

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 (a) The lands within the national recreation area, subject to valid existing rights, are withdrawn from location, entry, and patent under the United States mining laws.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 non-discriminatory 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 Fulliar;

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

of type A, chemical grade manganese ore from the national stockpile and the supplemental stockpile;

H.R. 15837. An act to authorize the disposal of type B, chemical grade manganese ore from the national stockpile and the supplemental stockpile;

H.R. 15838. An act to authorize the disposal of shellac from the national stockpile;

H.R. 15839. An act to authorize the disposal of tungsten from the national stockpile and the supplemental stockpile;

H.R. 15998. An act to authorize the disposal of Surinam-type metallurgical grade bauxite from the national stockpile and the supplemental stockpile;

H.R. 16289. An act to authorize the disposal of natural Ceylon amorphous lump graphite from the national stockpile and the supplemental stockpile;

H.R. 16290. An act to authorize the disposal of refractory grade chromite from the national stockpile and the supplemental stockpile;

H.R. 16291. An act to authorize the disposal of chrysotile asbestos from the national stockpile and the supplemental stockpile;

H.R. 16292. An act to authorize the disposal of corundum from the national stockpile;

H.R. 16295. An act to authorize the disposal of natural battery grade manganese ore from the national stockpile and the supplemental stockpile; and

H.R. 16297. An act to authorize the disposal of molybdenum from the national stockpile.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 7517. An act 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; and

H.R. 12758. An act to authorize the Secretary of the Interior to establish a volunteers in the park program, and for other purposes.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 2108. An act to promote public health and welfare by expanding, improving, and better coordinating the family planning services and population research activities of the Federal Government, and for other purposes;

S. 2455. An act to authorize appropriations for the Civil Rights Commission, and for other purposes; and

S. 3586. An act to amend title VII of the Public Health Service Act to establish eligibility of new schools of medicine, dentistry, osteopathy, pharmacy, optometry, veterinary medicine, and podiatry for institutional grants under section 771 thereof, to extend and improve the program relating to training of personnel in the allied health profession, and for other purposes.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 16595) entitled "An act to authorize appropriations for activities of the National Science Foundation, and for other purposes."

The message also announced that the Senate insists upon its amendments to

the bill (H.R. 17711) entitled "An act to amend the District of Columbia Co-operative Association Act," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. TYDINGS, Mr. SPONG, Mr. EAGLETON, and Mr. MATHIAS to be the conferees on the part of the Senate.

The message also announced the Senate agrees to the amendments of the House to a bill of the Senate of the following title:

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.

REREFERENCE OF H.R. 18365 TO COMMITTEE ON ARMED SERVICES

Mr. BRINKLEY. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the bill (H.R. 18365) to amend title 10 of the United States Code to permit actions against the United States for damage to the good name and reputation of members of the Armed Forces charged with committing certain crimes against civilians in combat zones if such members are cleared of such charges, and for other purposes, of which I am the author, and that the bill be referred to the Committee on Armed Services.

In this regard, Mr. Speaker, I have gotten the permission of the chairman of the Committee on the Judiciary and of the Committee on Armed Services.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

There was no objection.

THE CONSUMER AMENDMENT TO QUOTA BILL

(Mr. VANIK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VANIK. Mr. Speaker, today, the Ways and Means Committee adopted a watered-down version of my consumer amendment to the quota bill.

It was my hope that there could be a modest recognition of consumer rights in the items which are to receive special shelter and protection.

The original language of my amendment authorized the President to suspend the quota provisions, upon advice by the Council of Economic Advisers that wholesale prices of items affected by the quotas provided by the bill have risen unreasonably above the wholesale price index.

Stanley Nehmer, Deputy Assistant Secretary for Resources of the Department of Commerce, opposed the amendment on behalf of the administration. He stated that the President had powers under the bill to suspend quotas because of "market disruption" and "other factors he may deem relevant." He also stated that price increases could result from other factors and expressed concern about the feasibility of administering the consumer provision because of a correlation problem between tariff schedules and Bureau of Labor statistics.

The administration reaction to this modest consumer proposal reflects a general lack of concern for the American consumer. The established legislative history on market disruption is completely directed toward industries rather than consumers. It is also demeaning to the consumer's interests to include it among "other factors the President may deem relevant" in suspending quotas.

The administration's complaint about the difficulty in correlating the wholesale price index to the tariff identification numbers is feeble.

The watered-down amendment adopted as a substitute for my proposal is as follows:

NEW SECTION TO FOLLOW SECTIONS 103 AND 104

In carrying out the provisions of Sections 103 and 104, including the implementation of arrangements or agreements provided for in Section 104, the President may authorize increased exports to the United States or entries and withdrawals from warehouse for consumption in the United States of any category of articles whenever he determines that the supply of articles similar to those subject to limitation under such sections will be inadequate to meet domestic demand at reasonable prices.

This is a toothless consumer provision which does not protect consumer rights. I am very skeptical that it can work.

This provision adopted by the committee seeks to insure an adequacy of supplies to meet domestic demand at reasonable prices. My fear is that it will result in total collaboration between domestic producers and importers to develop a neat arrangement of rigging pricing policies for the benefit of everyone involved except the consumer.

NIXONOMIC GAME PLAN IS ON TARGET

(Mr. HANNA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HANNA. Mr. Speaker, we have been assured by White House strategists that the Nixonomic game plan is on target. I have just received from my congressional district, Mr. Speaker, the latest tally on what the Nixon marksmanship is hitting in that target.

Jobless rates in Orange County hit 5.8 percent. For my area this means 32,000 persons are unemployed. Last month 800 people were laid off in the aerospace industry alone. They say recession occurs when your brother-in-law is out of work. Depression hits when you are out of work. A disturbing number of my constituents are joining their brother-in-law in the unemployment office.

Building trade unions estimate that from 30 percent to 35 percent of their skilled workers are jobless. With a great need for housing, the vacancy rate in apartments in Orange County is up 7.9 percent. People out of work cannot pay rent.

Our assessment is that the picture is even worse when one considers the amount of underemployment caused by displaced skills seeking undercapacity jobs as their only hope for employment.

Compressed living conditions and extension of the life of below standard

housing also contributes to a profile of indignity and suffering not visible in the ordinary reporting and statistics.

More and more people in my area are hoping that the President will either shift his target or not take such deadly aim.

RECEDING FROM HOUSE AMENDMENTS TO S. 1456, AMENDMENT TO AGRICULTURAL ADJUSTMENT ACT

Mr. GOODLING. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (S. 1456) to amend section 8c(6) (I) 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, with the House amendments thereto, and recede from the House amendments.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

A motion to reconsider was laid on the table.

PROPOSED INVESTIGATION OF FEDERAL MEAT INSPECTION ACT

(Mr. KLEPPE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KLEPPE. Mr. Speaker, I am today introducing a resolution that would establish a joint congressional committee to conduct a study and investigation of the Federal Meat Inspection Act.

The committee would undertake at firsthand an evaluation of packing plants in which meat destined for consumption in this country is processed. Particular emphasis would be placed on imbalances and deficiencies in the level of inspection provided.

Included in the study would be foreign plants which are approved for shipping meat to the United States.

Serious complications have arisen since implementation of the Federal Meat Inspection Act of 1968, and this committee, to be comprised of three Members of the House of Representatives and three Members of the Senate, would thoroughly study the Meat Act to determine whether meat inspection is being effectively and uniformly administered, whether the provisions of the act are practicable and fair, and whether the provisions of the act relating to imported meat are being effectively enforced.

The American people now have the highest quality of food available anywhere in the world. It would be unfortunate if we could not insure that all Americans enjoy purity of all their food products. By creating the joint committee proposed in my resolution, we can guarantee that the people of America will purchase only that food which is safe, healthful, and pure.

CHET HUNTLEY CONFESSES

(Mr. SCHERLE asked and was given permission to address the House for 1

minute and to revise and extend his remarks.)

Mr. SCHERLE. Mr. Speaker, Chet Huntley has finally confessed to what many of us knew all along, just by listening to him. He is a Nixon hater. I just say he is in good company. Alger Hiss will applaud. So will Arthur Schlesinger and Dr. Spock. So will Jerry Rubin and some Members of the other body.

Mr. Speaker, they say confession is good for the soul. In this case confession is also good for the American people because it allows them to know just where Mr. Huntley has stood all these years when he was making the snide remarks and the great pontifications—as well as what he was standing in when he made them.

Mr. Speaker, I read that Mr. Huntley leaves NBC on August 1 to return to Montana. I believe he is 16 years late. Until then, however, it seems to me that Mr. Huntley hardly has a place among those unbiased electronic journalists we watch nightly. I would hope that NBC realizes that Mr. Huntley has ended his usefulness to them and has destroyed his credibility with the American people.

APPOINTMENT OF CONFEREES ON H.R. 16915, LEGISLATIVE BRANCH APPROPRIATIONS, 1971

Mr. ANDREWS of Alabama. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 16915) making appropriations for the legislative branch for the fiscal year ending June 30, 1971, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Alabama? The Chair hears none, and appoints the following conferees: Messrs. ANDREWS of Alabama, KIRWAN, YATES, CASEY, EVANS of Colorado, MAHON, BOW, LANGEN, REIFEL, and DEL CLAWSON.

REPORT ON STUDY OF 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 OF THE UNITED STATES (H. DOC. NO. 91-367)

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Public Works and ordered to be printed, with illustrations:

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 NIXON.

THE WHITE HOUSE, July 15, 1970.

WAYS AND MEANS COMMITTEE DEEPLY CONCERNED WITH PROBLEMS OF THE CONSUMER

(Mr. BURKE of Massachusetts asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURKE of Massachusetts. Mr. Speaker, I understand that some statements were made in the House today with relation to the activities of the Committee on Ways and Means on its treatment of the consumers in respect to trade.

I want this House to know that every member of the Committee on Ways and Means is deeply concerned with the problems of the consumer. They are also deeply concerned with the exploitation of human beings in this world. When you stop to consider that some nations have 10-year-old children working in the mills and the factories for 10 hours a day 6 days a week for 6 cents an hour. This in my opinion is unconscionable and there is no justification for it. If we are going to amend the trade law to protect the consumer, we certainly need further amendments on that bill to protect the human beings of this world. I say it is unconscionable for anyone in this Nation or any nation in the world to have children work in the mills for 10 hours a day. Believe me, those children never reach the age of 30, and in some of those countries they have the fattest graveyards in the world. Those children die from malnutrition, tuberculosis, and all of the dread diseases caused by the exploitation of human beings in these various industries that are importing their goods into this country.

I want to say to the Members of this House, let us stand up and do the right thing. Let us stand for the protection of human beings in this world no matter where they are.

MEANINGFUL CONSUMER PROTECTION NEEDED

(Mr. BOGGS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOGGS. Mr. Speaker, I was much interested in the remarks made by the gentleman from Ohio (Mr. VANIK) and the gentleman from Massachusetts (Mr. BURKE).

Somehow or other I find myself puzzled that we seem now to neglect the consumer.

When I was growing up in Long Beach, Miss., when I was 13 years old I worked in a drugstore as a sodajerker. In that drugstore there was a sign which read, "The customer is always right." There was a very fine gentleman who ran that drugstore. His name was Day and was my friend for many years. When I first went to work he said to me, "Son, the only way that I stay in business is by pleasing the people who come in here and buy what I sell. They trust me as an honest businessman. And I want them to get fair treatment.

"I do not want to sell them a medicine that I do not think is the medicine that the doctor prescribed. I do not want to sell them something so that they can

come back and say, 'Look. You were dishonest with me.'"

Somehow or other, Mr. Speaker, that fine concept of trust and friendship between the buyer and seller is not so prevalent now.

Today, in many places, there seems to be open battle between buyer and seller.

I would hope, before this Congress adjourns, that we will consider meaningful consumer legislation; not legislation designed to punish anyone or to harm American industry, which everyone knows is the greatest system in the world, but legislation that gives the consumer the kind of a break that that fine man who ran that drugstore insisted on giving the people who came into that store when I worked there 43 years ago.

PERMISSION FOR HOUSE MANAGERS TO FILE CONFERENCE REPORT ON H.R. 16916, OFFICE OF EDUCATION APPROPRIATIONS, 1971

Mr. FLOOD. Mr. Speaker, I ask unanimous consent that the managers on the part of the House may have until midnight tonight to file a conference report on the bill (H.R. 16916) making appropriations for the Office of Education for the fiscal year ending June 30, 1971, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

CONFERENCE REPORT (H. Doc. No. 91-1306)

The Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 16916) "making appropriations for the Office of Education for the fiscal year ending June 30, 1971, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 6, 12, 14, 26, 27, 28, 29, 30, 31 and 39.

That the House recede from its disagreement to the amendments of the Senate numbered 4, 10, 11, 13, 16, 17, 19, 20, 21, 22, 25, 35, 36, 37 and 40, and agree to the same.

Amendment numbered 1: That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$551,068,000"; and the Senate agree to the same.

Amendment numbered 2: That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$536,068,000"; and the Senate agree to the same.

Amendment numbered 5: That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$143,393,000"; and the Senate agree to the same.

Amendment numbered 7: That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$50,000,000"; and the Senate agree to the same.

Amendment numbered 8: That the House recede from its disagreement to the amend-

ment of the Senate numbered 8, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$1,846,968,000"; and the Senate agree to the same.

Amendment numbered 15: That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$21,250,000"; and the Senate agree to the same.

Amendment numbered 18: That the House recede from its disagreement to the amendment of the Senate numbered 18, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$494,196,000"; and the Senate agree to the same.

Amendment numbered 23: That the House recede from its disagreement to the amendment of the Senate numbered 23, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$967,880,000"; and the Senate agree to the same.

Amendment numbered 24: That the House recede from its disagreement to the amendment of the Senate numbered 24, and agree to the same with an amendment, as follows: In lieu of the sum named by said amendment insert "\$7,000,000"; and the Senate agree to the same.

Amendment numbered 32: That the House recede from its disagreement to the amendment of the Senate numbered 32, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$85,040,000"; and the Senate agree to the same.

Amendment numbered 33: That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$7,092,500"; and the Senate agree to the same.

Amendment numbered 34: That the House recede from its disagreement to the amendment of the Senate numbered 34, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "\$11,000,000"; and the Senate agree to the same.

Amendment numbered 41: That the House recede from its disagreement to the amendment of the Senate numbered 41, and agree to the same with an amendment, as follows: In lieu of the number proposed by said amendment insert "211"; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 3, 9 and 38.

DANIEL J. FLOOD,
WILLIAM H. NATCHER,
NEAL SMITH,
W. R. HULL, JR.,
BOB CASEY,
GEORGE MAHON,
ROBERT H. MICHEL,
GARNER E. SHRIVER,
CHARLOTTE T. REID,
FRANK T. BOW,

Managers on the Part of the House.

WARREN G. MAGNUSON (except as to amendment 39),
RICHARD B. RUSSELL,
JOHN STENNIS,
ALAN BIBLE,
ROBERT C. BYRD,
SPESSARD L. HOLLAND,
NORRIS COTTON,
CLIFFORD P. CASE (except as to amendment 39),
HIRAM L. FONG (except as to amendment 39),
J. CALBE BOGGS (except as to amendment 39),
MILTON R. YOUNG,

Managers on the Part of the Senate.

STATEMENT

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 16916) making appropriations for the Office of Education for the fiscal year ending June 30, 1971, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon and recommended in the accompanying conference report as to each of such amendments, namely:

TITLE I—OFFICE OF EDUCATION

Amendments Nos. 1 and 2: Appropriate \$551,068,000 for "School assistance in Federally affected areas" instead of \$440,000,000 as proposed by the House and \$673,800,000 as proposed by the Senate and provide \$536,068,000 for maintenance and operation of schools instead of \$425,000,000 as proposed by the House and \$658,800,000 as proposed by the Senate.

Amendment No. 3: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment which incorporates language proposed by the Senate providing full entitlement under section 3(a) for "hardship" districts and restores House language stricken by the Senate providing 90 percent of entitlement under section 3(a) and 100 percent of amounts payable under section 6.

Amendment No. 4: Provides for allocation of funds under parts A, B, and C of title I of the Elementary and Secondary Education Act as proposed by the Senate instead of only part A as proposed by the House.

Amendment No. 5: Provides that \$143,393,000 of the amount appropriated for "Elementary and secondary education" shall be for supplementary centers and services under title III of the Elementary and Secondary Education Act instead of \$137,393,000 as proposed by the House and \$150,393,000 as proposed by the Senate.

Amendment No. 6: Provides that \$29,750,000 of the amount appropriated for "Elementary and secondary education" shall be for strengthening State departments of education under title V of the Elementary and Secondary Education Act as proposed by the House instead of \$33,750,000 as proposed by the Senate.

Amendment No. 7: Provides that \$50,000,000 of the amount appropriated for "Elementary and secondary education" shall be for equipment and minor remodeling under title III-A of the National Defense Education Act instead of \$20,000,000 as proposed by the House and \$79,200,000 as proposed by the Senate.

Amendment No. 8: Appropriates \$1,846,968,000 for "Elementary and secondary education" instead of \$1,808,968,000 as proposed by the House and \$1,898,168,000 as proposed by the Senate. The conferees are agreed that the amount appropriated includes \$10,000,000 for dropout prevention, instead of \$8,000,000 as provided by the House and \$15,000,000 as provided by the Senate, and \$25,000,000 for bilingual education as provided by the House, instead of \$31,000,000 as provided by the Senate. Within the total amount for bilingual education, \$1,000,000 is specifically for schools on Indian reservations, as authorized by section 706 of the Elementary and Secondary Education Act.

Amendment No. 9: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which relates to the minimum grant which a State may receive under title I-A of the Elementary and Secondary Education Act.

Amendment No. 10: Modifies language to conform with Amendment No. 4.

Amendment No. 11: Provides that \$1,000,000 of the amount appropriated for "Education for the handicapped" shall be for special programs for children with specific learning

disabilities under part G of the Education of the Handicapped Act as proposed by the Senate. The House made no provision for these programs.

Amendment No. 12: Strikes language proposed by the Senate providing that \$4,000,000 of the appropriation for "Vocational and adult education" shall be for residential vocational schools under section 151 of the Vocational Education Act.

Amendment No. 13: Inserts language proposed by the Senate citing part C of the Vocational Education Act which requires 10 percent of the amounts allocated to the States for basic vocational education grants to be used for research. The conferees are agreed that this provision is adopted on a trial basis for one year, and that the results will be reviewed before a decision is made to include it in next year's appropriation bill.

Amendment No. 14: Provides that \$350,336,000 of the appropriation for "Vocational and adult education" shall be for basic grants as proposed by the House instead of \$346,336,000 as proposed by the Senate.

Amendment No. 15: Provides that \$21,250,000 of the appropriation for "Vocational and adult education" shall be for consumer and homemaking education instead of \$17,500,000 as proposed by the House and \$25,000,000 as proposed by the Senate.

Amendments Nos. 16 and 17: Insert language proposed by the Senate citing part I of the Vocational Education Act which authorizes grants for curriculum development.

Amendment No. 18: Appropriates \$494,196,000 for "Vocational and adult education" instead of \$490,446,000 as proposed by the House and \$497,946,000 as proposed by the Senate.

Amendment No. 19: Provides that \$16,000,000 of the appropriation for "Vocational and adult education" shall be for exemplary programs under part D of the Vocational Education Act as proposed by the Senate instead of \$20,000,000 as proposed by the House. This will make \$4,000,000 available for curriculum development.

Amendments Nos. 20 and 21: Insert language proposed by the Senate citing part A of title VI of the Higher Education Act which authorizes grants for instructional equipment.

Amendment No. 22: Inserts language proposed by the Senate citing title I of the Higher Education Facilities Act which authorizes grants for construction of undergraduate academic facilities.

Amendment No. 23: Appropriates \$967,880,000 for "Higher education", instead of \$899,880,000 as proposed by the House, and \$1,046,670,000 as proposed by the Senate. The conferees are agreed that the amount appropriated includes \$160,000,000 for college work-study and cooperative education programs as proposed by the House, instead of \$176,000,000 as proposed by the Senate, \$243,000,000 for student loans as proposed by the Senate, instead of \$229,000,000 as proposed by the House, \$10,080,000 for aid to land-grant colleges, instead of \$8,080,000 as proposed by the House and \$12,120,000 as proposed by the Senate, \$8,000,000 for foreign language training and area studies instead of \$6,000,000 as proposed by the House and \$15,300,000 as proposed by the Senate. No funds are provided for grants for construction of undergraduate facilities except for those specifically earmarked by Amendment No. 25 for public community colleges and technical institutes. The Senate included \$28,050,000 for grants for construction of other undergraduate facilities.

Amendment No. 24: Provides that \$7,000,000 of the amount appropriated for "Higher education" shall be for instructional equipment instead of \$14,500,000 as proposed by the Senate. The House made no provision for this program.

Amendment No. 25: Provides that \$43,000,000 of the amount appropriated for "Higher

education" shall be for grants for construction of public community colleges and technical institutes as proposed by the Senate. The House made no provision for this program.

Amendment No. 26: Provides that \$167,700,000 of the amount appropriated for "Higher education" shall be for educational opportunity grants, as proposed by the House, instead of \$185,600,000 as proposed by the Senate.

Amendment No. 27: Deletes appropriation of \$4,500,000 for initial funding of six programs proposed by the Senate.

Amendments Nos. 28, 29, 30, and 31: Restore House language stricken by the Senate and delete language proposed by the Senate providing a separate appropriation for the "Teacher Corps" and appropriate \$135,800,000 for "Education professions development" as proposed by the House, instead of \$105,000,000 as proposed by the Senate, including \$30,800,000 for the Teacher Corps as proposed by the House, instead of a separate appropriation of \$40,800,000, as proposed by the Senate.

Amendment No. 32: Appropriates \$85,040,000 for "Community education" instead of \$71,636,000 as proposed by the House, and \$101,794,000 as proposed by the Senate. The conferees are agreed that the amount appropriated includes \$15,325,000 for college library resources, instead of \$9,900,000 as proposed by the House and \$20,750,000 as proposed by the Senate, \$3,900,000 for librarian training as proposed by the House, instead of \$8,250,000 as proposed by the Senate, and \$6,613,500 for cataloging by the Library of Congress, instead of \$5,727,000 as proposed by the House and \$7,500,000 as proposed by the Senate.

Amendment No. 33: Provides that \$7,092,500 of the amount appropriated for "Community education" shall be for grants for public library construction instead of \$5,000,000 as proposed by the House, and \$9,185,000 as proposed by the Senate.

Amendment No. 34: Provides that \$11,000,000 of the amount appropriated for "Community education" shall be for educational broadcasting facilities, instead of \$6,000,000 as proposed by the House and \$15,000,000 as proposed by the Senate.

Amendment No. 35: Appropriates \$90,077,000 for "Research and training" as proposed by the Senate, instead of \$105,325,000 as proposed by the House. The conferees are agreed that the Secretary may exercise discretion as to the distribution of the total appropriation among the various activities, and that they would have no objection to the use of an additional \$4,000,000 for experimental schools.

Amendment No. 36: Appropriates \$45,164,000 for "Salaries and expenses" as proposed by the Senate, instead of \$46,107,000 as proposed by the House.

Amendment No. 37: Strikes language proposed by the House and inserts language proposed by the Senate which will permit loans to be made from the Higher Education Facilities Loan fund, to the extent that amounts are available from commitments withdrawn prior to July 1, 1971, by the Commissioner of Education. The House language would have limited such loans to a total of \$10,000,000.

Amendment No. 38: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment which will appropriate \$75,000,000 for "Emergency school assistance" instead of \$150,000,000 as proposed by the Senate.

TITLE II—GENERAL PROVISIONS

Amendment No. 39: Restores sections 209 and 210 included in the House bill and stricken by the Senate.

Amendment No. 40: Deletes section 211 in-

cluded in the House bill and stricken by the Senate.

Amendment No. 41: Changes section number.

DANIEL J. FLOOD,
WILLIAM H. NATCHER,
NEAL SMITH,
W. R. HULL, Jr.,
BOB CASEY,
GEORGE MAHON,
ROBERT H. MICHEL,
GARNER E. SHRIVER,
CHARLOTTE T. REID,
FRANK T. BOW,

Managers on the Part of the House.

CONFERENCE REPORT ON S. 2601, DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970

Mr. ABERNETHY. Mr. Speaker, I call up the conference report on the bill (S. 2601) to reorganize the courts of the District of Columbia, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The Clerk read the statement.

Mr. ABERNETHY (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

Mr. ADAMS. Mr. Speaker, reserving the right to object, I notice that yesterday there was a unanimous-consent request made that the conference report not be printed in the RECORD. I do not know what the gentleman from Mississippi intends to do about the statement of the managers on the part of the House being read. I want to point out the fact that there are probably only 50 or 60 of us on the floor now. The report has not been printed in the RECORD. The statement is not going to be read and he has asked it not be printed. I would like to find out at some point about the contents of the report. I, therefore, want to engage in a colloquy with the gentleman from Mississippi in order to determine what is in this conference report.

Mr. Speaker, this has been a very controversial matter. It has involved preventive detention and no-knock provisions as well as many other things. I think at some point some of the Members ought to know what finally came out of the conference and I think the public should, too. That is why I reserved the right to object.

Mr. Speaker, I would like to know from the gentleman if we are going to have an opportunity to go through this and if at some point we are going to have the statement read or the report printed in the RECORD. I just got the report in the back of the Chamber and I will bet that there are not 10 Members who have ever seen the report.

At some point, I would say to the gentleman from Mississippi, I think we

should go into some detail as to what is in this conference report.

Mr. ABERNETHY. Mr. Speaker, will the gentleman yield?

Mr. ADAMS. I am glad to yield to the gentleman from Mississippi.

Mr. ABERNETHY. The gentleman from Washington approached me earlier about this matter. I assured the gentleman then and I reassure him now that the conferees are here to answer such questions as we can about this report.

The only reason I requested that we dispense with the reading of the report is to attempt in a small way to save the Government a small amount of money. We were advised that it would cost about \$18,000 to print the report in the CONGRESSIONAL RECORD. It was for that reason that I requested that the printing in the RECORD be dispensed with—the statement of the managers on the part of the House is no small printing item itself. I do not think the reading of it word for word would make any contribution to the edification or information of the Members. So for that reason and in order to expedite matters and in order to economize in the cost of printing the conference report and statement—not to conceal anything, however—we have asked that this be waived.

Mr. Speaker, I assure the gentleman that we shall attempt to answer every question he propounds and there will be no attempt to conceal anything or foreclose anyone.

I am aware of the gentleman's interest in this legislation. I am aware of the interest he manifested in the hearings. I know the gentleman has some things that are on his mind about which he wants to be informed. I can assure the gentleman we shall do our best to give him that information.

Mr. ADAMS. I might inquire of the gentleman if his unanimous-consent request also includes that the statement of the managers on the part of the House and the Senate will be printed in the RECORD so that at some point we will have in the RECORD of the House or of the Congress what came out of the conference, because most of us do not know what happened. The conference, of course, was closed and we simply do not know what happened.

Mr. ABERNETHY. Mr. Speaker, if the gentleman will yield further, my request did include a waiver of the printing of the statement of the managers in the RECORD. I offered that as an economy move. It would cost a considerable amount of money to print this statement. The conference report is now available and filed in the committee and in the House, and there will be copies of it maintained forever, I assume, in the Library of Congress and in the library of the House.

I personally think that the ideal thing to do would be to waive the printing of the statement of the managers in the RECORD. If the gentleman feels, however, that it should be printed in the RECORD and asks unanimous consent that it be so printed, then I certainly shall not interpose any objection; but I would hope that he would not do so.

Mr. ADAMS. As I understand it, in the

unanimous-consent request made by the gentleman from Mississippi we are now talking about, is the statement of the managers on the part of the House as opposed to the report itself?

Mr. ABERNETHY. I referred to the statement of the managers on the part of the House, and I included that in the request.

Mr. ADAMS. If the gentleman would include in his request that the statement of the managers on the part of the House be printed in the RECORD as opposed to the report itself, then I would not interpose an objection to his request. Further, I think this colloquy has made it very clear that the gentleman from Washington is taking the responsibility for what additional expense might be involved in printing it in the RECORD. A report should be printed in the RECORD so that all of the Members will know what we have done.

Mr. ABERNETHY. If the gentleman will yield to me, I will make that request now.

Mr. ADAMS. I yield to the gentleman from Mississippi.

Mr. ABERNETHY. Mr. Speaker, I ask unanimous consent to amend my request, and ask unanimous consent that the reading of the statement of the managers on the part of the House be dispensed with, and that it be printed in the RECORD at this point.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The statement of the managers on the part of the House is as follows:

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE ON S. 2061, DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the text of the bill (S. 2601) to reorganize the courts of the District of Columbia, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all after the enacting clause and inserted a substitute. The Senate receded from its disagreement to the amendment of the House to the text of the bill with an amendment which was a substitute for both the House amendment to the text of the bill and the Senate bill. The House recedes from its disagreement to the amendment of the Senate to the amendment of the House to the text of the bill with an amendment which is a substitute for both the House amendment and the Senate amendment thereto. The differences between the House amendment and the substitute agreed to in conference are noted below except for minor technical and clarifying changes made necessary by reason of the conference agreement.

Unless otherwise indicated, references to titles 11, 16, and 23 (and sections thereof) are to those titles (and sections thereof) in the D.C. Code as contained in the revision made by the conference substitute.

COURT REORGANIZATION

Transfer of civil jurisdiction. (3)

The House amendment provided for the transfer of civil jurisdiction from the Unit-

ed States District Court for the District of Columbia (hereafter in the statement of managers referred to as the "District Court") to the Superior Court of the District of Columbia established by the Act (hereafter in the statement of managers referred to as the "Superior Court") in three stages with probate, guardianship, partition of property, and other fiduciary matters being transferred in the second stage. It specified that pending, as well as subsequent, probate matters would be transferred. It also provided transfer of all local personal injury and property damage cases (regardless of the amount in controversy) in the first stage.

The Senate amendment provided for transfer in four stages with probate, guardianship, and partition of property in the fourth stage and other fiduciary matters in the second stage. Jurisdiction over personal injury cases (in which the amount in controversy did not exceed \$50,000), like other civil cases, was transferred in the first stage.

The conference substitute in section 11-501 and 11-921 adopts the three stages of the House amendment but provides for transfer of probate, guardianship, and partition of property in the third stage. Pending probate and fiduciary cases (other than matters in actual trial) are transferred along with jurisdiction over subsequent cases. Jurisdiction over local personal injury and property damage cases (transferred in the first stage) is subject to the \$50,000 jurisdictional limit. In addition, pending cases (other than matters in actual trial) under chapters 3, 7, 11, 13, and 15 of title 21 of the District of Columbia Code are also transferred at the time (second stage) when jurisdiction over those cases is transferred to the Superior Court. Section 199 (b) (3) of part E of title 1 of the Act provides that cases pending before the District Court or the Commission on Mental Health under chapter 5 of such title 21 are to be resolved without reference to the amendments made by the Act.

Jurisdiction of interlocutory appeals. (6)

The House amendment provided that the D.C. Court of Appeals would have jurisdiction of interlocutory criminal appeals under proposed sections 23-104 and 23-111(d) (2) of the D.C. Code (interlocutory appeals by the United States in criminal cases and interlocutory appeals by the United States in hearings involving increased penalties for subsequent offenses) and also specified general jurisdiction of interlocutory criminal appeals, not otherwise covered by the provision, where a substantial question exists.

The Senate amendment provided jurisdiction of interlocutory criminal appeals only under proposed section 23-104 of the D.C. Code.

The conference substitute adopts in section 11-721 the House references to both 23-104 and 23-111(d) (2) but follows the Senate amendment in omitting reference to interlocutory criminal appeals not otherwise covered.

Small Claims and Conciliation Branch. (10)

The House amendment fixed the jurisdictional limit of the Small Claims and Conciliation Branch of the Superior Court at \$500 and required the Branch to hold evening sessions whenever necessary.

The Senate amendment fixed the limit at \$750, specified that the jurisdiction of the Branch was exclusive, and required the Branch to hold at least one evening session per week.

The conference substitute in chapter 13 of title 11 adopts the Senate provisions. It is provided that the Branch has exclusive jurisdiction of action for the recovery of money. Actions involving interests in real property may not be brought in the Branch; and if interests in real property are raised in an action by counterclaim or any other means the Branch will certify the action to the

Civil Division. The Branch may also certify other cases to the Civil Division.

Number of judges, salary, and tenure (11, 12, 13)

The House amendment provided for the appointment of thirteen additional judges to the Superior Court—ten judges upon enactment of the bill and three more judges two years later. Judges were to be appointed for a ten year term. D.C. Court of Appeals judges would have received \$36,000 per annum and Superior Court judges, \$34,000 per annum.

The Senate amendment provided twenty-three additional judges—ten upon enactment, nine more judges two years after enactment (6 months preceding the second stage of transfer of jurisdiction), and four more judges three and one-half years after enactment. Appointment would have been for an initial four year term with reappointment for service during good behavior, subject to mandatory retirement at age 70. D.C. Court of Appeals judges would have received 95% of the salary of Federal appellate judges which is currently \$42,500 and Superior Court judges, 95% of the salary of District Court judges which is currently \$40,000.

The conference substitute in section 11-903 and in section 195 provides for seventeen additional judges—ten judges upon enactment and seven more judges eighteen months later (6 months preceding the second stage of transfer of jurisdiction). Under section 11-1502, judges are appointed for fifteen year terms subject to mandatory retirement at age 70. The new term of office will apply only to judges appointed after the date of enactment, whether appointed under the authorization for additional judges or appointed to fill vacancies. In addition, the new qualifications for judges will also apply to judges so appointed after the date of enactment.

Under sections 11-703 and 11-904 of the conference substitute, the local judges will receive 90% of the annual salary of the Federal judges in the District of Columbia. Thus the D.C. Court of Appeals judges will receive annually \$38,250 (90% of current Federal appellate court salary rate of \$42,500), and the chief judge will receive an additional \$500.00. The judges of the Superior Court will receive annually \$36,000 (90% of the U.S. District Court salary rate of \$40,000), and the chief judge will receive an additional \$500.00. The new salary rates will take effect on the effective date of the bill.

Judges' reports and meetings (14)

The House amendment required judges of both courts to submit time and attendance records to their respective chief judges, and required Superior Court judges to meet as specified in court rules and at the call of the chief judge.

The Senate amendment required Superior Court judges to submit monthly written reports to the chief judge and the Commission on Judicial Disabilities and Tenure, containing more detailed information than required in the House amendment. The Senate amendment also provided that Superior Court judges meet as specified in court rules and at the call of the chief judge, but required meetings at least once a month.

The conference substitute in sections 11-709 and 11-909 conforms to the House amendment, except that the requirement of monthly reports is made applicable to both the Superior Court and the D.C. Court of Appeals.

Law clerks for judges of appeals court (16)

The House amendment provided for the appointment of one law clerk per judge. The Senate amendment provided for the appointment of one or more law clerks per judge.

The conference substitute in section 11-708 permits the appointment of one law clerk per associate judge and permits the chief

judge to appoint two personal law clerks and three general law clerks to serve the entire court.

Qualifications for judicial appointments (17)

The House amendment provided that in the case of appointees selected from law professors or Government lawyers, such appointees must be members of the D.C. bar at the time of appointment and must have been eligible for membership in the bar at least 5 years before appointment.

The Senate amendment had no special provision for law professors or government lawyers.

The conference substitute in section 11-1501 conforms to the House amendment and also reestablishes the residency requirement of existing law.

Judges' vacation and sick leave (18)

The Senate amendment contained a provision, not in the House amendment, which provided for vacations for judges not to exceed six weeks, and also provided for sick leave.

The conference substitute in section 11-1505 contains the Senate provision with an amendment authorizing vacations of not more than thirty calendar days, and deleting any reference to sick leave.

Judicial review of commission decisions (19)

The Senate amendment contained a provision not included in the House amendment, which required decision by the court reviewing the Commission's order of removal or retirement within ninety days of oral argument or submission of briefs.

The conference substitute in section 11-1529 adopts the Senate provision.

Commission on judicial disabilities and tenure (19)

(1) The House amendment provided for a seven member commission to be appointed by the President.

The Senate amendment provided a seven member commission with three members to be appointed by the President, two members appointed by the Commissioner, and two members appointed by the chief judge of the U.S. District Court.

The conference substitute in subchapter II of chapter 15 of title 11 establishes a five-member commission. The President is to appoint three members. Of the President's appointees two must be District of Columbia residents and one a member of the District of Columbia bar and actively engaged in practice for five of the ten years immediately prior to his appointment. The Commissioner is to appoint one member who is to be a District of Columbia resident and not a lawyer. The chief judge of the U.S. District Court is to appoint one member from among the active or retired Federal judges serving in the District of Columbia.

(2) The House amendment provided a chairman of the commission appointed by a majority of the commission to a two year term; and provided for four alternate members to be appointed by the President.

The Senate amendment provided for the designation of the chairman by the President from among his appointees who are members of the D.C. bar. No term of office was specified for the chairman. The Senate amendment also provided for three alternate members, one appointed by the President, one appointed by the Commissioner, and one by the chief judge of the District Court.

The conference substitute in subchapter II of chapter 15 of title 11 adopts the Senate provision.

Judges' financial statements (20)

The Senate amendment contained a provision, not included in the House amendment, which required annual financial statements to be filed by each judge with the Commission on Judicial Disabilities and Tenure.

The conference substitute in section 11-1530 adopts the Senate provision. It is provided that, except with respect to information relating to nonjudicial positions held and honorariums received, the information contained in the statements is to be confidential unless required to determine compliance with the reporting requirements or in connection with the duties of the Commission.

Judges' retirement (21)

The House amendment required any judge retired for disability, either voluntarily or involuntarily, to have five years' service (including allowable civilian service) to be eligible for retirement salary.

The Senate amendment required no minimum service for involuntarily retired judges.

The conference substitute in section 11-1562(d) adopts the Senate provision.

Executive officer (23, 26)

The House amendment provided for appointment of the Executive Officer of the local courts by the President, while the Senate amendment provided for appointment by the Joint Committee on Judicial Administration. The House amendment provided for vesting allocation of space in court buildings in the chief judges, while the Senate amendment vested allocation of space in the Executive Officer subject to the supervision of the Joint Committee. The Senate amendment also specified duties for the Executive Officer not included in the House amendment: (1) to recommend to the chief judges assignment of judges, and (2) receive, evaluate, and act upon complaints as to court operations.

The conference substitute in section 11-1703 adopts the Senate provisions relating to appointment of the Executive Officer by the Joint Committee and space allocation by the Executive Officer. In addition, the Executive Officer is to make recommendations to the chief judge of the Superior Court relating to the arrangement and division of the business of that court and the fixing of the time of sessions of the court's divisions and branches.

Auditor-master (24)

The House amendment contained a provision, not included in the Senate amendment, providing for the Office of Auditor for the D.C. court system.

The conference substitute modifies the House amendment by providing in section 11-1724 for an Auditor-Master of the Superior Court who both audits accounts and executes orders of reference, thus placing upon him certain quasi-judicial functions.

Salaries of nonjudicial court personnel (25)

The House amendment established a ceiling on the salary rate that could be fixed by the Executive Officer for non-judicial court personnel. He could fix the salary of not more than 1 person at the maximum salary rate for GS-17 and not more than 3 persons at the maximum salary rate for GS-16.

The limit in the Senate amendment was as follows: He could fix the salary of not more than 1 person at the salary rate for a GS-18, not more than 3 persons at the maximum salary rate for GS-17, and not more than 7 persons at the maximum salary rate for a GS-16.

The conference substitute provides that the maximum salary rate that can be fixed by the Executive Officer is the maximum salary rate for a GS-15 (current maximum \$29,752), except that—

(1) he may fix the salary for 2 persons at not more than the maximum salary rate for a GS-17 (current maximum \$34,810), and

(2) he may fix the salary for 5 persons at not more than the maximum salary rate for a GS-16 (current maximum \$33,627).

Annual report of the District of Columbia court system (27)

The House amendment required the Executive Officer to prepare an annual report

of the District of Columbia Court system concerning the work of the courts.

The Senate amendment was the same as the House amendment except that it specified with greater detail the purpose of the annual report.

The conference substitute in section 11-1745 adopts the Senate amendment.

Assignment of judges to juvenile court; administration of, and vacancy in, that court (30)

The House amendment contained a provision, not in the Senate amendment, which provided that during the period between the date of enactment of the bill and its effective date (six months) the chief judge of the District of Columbia Court of General Sessions could assign judges to the Juvenile Court.

The conference substitute in section 196 adopts the House amendment. Because of the recent death of the chief judge of the Juvenile Court, it is also provided that during the period between enactment and the effective date the chief judge of the District of Columbia Court of General Sessions will administer the Juvenile Court and that the vacancy in the office of chief judge of the Juvenile Court will be filled by the appointment of a judge who will serve as an associate judge.

Temporary assignment of District court judges to superior court (31)

The Senate amendment contained a provision, not in the House amendment, authorizing the Chief Judge of the Superior Court to certify a need for additional judges to the Chief Judge of the U.S. Court of Appeals. It authorized the Chief Judge of the U.S. Court of Appeals to assign District Court judges temporarily to the Superior Court.

The conference substitute in section 11-908 (c) adopts the Senate provision with the modification that the consent of the Chief Judge of the District Court is required. In addition, after the completion of the transfer of jurisdiction to the Superior Court (three years after enactment) District Court judges may be assigned to Superior Court only if the Attorney General of the United States consents.

Advisory Committee on Rules (32)

The Senate amendment contained a provision, not in the House amendment, which authorized the Superior Court to appoint a committee of lawyers to advise it with respect to rules of court.

The conference substitute in section 11-946 adopts the Senate provision.

Service by petit jurors (32A)

The House amendment provided that unless actually serving as a trial juror in a case, petit jurors could not be required to serve more than one month in any twelve consecutive months.

The Senate amendment differed in that service was limited to thirty days in any two year period.

The conference substitute in section 11-1905 adopts the Senate provision.

Qualifications for Register of Wills (33)

The Senate amendment contained a provision, not in the House amendment, which specified that a person appointed Register of Wills must be a citizen of the United States, must have been a member of the D.C. bar for five of the ten years preceding his appointment, must have either been actively engaged in probate practice in the District or had broad experience in the administration of estates in the District for five of the ten years preceding his appointment.

The conference substitute in section 11-1102(b) adopts the Senate provision, except that it requires active probate practice or broad experience in, or knowledge of the subject of, the administration of estates of de-

ceased persons in the District of Columbia, and does not specify any length of time with respect to this qualification.

Salary of Register of Wills (34)

The House amendment left to the Executive Officer of the court the authority to set the Register of Wills' salary.

The Senate amendment provided a salary of not less than a GS-18.

The conference substitute provides in section 11-2102(c) and section 199(b)(2) that the court having probate jurisdiction will fix the salary at a rate not to exceed the maximum salary rate for a GS-16 (current maximum \$33,627).

Bar admission and disbarment (36)

The House amendment provided for a transfer of jurisdiction over bar admission to the D.C. Court of Appeals effective April 1, 1972. A substantive amendment to existing law which required automatic suspension of a member of the bar convicted of a crime of moral turpitude pending appeal of the conviction would also have become effective April 1, 1972.

The Senate amendment provided an effective date of April 1, 1974, for transfer of bar admission jurisdiction but the suspension provision, identical to the House, would have become effective on the effective date of the bill.

The conference substitute in section 11-2501(c) retains the April 1, 1972, effective date for bar admission jurisdiction but in section 199(b)(1) makes the suspension provision effective on the effective date of the conference substitute.

Chief medical examiner

The House amendment provided for the establishment of the Office of Chief Medical Examiner in lieu of the Office of Coroner for the District of Columbia with the requirement that the Chief Examiner and at least one deputy be certified or board eligible for certification in anatomic pathology by the American Board of Pathology.

The Senate amendment provisions were identical to those of the House.

Chapter 23 of title 11 of the conference substitute contains the provisions of the House amendment. The conferees recognize the difficulty in securing persons who have the requisite qualifications and the necessary experience to fill the position of Chief Medical Examiner. It is intended that, in the administration of such chapter 23, the individual currently serving as the Coroner of the District of Columbia shall be continued in office as the Acting Chief Medical Examiner for a period of at least a year following the date such chapter 23 takes effect.

JUVENILES

Definition of child (37)

The House amendment provided that for purposes of Family Division jurisdiction the term "child" includes persons under 18 except those 16 and older charged by the United States attorney with murder, manslaughter, rape, mayhem, arson, kidnapping, burglary, robbery, any assault with intent to commit any such offense, or assault with a dangerous weapon, or any such offense and a properly joinable offense.

The Senate amendment provided that "child" includes persons under 18 except those 16 and older who have been previously either found delinquent with respect to a felony committed when 15 or older or have been subject to a consent decree and are charged by the United States Attorney for the District of Columbia with any of the offenses listed in the House amendment, or any such offense and a properly joinable offense.

The conference substitute provides in section 16-2301 that the term "child" includes persons under 18 except those 16 and older

charged by the United States attorney with murder, forcible rape, robbery while armed, burglary in the first degree, or assault with intent to commit one of these offenses, or any such offense and a properly joinable offense.

Setting aside judgment (39)

The House amendment provided that if a court discovers after judgment has been entered that the person before it is under 18, the judgment may not be set aside because of the age of the defendant.

The Senate amendment provided that a court may set aside a judgment on the ground of the defendant's age if the court discovered after judgment had been entered that the person before it was under 18 and after a hearing the court found that (1) neither the defendant nor his counsel had reason to believe before entry of judgment that defendant was under 18, and (2) the defendant would not have been transferred for criminal prosecution if his age had been known.

The conference substitute in section 16-2302 adopts the Senate amendment.

Right to counsel (40)

The House amendment provided that a child alleged to be delinquent or in need of supervision is entitled to counsel at all critical stages of Family Division proceedings beginning at the time of admission or denial of the allegations in the petition.

The Senate amendment provided that a child alleged to be delinquent or in need of supervision is entitled to counsel at all critical stages of Family Division proceedings including the time of admission or denial of the allegations in the petition.

The conference substitute in section 16-2304 adopts the Senate amendment.

Time for filing petition (41)

The House amendment provided that the petition shall be filed within ten days after the complaint is referred to the Director of Social Services.

The Senate amendment provided that the petition shall be filed within five days after the complaint is referred to the Director of Social Services.

The conference substitute provides in section 16-2305 that the petition shall be filed within seven days, excluding Sundays and legal holidays, after the complaint is referred to the Director of Social Services.

Time of filing transfer motion (42)

The House amendment provided that the motion requesting the court to order a child transferred for criminal prosecution must be filed within ten days, or later for good cause shown, after a petition alleging delinquency is filed.

The Senate amendment provided that the transfer motion must be filed within five days after the delinquency petition is filed.

The conference substitute provides in section 16-2307 that the transfer motion must be filed within seven days, excluding Sundays and legal holidays, of the filing of a delinquency petition, except that the Family Division may for good cause shown extend the time for filing the motion.

Report of the director of social services (43)

The House amendment provided the report of the Director of Social Services is to be made available to the attorney for the child and the Corporation Counsel at least five days before the transfer hearing.

The Senate amendment provided the Director's report is to be made available to the attorney for the child and to the Corporation Counsel at least two days before the hearing.

The conference substitute provides in section 16-2307(f) that the report of the Director of Social Services is to be made available to the attorney for the child and to the Corporation Counsel at least three days prior to the transfer hearing.

Time for hearing on motion to transfer (44)

The Senate amendment contained a provision, not contained in the House amendment, which provided that the hearing on the motion to transfer a child for criminal prosecution is to be held not later than fifteen days after the motion is filed if the child is not in custody, or not later than seven days if the child is in custody.

The conference substitute provides in section 16-2307(d) that the hearing on the transfer motion shall commence within ten days (excluding Sundays and legal holidays) of the filing of the motion.

Requirement for transfer for criminal prosecution (45)

The House amendment provided that the Family Division shall order a child transferred for criminal prosecution unless it finds there are reasonable prospects for rehabilitating the child by the time he reaches his majority.

The Senate amendment provided that the Family Division shall order a child transferred for criminal prosecution if it finds there are no reasonable prospects for rehabilitating the child by the time he reaches his majority.

The conference substitute in section 16-2307(d) adopts the House version with an amendment which provides that at the hearing on the motion requesting transfer the child shall not be required to establish that there are reasonable prospects for his rehabilitation by the time he reaches his majority.

Jurisdiction of Family Division over person transferred (47)

The House amendment provided that Family Division jurisdiction terminates as to any law violations alleged to have been committed by a child after he has been transferred for criminal prosecution.

The Senate amendment provided that Family Division jurisdiction terminates over a child who has been transferred as to any subsequent law violations unless (1) trial after the original transfer is terminated by other than a verdict of guilty or not guilty by reason of insanity, and (2) if at the time of verdict there is no outstanding indictment or information for a criminal offense alleged to have been committed after transfer.

The conference substitute in section 16-2307(h) adopts the Senate version with an amendment providing that Family Division jurisdiction shall also terminate when a child who has been transferred for criminal prosecution enters a plea of guilty to any offense.

Time of initial appearance (48)

The House amendment provided that the time for an initial appearance is to be set forth in the summons or at a later time as authorized by rule of court.

The Senate amendment provided that the time for an initial appearance is to be set forth in the summons but may not be later than five days after the petition is filed.

The conference substitute in section 16-2308 conforms to the Senate amendment, except that it provides that failure to hold the initial appearance within the specified time shall not be grounds for dismissal of the petition.

Duties of Director of Social Services (49)

The Senate amendment included a provision, not included in the House amendment, which provided that the Director of Social Services, in addition to determining the need for detention or shelter care prior to the admission of a child to such facilities, shall advise a child who is not released of his right to counsel.

The conference substitute in section 16-2311 adopts the Senate amendment.

Continuance of detention or shelter care hearing (50)

The House amendment provided a detention or shelter care hearing or any part of it may, for good cause shown, be continued for five days.

The Senate amendment provided that only the probable cause determination may be continued for five days.

The conference substitute in section 16-2312 prohibits continuance of the determination of the need for detention or shelter care but specifically authorizes, for good cause shown, continuance of any other part of the hearing, including the filing of a petition, for five days.

Length of commitment for physical or mental examination (51)

The House amendment provided for an initial commitment of 60 days and permitted a 60-day continuance.

The Senate amendment provided for an initial commitment of 30 days and two continuances of not more than 30 days each.

The conference substitute provides in section 16-2315(b) for an initial commitment of 45 days and continuances of not more than 45 days in the aggregate.

Standard of proof in factfinding hearing in a delinquency case (52)

The House amendment provided that in a factfinding hearing in a delinquency case the allegations must be established by the preponderance of the evidence.

The Senate amendment provided that the allegations in a delinquency case must be established by proof beyond a reasonable doubt.

The conference substitute in section 16-2317 conforms to the Senate amendment.

Time for hearings (53)

The Senate amendment included a provision, not included in the House amendment, which provided for time limitations for factfinding and dispositional hearings. The conference substitute conforms to the House amendment. The conferees are deeply concerned about the backlog of over 6,000 cases in the Juvenile Court of the District of Columbia and the long delays in the processing of juvenile cases through the court. The new resources which will be available to handle juvenile cases in the Family Division of the Superior Court under this Act should alleviate the present situation. If after operating two years the situation has not significantly improved, the conferees suggest the appropriateness of Congress reviewing the need for alternative ways to effect the faster processing of cases including the establishment of time limitations for factfinding and dispositional hearings.

While not obligatory, the kind of general goals the conferees have in mind are as follows: Factfinding stage—about 30 days for custody cases and about 60 days for community cases; and dispositional stage—about 15 days for persons previously known to the juvenile system, about 21 days for custody cases for persons new to the juvenile system, and about 30 days for community cases for persons new to the juvenile system.

Dispositional hearing; notice requirements (55)

The Senate amendment contained a provision, not contained in the House amendment, which provided that in delinquency and need of supervision cases prompt notice of the time of dispositional hearing shall be given to the child, his spouse (if any), parent, guardian or custodian, or in neglect cases, to the child and to the parent, guardian or custodian named in the petition.

The conference substitute in section 16-2317(e) adopts the provision in the Senate amendment.

Place of commitment (56)

The House amendment provided that, unless the Family Division ordered otherwise, no child found to be in need of supervision, unless also found to be delinquent, shall be committed to or placed in an institution or facility for delinquent children.

The Senate amendment provided that no child found to be in need of supervision, unless also found to be delinquent, shall be committed to or placed in such an institution or facility, except that, if the child is found to be in need of supervision a second time, the Family Division may order him committed to or placed in such an institution or facility.

The conference substitute in section 16-2320 adopts the Senate amendment.

Institutional transfer (57)

The House amendment contained a provision, not in the Senate amendment, which provided that no delinquent child could be committed to a penal or correctional institution for adult offenders, except that a child age 16 or older could be transferred to a penal youthful offender institution if the Family Division found after a hearing that the child's conduct was menacing to other children and the child cannot be controlled.

The conference substitute provides in section 16-2320(e) that no child found to be delinquent, in need of supervision, or neglected can be committed to a penal or correctional institution for adult offenders.

Time of filing notice of interlocutory appeal (59)

The House amendment provided that notice of an interlocutory appeal shall be filed within three days of the entry of the order appealed from.

The Senate amendment provided that notice of an interlocutory appeal shall be filed within two days of the entry of the order appealed from.

The conference substitute in section 16-2327(a) adopts the Senate amendment.

Time of appellate court hearing of interlocutory appeal (60)

The House amendment provided that such appeals shall be given precedence over other cases and shall be expedited.

The Senate amendment provided that the appellate court shall hear argument in such appeals within two days (excluding Sundays) of the filing of the notice of appeal and render its decision the day following the argument.

The conference substitute in section 16-2327(b) adopts the Senate amendment with an amendment requiring argument to be heard within three days (excluding Sundays) of the filing of the notice of appeal.

Juvenile case records (61)

The Senate amendment contained a provision not contained in the House amendment which provided that the provisions relating to the confidentiality of juvenile case records would extend to any writing filed in court proceedings other than social records.

The conference substitute in section 16-2330 adopts the provision in the Senate amendment.

IMPEACHMENT OF WITNESSES**Impeachment of witnesses (64)**

The House amendment, adopted in the conference substitute, provided that evidence of a conviction of a felony or any other offense involving dishonesty or false statement shall, if offered, be admitted to impeach the credibility of a witness. The language of the House amendment and the conference substitute is similar to the rule on impeachment recommended by the Advisory Committee on Rules of Evidence to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States. Should the

Supreme Court of the United States subsequently promulgate as part of prescribed rules of evidence for all Federal courts a different rule of impeachment, the conferees suggest the appropriateness of Congress reconsidering the rule adopted in the conference substitute.

PRIVILEGED COMMUNICATIONS

Disclosure of privileged communications (65)

The House amendment removed the restriction in existing law that an accused must raise the defense of insanity before his doctor may disclose communications between himself and the accused relating to the mental competency or sanity of the accused. The Senate amendment maintained the existing restrictions but permitted the doctor to disclose such communications where the court is required under prevailing law to raise the defense of insanity *sua sponte*.

The conference substitute in section 143 (3) (B) conforms to the Senate amendment.

CHANGE IN REFERENCES TO FEEBLE-MINDED PERSONS

Changes in references to feeble-minded persons and authority to make regulations for District of Columbia Training School (66)

The House amendment provided that (1) all references to "feeble-minded persons" be deleted and "retarded persons" be inserted in lieu thereof in chapter 11 of title 21, D.C. Code, and (2) the District of Columbia Council instead of the Department of Public Welfare may make regulations relating to persons in the D.C. Training School.

The Senate amendment provided that (1) all references to "feeble-minded" be deleted and "substantially retarded" be inserted in lieu thereof in chapter 11 of title 21, D.C. Code, and (2) the District of Columbia Commissioner instead of the Department of Public Welfare shall be authorized to make regulations relating to persons in the D.C. Training School.

The conference substitute in section 150 adopts the Senate amendment, except that the regulation authority is placed in the District of Columbia Council.

CRIMINAL LAW

Mandatory life sentence for third violent felony conviction (69)

The House amendment contained a provision, not included in the Senate Amendment, which required the court to sentence a person convicted of a third violent felony to a mandatory sentence of life imprisonment with eligibility for parole only after serving twenty years.

The conference substitute contains no such provision.

Breaking into vending machines (71)

The House amendment contained a provision, not included in the Senate amendment, which included in the second degree burglary statute (maximum penalty of fifteen years imprisonment) the crime of breaking or entering into a parking meter, coin telephone, vending machine, or other device designed to receive currency with intent to steal.

The conference substitute in section 203 contains a provision making the breaking or entering of a parking meter, coin telephone, vending machine, or other device with intent to steal, a separate crime with a maximum penalty of three years' imprisonment.

Penalties for persons who commit crimes of violence while armed (74)

The House amendment contained a provision, not included in the Senate amendment, which amended existing law to prescribe mandatory minimum additional penalties for persons convicted of committing a crime of violence while armed. In the case of a first conviction, the minimum additional sentence was set at 3 years. In the case of a second or subsequent conviction, the minimum additional sentence was set at 10 years.

The conference substitute in section 205 provides no mandatory minimum penalty upon a first conviction (which follows existing law), and a five-year mandatory minimum penalty upon a second or subsequent conviction (which follows the 1968 Federal Gun Control Act).

Confinement of defendants acquitted on the ground of insanity (76)

The House amendment contained a provision, not included in the Senate amendment, which amended section 927 of the Act of March 3, 1901 (D.C. Code, sec. 24-301), to provide that a person acquitted solely on the ground that he was insane shall be confined to a hospital for the mentally ill until such time as the hospital certifies him eligible for release.

Section 207 of the conference substitute, which amends such section 927, conforms to the House amendment with an amendment providing that a hearing must be held within 50 days of the confinement to determine whether the person is entitled to release from custody. The decision of the court must be made within 10 days of the beginning of the hearing. Counsel is to be provided the person (including, under a provision of title III of the substitute, representation by the Public Defender Service) and eligibility for release must be established by the person by a preponderance of the evidence.

The hearing provided for will be held in accordance with the procedures of such section 927. The procedures for release in civil commitment cases prescribed by the District of Columbia Hospitalization of the Mentally Ill Act of 1964 will not apply to such hearing.

Explosive devices (78)

The House amendment contained a provision, not included in the Senate amendment, making it a crime to possess any incendiary device (bomb, grenade, mine, or other similar device) with a penalty of not less than two years for the first offense and not less than ten years for the second offense.

The conference substitute in section 209 provides (1) no person shall manufacture, transfer, use, possess, or transport a "moleto cocktail"; (2) no person shall manufacture, transfer, use, possess, or transport any device designed to explode or produce uncontained combustion with the intent that the same may be used unlawfully against any person or property; and (3) no person shall, during a state of emergency, manufacture, transfer, use, possess, or transport any device designed to explode or produce uncontained combustion, except at his residence or place of business. The penalties are one to five years for the first offense, three to fifteen years for the second offense, and five years to life for the third or subsequent offense. The Federal Youth Corrections Act shall not apply to a third or subsequent offense.

Conduct of prosecutions (79)

The House amendment provided that separate indictments or informations of the United States and District of Columbia may be joined for trial and the case may be prosecuted by either the United States or the District of Columbia, if the other consents. The Senate amendment provided that only the United States may prosecute such a case.

The conference substitute in section 23-101(e) conforms to the House amendment with a conforming amendment in section 23-101(d) which provides the same procedure for conducting prosecutions under an indictment or information charging offenses prosecutable by the United States and the District of Columbia.

Appeals by the United States and by the District of Columbia (81, 82, 83)

The House amendment contained a provision, not included in the Senate amendment, which provided that the prosecution

may appeal a substantial and recurring question of law after trial, but a verdict in favor of the defendant could not be set aside.

The conference substitute contains no such provision.

The House amendment also contained a provision that the court could either adjourn the trial or grant a mistrial for purposes of an in-trial appeal by the Government.

The Senate amendment contained a provision that the court could only adjourn the trial for forty-eight hours for the purposes of an in-trial appeal by the Government and that the appellate court must hear oral argument within twenty-four hours and render a decision within twenty-four hours thereafter.

The conference substitute in section 23-104 conforms to the Senate amendment with an amendment that the trial can be adjourned for ninety-six hours and that the appellate court shall hear oral argument within forty-eight hours and render a decision within forty-eight hours thereafter; or otherwise the appeal is voided.

Depositions (84)

The House amendment contained a provision, not included in the Senate amendment, which gave the prosecution as well as the defense the right to request the deposition of potentially unavailable material witnesses.

The conference substitute in section 23-108 conforms to the House amendment with an amendment permitting the other party or parties to cross-examine the deponent and to receive a copy of the deposition.

Proceeding to establish prior convictions for recidivist penalty laws (85)

The House amendment provided that the prosecution shall file after trial but before sentence an information of previous convictions that would subject the defendant to increased punishment. The Senate amendment provided that the information must be filed before trial.

The conference substitute in section 23-111 conforms to the Senate amendment with amendments providing that (1) the court can grant a reasonable continuance of the trial or entry of guilty plea upon a showing by the prosecution that with due diligence it was not able to obtain before trial or entry of guilty plea the facts regarding prior convictions, and (2) clerical mistakes in the information may be amended at any time before pronouncement of the sentence.

Inclusion of tests for seizure of evidence in executing search warrant (87)

The House amendment provided that a search warrant may direct the seizure of designated property and the seizure may include taking impressions or performing chemical, scientific, medical or other tests or experiments on designated premises, vehicles, objects, or persons. The Senate amendment was identical except that reference to medical or other tests or experiments on persons was omitted.

The conference substitute in section 23-521(c) conforms to the Senate amendment. The omission of tests on persons is not intended, by negative inference or otherwise, to affect the authority of police officers to perform or conduct such tests as authorized by case law. E.g., *Schmerber v. California*, 384 U.S. 757 (1966).

Application for search warrant (88)

The House amendment provided that the application for a search warrant must include a statement that there is probable cause to believe that the property may be found in designated premises. The Senate amendment was identical except there had to be probable cause to believe the property is to be found.

The conference substitute in section 23-522(b) provides that the application for a

search warrant must include a statement that there is probable cause to believe that the property is likely to be found in designated premises. The *likelihood* language here and throughout title 23 conforms to the constitutional standard of probable cause.

Application for nighttime search warrant
(89)

The House amendment provided that an application for a nighttime search warrant must include a statement that, based upon a reasonable belief (1) the warrant cannot be executed during the hours of daylight, (2) the property sought is likely to be removed or destroyed if not seized forthwith, or (3) the property sought is not likely to be found except at certain times or in certain circumstances. The Senate amendment was identical except the term *probable cause* was used instead of *reasonable belief*, and the word *will* was used instead of the phrase *is likely to*.

The conference substitute in section 23-522 (c) provides that an application for a nighttime search warrant must include a statement that there is *probable cause to believe* that (1) the warrant cannot be executed during the hours of daylight, (2) the property sought is likely to be removed or destroyed if not seized forthwith, or (3) the property sought is *not likely to be found* except at certain times or in certain circumstances.

Executing warrant directing search of a person (90)

The House amendment provided that if a person, after being advised of the warrant to search him, resists the search, the executing officer may use such force as is necessary to execute the warrant. The Senate amendment provided that if a person, after being advised of the search warrant, resists the search, the executing officer may arrest the person, without a warrant, for resisting a police officer or for violating any other applicable provision of law.

The conference substitute in section 23-524 (b) conforms to the Senate amendment.

Seizure of evidence not specified in search warrant (91)

The House amendment provided that an officer executing a search warrant may seize any fruits, instrumentalities, or evidence of crime, or contraband, discovered in the course of the search which he reasonably believes are subject to seizure. The Senate amendment provided that an officer executing a search warrant may seize any fruits, instrumentalities, or evidence of crime, or contraband, discovered by observation incident to and as an inadvertent consequence of the search and which he has probable cause to believe are subject to seizure.

The conference substitute provides in section 23-524(e) that an officer executing a search warrant may seize any fruits, instrumentalities, or evidence of crime, or contraband, discovered in the course of the lawful execution of the search warrant if he has probable cause to believe such property is subject to seizure. The phrase *lawful execution of the search warrant* limits the seizure of items not listed in the search warrant to those discovered during the process of the search for items listed in the search warrant. See *Alderman v. United States*, 394 U.S. 177 n. 10 (1969).

Performance of preliminary police duties after arrest (92)

The House amendment contained a provision, not included in the Senate amendment, which provided that before taking an arrested person to a judicial officer, a law enforcement officer shall perform all recording, fingerprinting, photographing, and other preliminary police duties, and if performed with reasonable promptness, the period of

time required shall not be considered a delay.

The conference substitute in section 23-562(c) conforms to the House amendment with an amendment providing that before taking an arrested person to a judicial officer the officer may perform any recording, fingerprinting, photographing, or other preliminary police duties.

Territorial limits for execution of misdemeanor warrants (93)

The House amendment contained a provision, not included in the Senate amendment, which provided in section 23-563(b) that a misdemeanor arrest warrant or summons can be served within twenty-five miles of the Superior Court.

The conference substitute contains no such provision.

Arrest warrant for child outside the District of Columbia (93A)

The House amendment contained a provision, not in the Senate amendment, which provided that a warrant for the arrest of a child could be issued as if the child were an adult if the warrant application alleged that the child committed a felony and may not be found in the District of Columbia.

Section 23-563 of the conference substitute is the same as the House amendment except that to conform to the Interstate Compact on Juveniles authorized by title IV of the substitute it is provided that, if the District of Columbia adopts article 17 of the Compact (relating to the return of juveniles alleged to be delinquent), such a warrant can be issued only if the child is not known to be in a jurisdiction which is a party to that article. If the child is found in a jurisdiction which is a party to such article and the District of Columbia has adopted that article, the child is to be returned in accordance with that article, and any warrant issued under this section shall be null and void.

Rule of announcement of identity and purpose and the exceptions thereto (96-97)

The provisions agreed to in the conference substitute do not change existing law but merely put into clear statutory form the current law in effect today in the United States and provide the additional protection of requiring prior judicial approval of an entry without notice when the circumstances which would justify such entry are known at the time application for a warrant is made.

The Senate amendment contained a provision, not included in the House amendment, which required an officer to obtain prior judicial approval when at the time of application for a search warrant he knew or had reason to know of circumstances justifying entry without notice. The provision restricted an officer from entering without notice on his own discretion to circumstances known to the officer at the time of entry but which the officer did not know or have reason to know at the time of application for the warrant.

The conference substitute in section 23-591(c) conforms to the Senate amendment with an amendment extending the requirement to arrest warrants as well and an amendment deleting the reason to know language. The *reason to know* language was deleted because it might have been interpreted as holding an officer accountable for knowledge possessed by other law enforcement officers in the District of Columbia. However, the deletion of this language shall not be construed to shield police laxity or to permit a police officer who knows the facts in advance to subvert the clear intent of this section favoring prior judicial authorization by sending an officer who does not possess the knowledge to make the application.

The House amendment provided that circumstances justifying dispensing with notice of identity and purpose exist where the officer reasonably believes (1) his identity or purpose is already known, (2) notice is likely to

result in evidence being destroyed or concealed, (3) notice is likely to endanger the life of the officer, (4) notice is likely to enable the person to be arrested to escape, and (5) notice would be a useless gesture. The Senate amendment provided that circumstances justifying dispensing with notice of identity and purpose exist where the officer has probable cause to believe (1) notice will result in evidence being destroyed, and (2) notice will result in the life of the officer being in immediate danger.

The conference substitute in section 23-591(c) provides that circumstances justifying dispensing with notice of identity or purpose exist where the officer has probable cause to believe (1) notice is likely to result in evidence being destroyed, (2) notice is likely to endanger the life of the officer, (3) notice is likely to enable the person to be arrested to escape, and (4) notice would be a *useless gesture*. Useless gesture is a legal term of art and codifies the exception to the announcement rule recognized by the Supreme Court and the United States Court of Appeals for the District of Columbia Circuit in *Miller v. United States*, 357 U.S. 301 (1958) and *Bosley v. United States*, No. 21, 513, D.C. Cir., decided April 9, 1970, and includes the exception where the officer's identity and purpose is already known. By using the *probable cause* and *is likely to* language, the conference substitute is intended to conform to the standard of the opinion of the Supreme Court in *Ker v. California*, 374 U.S. 23 (1963). It is likewise intended, in this regard, that this provision of the conference substitute shall not be bound by relevant and conflicting statements, if any, contained in House Report No. 91-907 and Senate Report No. 91-538.

Wire interception and electronic surveillance
(100-113)

The formats of the House amendment and the Senate amendment providing for court authorized interception of wire and oral communications were substantially different. Subchapter III of chapter 5 of title 23 of the conference substitute conforms in large part to the more comprehensive format of the Senate amendment.

The Senate amendment contained a number of provisions not included in the House amendment which were adopted, as follows, in the conference substitute: (1) Any person who unlawfully intercepts or discloses a wire or oral communication is subject to a criminal penalty of five years and \$10,000, (2) any person who unlawfully possesses, sells, distributes, manufactures, assembles, or advertises a wire or oral communication interception device is subject to a criminal penalty of five years and \$10,000, (3) any intercepting device unlawfully possessed, used, sold, distributed, or manufactured or assembled may be seized and forfeited to the District of Columbia, (4) immunity may be granted to witnesses testifying before a grand jury or court in the District of Columbia with respect to a violation of this law, (5) standards and conditions are set out under which lawfully seized communication may be disclosed, (6) any person whose communications have been lawfully intercepted may sue for civil damages and (7) in amendments to the Federal law, courts are authorized to order communications common carriers to assist law enforcement officers and good faith reliance on a court order or legislative authorization is made a complete defense to civil or penal actions.

The Senate amendment contained several provisions, not included in the House amendment, which were adopted with amendment, as follows, in the conference substitute: (1) A showing of special need is required for authorization or approval of any communications interception to be made or made from facilities of a physician, clergyman, or attor-

ney, or, in the case of oral communications, also from facilities used as a place of habitation by husband and wife. The court must determine that the facilities were, are, or are about to be, used in connection with conspiratorial activities characteristic of organized crime and that the interception will be conducted to minimize interceptions of privileged communications. (2) A report must be filed by the authorizing or denying judge to the chief judge of the District of Columbia Court of Appeals within thirty days, and an annual report must be filed by the United States Attorney with the Chief Judge of the District of Columbia Court of Appeals and Congress. The Senate amendment had proposed, in addition, the filing of reports with the District of Columbia Commissioner and the public and the form of the reports being prescribed by the District of Columbia Council, but these provisions were not included in the conference substitute.

The Senate amendment contained several provisions slightly different from the House amendment which were adopted, as follows, in the conference substitute: (1) After an emergency wiretap, application for a court order must be initiated within twelve hours and completed in seventy-two hours; and (2) a motion to suppress an intercepted communication may be made on grounds that the communication was unlawfully intercepted, the order was insufficient on its face, the interception was not made in conformity with the order, service was not made as required, and the seal was not present. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this subchapter and shall not be received in evidence in the trial, hearing, or proceeding. This does not change the attenuation rule. See *Nardone v. United States*, 127 F. 2d 521 (2nd Cir.), cert. denied, 316 U.S. 698 (1942); *Wong Sun v. United States*, 371 U.S. 471 (1963). Nor generally does it press the scope of the suppression role beyond present search and seizure law. See *Walder v. United States*, 347 U.S. 62 (1954).

The House amendment contained a provision, not included in the Senate amendment, which permitted interception in emergency situations for activities threatening the national security.

The conference substitute contains no such provision.

The House amendment provided, in addition to those crimes in the Senate amendment, the following crimes for which court authorized interception could be authorized: abortion, arson, blackmail, burglary, destruction of property, receiving stolen property, and robbery.

The conference substitute conforms to the House amendment, except that the crime of abortion is deleted.

Release and pretrial detention of persons charged with criminal offenses (117)

The House amendment contained a comprehensive provision, not in the Senate amendment, delineating standards for release in criminal cases prior to trial, following conviction and pending appeal, and authorizing limited pretrial detention for specified categories of dangerous defendants.

The conference substitute adopts the House amendment with the following five amendments:

(1) A prohibition against the detention of any defendant charged with a non-capital crime solely on the basis of the nature and circumstances of the present offense charged.

The House amendment authorizes pretrial detention for a maximum of sixty days on grounds of dangerousness to other persons or the community for three classes of defendants:

(A) Defendants charged with "dangerous crimes";

(B) Defendants charged with "crimes of violence";

(C) Defendants charged with any crime who threaten witnesses or otherwise obstruct justice.

For defendants in classes B and C, the House amendment specifies the minimum past conduct necessary to make such a defendant eligible for pretrial detention. For a defendant in class B, this minimum is that he have a prior conviction of a crime of violence within ten preceding years, that he allegedly committed the crime of violence with which he is charged while released prior to trial, or while on probation, parole, or mandatory release, for a crime of violence, or that he has become a narcotic addict. For a defendant in class C, this minimum is a threat to witnesses or other conduct which obstructs justice. Moreover, while this minimum past conduct may, when considered together with the nature and circumstances of the offense charged, be sufficient to justify a defendant's pretrial detention, it may also not be sufficient since the judicial officer must find, based on all the facts set out in section 23-1321(b), that no condition or combination of conditions or release will reasonably assure the safety of the community.

Under the House amendment, a defendant charged under class A with a dangerous crime can be detained, even if he has never been convicted, arrested, charged, or even associated with any criminal conduct other than his present charge. The conference substitute eliminates this possibility. This is accomplished by providing that a person charged with a dangerous crime can be detained only if the judicial officer finds, after considering his pattern of behavior consisting of his past and present conduct, and other factors set forth in section 23-1321(b), that no condition or combination of conditions will reasonably assure the safety of the community. A judicial officer may not issue an order of detention based solely on the nature and circumstances of the dangerous crime charged. Such an order must be based at least in part on the past conduct of the defendant.

The conference substitute does not delineate the precise past conduct which may justify pretrial detention of a person charged only with a dangerous crime. Depending on the facts of the particular case, detention may be justified when further police investigation establishes that a defendant charged with a dangerous crime is responsible for other heretofore unsolved serious crimes. Detention may be justified for a defendant with a prior misdemeanor record. The decision is left to the sound judgment of the judicial officer based on the facts of the particular case, and subject to appellate review.

(2) The elimination of the crimes of nonforcible rape and indecent liberties from the category of "dangerous crimes."

The purpose of this change is to prohibit the possibility of detaining a person charged only with nonforcible rape or indecent liberties, unless he has a prior conviction of or is on pretrial release for a violent felony or is a narcotic addict.

(3) The addition of a provision which guarantees that the sixty-day period of detention cannot be extended by the filing of timely motions by the defendant other than motions for continuances.

The House provision authorizes extension of the sixty-day period of detention if the trial is delayed at the request of the defendant. The filing by a defendant of timely motions, such as motions to suppress illegally obtained evidence or motions for discovery, may result in delay of the trial beyond the sixty-day period. In order to make it perfectly clear that such a delay of the trial would not be considered a delay at the request of the defendant, this provision was added.

(4) The strengthening of the House amendment which provided for expedited trials within the sixty-day period by specifying that the cases of those detained shall be placed on an expedited calendar and, consistent with the sound administration of justice, given priority over all other cases. The conferees recognize that the success of an expedited calendar for pretrial detention cases depends on the readiness of the prosecution for trial and, therefore, urge that 25 additional prosecutors be appointed in the Office of the United States Attorney for the District of Columbia.

(5) The addition of the provision that for persons detained pending appeal pursuant to section 23-1325(c), the finding of the judicial officer that the appeal or petition for a writ of certiorari does not raise by clear and convincing evidence a substantial question of law or fact likely to result in a reversal or order for new trial, shall not be binding on the court in which review is sought; such a determination is one of law not subject to the traditional clearly erroneous standard of review.

PUBLIC DEFENDER SERVICE

Public Defender Service—limitation on representation, determination of eligibility (119,121)

The House amendment designated certain categories of persons who may receive public defender representation, and limited such representation to 60% of the persons in each of the categories. It also provided that a court must determine a person's financial inability to obtain adequate representation.

The Senate amendment limited representation to 60% of the persons in all the categories, rather than in each of the categories. The Senate amendment did not specify that a court determines financial inability.

Section 302(a) of the conference substitute conforms to the Senate provisions.

Compensation of Director and Deputy Director of the Public Defender Service (123)

The House amendment provided that the Board of Trustees of the Public Defender Service would fix the compensation to be paid the Director and the Deputy Director at not less than \$17,500 or more than \$27,500.

The Senate amendment authorized the Board of Trustees to fix the compensation of the Director at a rate not to exceed the rate for GS-18 of the General Schedule (current rate \$35,505) and to fix the rate of compensation of the Deputy Director at a rate not to exceed the maximum rate for GS-17 of the General Schedule (current maximum \$34,810).

Section 304 of the conference substitute conforms to the Senate amendment.

Acceptance by the Public Defender Service of public grants and private contributions (125)

The Senate amendment included a provision, not in the House amendment, providing for acceptance by the Public Defender Service of public grants and private contributions furthering the lawful objectives and purposes of the Service.

Section 307(b) of the conference substitute adopts the Senate provision.

LEGAL ASSISTANCE FOR POLICE OFFICERS

Legal assistance for police officers in wrongful arrest actions (126)

The House amendment contained a provision, not in the Senate amendment, which provided that, in an action for damages resulting from an alleged wrongful arrest by a police officer, the judgment of the court (whether for the plaintiff or the defendant) shall include an award of a reasonable attorney's fee to the police officer.

Title V of the conference substitute provides that in an action against a police officer for damages resulting from a wrong-

ful arrest by such officer, upon request, the Corporation Counsel is to provide representation for such officer or, if the Corporation Counsel fails or is unable to provide such representation, the Commissioner of the District of Columbia shall compensate such officer for reasonable attorney's fees (as determined by the court) incurred by the officer in his defense of the action brought against him.

LORTON

Transfer of correctional facilities at Lorton to Bureau of Prisons (127)

The House amendment contained a provision, not in the Senate amendment, which provided that all functions, powers, and duties of the Commissioner of the District of Columbia and the District of Columbia Council with respect to Lorton are transferred to the Attorney General. The conference substitute contains no such provision.

POLICE MUTUAL AID

Police mutual aid (132)

The Senate amendment contained a provision, not included in the House amendment, to remove a limitation in existing law under which policemen and equipment could be furnished to and by nearby local governments to assist in emergency situations only.

The conference substitute conforms to the Senate amendment.

FEDERAL PAYMENT

Federal payment (135)

The Senate amendment provided for an annual additional Federal payment to the District of Columbia in the amount of \$48,854,000, to be used in implementation of this Act and for other crime prevention purposes.

The House amendment contained no provision for Federal payment.

The conference substitute in title VII authorizes a one-time Federal contribution to the District of Columbia for the fiscal year ending June 30, 1971, in the amounts itemized below. These Federal authorizations total \$5 million. The first three are based upon estimates furnished by the District of Columbia government as first-year costs of expansion of the local court system. The authorizations are as follows:

(1) An amount not to exceed \$3,010,000 is authorized to be appropriated for costs of increasing the size and operation of the local court system provided in title I of the Act, and for the costs of additional services to be made through what is presently known as the Legal Aid Agency (reorganized under title III of the conference substitute into the Public Defender Service). Costs for the enlarged court system (the trial court and the appeals court) include salaries and benefits for additional judges, supporting court and prosecution staff, administrative and services personnel, witness and juror fees, and court supplies and equipment.

(2) An amount not to exceed \$580,000 is authorized for costs of renting and fitting physical facilities necessary to accommodate the additional personnel provided in title I.

(3) An amount not to exceed \$350,000 is authorized for costs of expansion of the District of Columbia Bail Agency so that it might carry out the additional services and assistance provided for in title II.

(4) An amount not to exceed \$1,060,000, plus any pourover from the three items above, is authorized for any other purpose of this Act, and for the costs of programs specifically designed to reduce the drug problem in the District of Columbia.

KITE-FLYING

Repeal of kite-flying prohibition (136)

The Senate amendment contained a provision, not included in the House amendment, repealing the prohibition in existing law on kite-flying.

The House amendment has no such provision, but the House has already passed a

similar repealer in separate legislation—H.R. 16476.

The conference substitute conforms to the Senate amendment.

JOHN L. McMILLAN,
THOMAS ABERNETHY,
JOHN DOWDY,
EARLE CABELL,
ANCHEER NELSEN,
WILLIAM H. HARSHA,
JOEL BROYHILL,
LAWRENCE J. HOGAN,

Managers on the Part of the House.

Mr. ADAMS. Mr. Speaker, I will not object, then, under my reservation of objection.

Mr. ABERNETHY. Mr. Speaker, this conference report deals with what is generally referred to in the House as the District of Columbia anticrime bill.

This is a very important piece of legislation, and a very important report. This report is brought to the House of Representatives as the result of a conference between the House conferees and the Senate conferees following the adoption of the legislation by the two Houses, the legislation in the House covering some 455 pages, and in the Senate some 467 pages.

It deals with every phase of the enforcement of the law in the District of Columbia.

We had 23 conferences with the Senate conferees. The staffs of the two committees have met 50 or 60 times in their effort to work out the numerous technicalities. We have spent a substantial part of the last 3 months in our effort to bring this report to the Members of this body.

When the conferees met we found that there were approximately 170 differences between the two bills. These have been resolved as the conference substitute shows.

I am very happy and pleased to advise the House that the House bill very largely, and almost entirely, prevailed. There are some changes in the bill, but the principal provisions laid down in the House bill have been brought back for reaffirmation of that which we approved when the bill was before the House some several months ago.

Mr. Speaker, I have suggested to the gentleman from Washington (Mr. ADAMS) and others, if they wish to make some inquiries about the report that I would be happy for them to do so. At this point, I would like to yield to the chairman of the Committee on the District of Columbia, the gentleman from South Carolina (Mr. McMILLAN).

Mr. McMILLAN. Mr. Speaker, I thank the gentleman from Mississippi.

Mr. Speaker, as chairman of the conferees I want to thank the members of the staff of our committee and I want to thank especially the legislative counsel of the House and the conference committee for their assistance in writing this conference report. Also their great assistance in writing the original House bill.

I especially want to thank every member on the District Committee who gave so much of their valuable time in attending the numerous conferences with the Senate. We had a real tough time in trying to get together on the provision

of the two bills in conference which contained 465 pages.

I regret very much that it was necessary to drop the proposal of transferring Lorton to the Department of Justice and one or two other items that was necessary for us to drop, with the understanding that they will come up in separate legislation.

Again I want to thank members on the Committee on the District of Columbia for the patience they have used in trying to bring a piece of legislation here to the House which is worthy of its name.

It is true we could have passed a bill before Christmas and sent to the President a crime bill, but it would not have had any teeth in it. Now if this legislation is enacted into law I think we can clean up the streets in Washington. I am certain it will not be the fault of the Congress and it will be the fault of the law enforcement officers and the court. We are reorganizing the courts to the extent that there will not be any excuse for not sending criminals in this city to jail.

CALL OF THE HOUSE

Mr. COHELAN. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER pro tempore (Mr. Boggs). Evidently a quorum is not present.

Mr. ABERNETHY. Mr. Speaker, I move a call of the House.

A call of the House was ordered. The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 215]

Beall, Md.	Edwards, La.	Patman
Bell, Calif.	Ford,	Pepper
Berry	William D.	Pickle
Blatnik	Galfanakis	Pollock
Bray	Glaimo	Powell
Brock	Gilbert	Rarick
Broomfield	Hawkins	Reifel
Caffery	Hébert	Rivers
Carey	Ichord	Roudebush
Celler	Keith	Ruppe
Chappell	Kirwan	Ryan
Clancy	Leggett	Scheuer
Clark	Lloyd	Springer
Clay	Long, La.	Symington
Conable	Lukens	Tiernan
Cramer	MacGregor	Tunney
Crane	Matsunaga	Wiggins
Culver	Meskill	Wilson,
Dawson	Murphy, N.Y.	Charles H.
Diggs	Ottinger	
Dorn	Passman	

The SPEAKER pro tempore. On this rollcall 372 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

CONFERENCE REPORT ON S. 2601,
DISTRICT OF COLUMBIA COURT
REFORM AND CRIMINAL PROCE-
DURE ACT OF 1970

The SPEAKER pro tempore. The Chair recognizes the gentleman from Mississippi (Mr. ABERNETHY).

Mr. ABERNETHY. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Minnesota (Mr. NELSEN).

Mr. NELSEN. Mr. Speaker, this is probably the most important bill that we will have before this Congress of the United States. It deals with the

problems of the District of Columbia, the Federal seat of Government, that should be of concern to all Members that are here in this body.

Without question the evidence would indicate that court reform in the District of Columbia is a very necessary step that must be taken in order to bring about the orderly administration of justice for those who come before the courts. In this bill, there is a very careful and thorough job done in the area of court reform.

At the same time, the evidence indicates that the law-enforcement facilities of this community are in need of tools with which to enforce the law, and these are also provided for in this bill.

I might point out that we find more and more evidence of narcotic addiction in the District of Columbia, and the police department in the District of Columbia has indicated the need of tools to cope with the crime problems caused by narcotic addiction, and they are provided for in this bill.

I want to say that perhaps one of the areas that needs most careful attention is the youth of this community, and we need do everything we can to make this a better city for our young people. The revision of the Juvenile Code is intended to treat firmly but fairly with our juveniles in this city.

A good deal of information has gone out that has frightened the public relative to the no-knock provision and to pretrial detention, but may I say that the bill as it is presently coming before you carefully defines the no-knock provision, which conforms to the case law or common law of the country. It carefully codifies what is presently being authorized by Supreme Court and other appellate court opinions in this country.

It also provides in the area of pretrial detention careful protection of the constitutional rights of those who may be detained by several procedural safeguards. May I point out that while we sat in conference, we had a case where a shootout with one of our Washington policemen occurred quite close to the Capitol. The person who was involved had been released and had been out on bail notwithstanding the fact that though he had been previously convicted of felonies he was nonetheless released so that he could conduct a shootout with one of our Metropolitan policemen. Under the procedure that is set up, this person could have been detained prior to trial and the shootout that nearly cost a policeman his life might never have happened.

So may I say that this bill has been carefully considered, that our conference committee did a very thorough and careful job of working with the other body, to obtain the best of both bills for the conference substitute, and that I believe that this bill should pass.

Mr. Speaker, 1 year ago today, I introduced, on behalf of myself and several other Members of this body, H.R. 12854, H.R. 12855, and H.R. 12856, which comprised a major part of the President's crime package for the District of Columbia.

Nearly 4 months ago, the House Dis-

trict Committee brought to the floor H.R. 16196, a bill which encompassed the President's crime package together with other amendments added in committee. That committee-sponsored bill passed the House by the substantial margin of 294 to 47.

This bill has been in conference for nearly 3 months, a long conference by nearly any standard. However, I should remind the Members that there were nearly 140 major differences between the House and Senate versions which had to be resolved.

Meanwhile, controversy, debate, and speculation—at times seemingly encouraged if not prompted by the various communications media—swirled outside the conferences concerning some of the provisions of the bill. Virtually all of these provisions had been put to a vote in the House prior to final passage and had been sustained by substantial margins. The long and thorough debate of the bill nearly 4 months ago gave a full airing to virtually all views concerning the provisions contained in the House bill. The House bill was in the main a good, strong piece of legislation badly needed in this city which is in serious, if not critical, condition by reason of the crime problem existing here for the past few years.

The labor of the conference is ended. We bring back to you today from conference not the same identical bill, but a good bill that I strongly urge you to promptly approve. It is a bill which I assure you meets the approval of the Department of Justice, and is one which, when passed by the Congress, will promptly be signed into law by the President.

The situation in the local courts and the crime statistics in recent months should tell us all that there is an urgent need for swift action as it relates to the District of Columbia Court Reform and Criminal Procedure Act of 1970. The May crime statistics saw an increase in crime after what appeared to be a 5-month decline. Other disturbing incidents have occurred. A former District Commissioner was recently mugged outside his home in midday. Then, a shootout between a policeman and a robbery suspect recently brought home to all of us, if we were not indeed convinced before, the need for amendment of the Bail Reform Act of 1966 so as to provide for pretrial detention.

In its court reform and criminal procedure aspects, this is much the same bill that left this body for conference some months ago. It still contains much of the legislation suggested and recommended by the District of Columbia Crime Commission, after a very thorough and costly study, some 4 years ago.

It is basically a court reform package. It reorganizes the local courts, increases the number of judges, provides for a professional administrator—an executive officer—to administer the local District of Columbia courts, and gives to the District a modern family division of the new superior court which was so strongly recommended by the District of Columbia Crime Commission in 1966. The date of enactment of this bill will give to the President the immediate authority to

appoint 10 new trial judges and three new appellate judges to the District of Columbia courts. Eighteen months later he is authorized to appoint seven more trial judges to handle the increased workload which will occur when the local court jurisdiction is expanded and the Federal courts jurisdiction over local matters is lessened.

Under the conference substitute, jurisdiction over purely local matters will be transferred to the local courts in three stages, but certain matters, such as probate, will be transferred in the third rather than the first stage as earlier provided by the House. Judges' salaries were compromised between the House-Senate versions by tying them to the Federal trial and appellate scales—\$36,000 for superior court trial judges and \$38,000 for local appellate judges. The power of the executive officer is expanded somewhat in the conference substitute as well as containing a change in the manner of his appointment—by the Joint Committee on Judicial Administration.

The Juvenile Code is not substantially different from the form in which it originally passed the House. However, there are some substantive changes. The definition of "child" as contained in the conference substitute includes persons under 18 except those 16 and older charged by the U.S. attorney with murder, forcible rape, robbery while armed, burglary in the first degree, or assault with intent to commit one of these offenses. This is a limitation on the original House amendment. Also, the conferees adopted a standard of proof in a factfinding hearing on delinquency cases by requiring allegations to be established "beyond a reasonable doubt." I think this is an improvement in keeping with recent Supreme Court decisions. In addition, specific time limits are set for filing petitions and motions to transfer in juvenile cases which constitute a compromise to expedite certain aspects of the juvenile procedures.

Turning to the substantive criminal law provisions in the bill, I believe it advisable to call to your attention certain important changes in the House amendment, or House versions adopted in the conference substitute.

The House amendment on the impeachment of witnesses is adopted in the conference substitute. The House version is similar to the rule recommended by the Advisory Committee on Rules of Evidence to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States. I believe it is designed to further the "truth seeking" aspects of criminal trials.

The House amendment on breaking into vending machines which amended the District of Columbia Code provision on second-degree burglary is changed. The conference substitute provides a separate section for this offense in the code carrying a maximum penalty of 3 years.

The House amendment providing mandatory life sentences for a third felony conviction has been deleted from the conference substitute. In addition, a House amendment providing mandatory

additional minimum penalties for persons convicted of committing crimes of violence while armed, was changed so as to provide only a 5-year mandatory minimum penalty upon a second or subsequent conviction. This provision adopted in the conference substitute conforms to the add-on penalty provided for the 1968 Federal Gun Control Act. You may recall that there was some opposition to the original House amendment by certain Federal prison authorities.

The House version of the court reform bill provided that persons acquitted in the District of Columbia solely on the grounds they were insane shall be confined to a hospital for the mentally ill until such time as the hospital certifies them eligible for release. In addition, the House provided that the defendants during their criminal trials had the burden of proving, by the preponderance of the evidence, their mental illness or defect. Then, assuming acquittal by reason of insanity, the petitioners seeking release from a hospital for the mentally ill had the burden of proof, by the preponderance of the evidence, that they no longer constituted a danger to themselves or others in the community. These provisions of the House amendment remain in the bill. A conference substitute does provide that a person acquitted by reason of insanity must receive a hearing and decision within 60 days after confinement to determine his eligibility for release from custody in the mental hospital. This corrects a situation which Chief Justice Burger found fault with when sitting on the U.S. circuit bench for the District of Columbia.

There have been some compromises reached by the House-Senate conferees relating to application for the execution of search warrants. Concerning the application for search warrants the House originally provided the application must include a statement that there was probable cause to believe the property may be found in designated premises. The conference substitute adopted a standard that there was probable cause to believe that the property is likely to be found in designated premises. The conferees considered the substitute to conform to the constitutional standard of probable cause.

As to the no-knock provision which has received so much publicity, which I consider to be out of proportion to the effect it will have on the community, New York has had a no-knock provision on its statute books for some time now and even the American Civil Liberties Union lawyers have had to admit that the use of such warrants has not been excessive at all. There have been no indiscriminate kicking of doors off their hinges in New York, and if there were, I believe the statute in New York would have been amended.

A number of conference substitutes have been agreed to as relates to search warrants. One relates to nighttime search warrants. It is a compromise which provides that an application for a nighttime search warrant must include a statement that there is probable cause to believe that, first, the warrant cannot

be executed during the hours of daylight, second, the property sought is likely to be removed or destroyed if not seized forthwith, or third, the property sought is not likely to be found except at certain times or in certain circumstances.

The House amendment provided that if a person, after being advised of the warrant to search him, resists the search, the executing officer may use such force as is necessary to execute the warrant. The Senate amendment provided that if a person, after being advised of the search warrant, resists the search, the executing officer may arrest the person, without a warrant, for resisting a police officer or for violating any other applicable provision of law.

The conference substitute in section 23-524(b) conforms to the Senate amendment.

The House amendment provided that an officer executing a search warrant may seize any fruits, instrumentalities, or evidence of crime, or contraband, discovered in the course of the search which he reasonably believes are subject to seizure. The Senate amendment provided that an officer executing a search warrant may seize any fruits, instrumentalities, or evidence of crime, or contraband, discovered by observation incident to and as an inadvertent consequence of the search and which he has probable cause to believe are subject to seizure.

The conference substitute provides in section 23-524(e) that an officer executing a search warrant may seize any fruits, instrumentalities, or evidence of crime, or contraband, discovered in the course of the lawful execution of the search warrant if he has probable cause to believe such property is subject to seizure. The phrase "lawful execution of the search warrant" limits the seizure of items not listed in the search warrant to those discovered during the process of the search for items listed in the search warrant. See *Alderman v. United States*, 394 U.S. 177n. 10 (1969).

The provisions agreed to in the conference substitute do not change existing law but merely put into clear statutory form the current law in effect today in the United States and provide the additional protection of requiring prior judicial approval of an entry without notice when the circumstances which would justify such entry are known at the time application for a warrant is made.

The Senate amendment contained a provision, not included in the House amendment, which required an officer to obtain prior judicial approval when at the time of application for a search warrant he knew or had reason to know of circumstances justifying entry without notice. The provision restricted an officer from entering without notice on his own discretion to circumstances known to the officer at the time of entry but which the officer did not know or have reason to know at the time of application for the warrant.

The conference substitute in section 23-591(c) conforms to the Senate amendment with an amendment extending the requirement to arrest warrants

as well and an amendment deleting the "reason to know" language. The "reason to know" language was deleted because it might have been interpreted as holding an officer accountable for knowledge possessed by other law enforcement officers in the District of Columbia. However, the deletion of this language shall not be construed to shield police laxity or to permit a police officer who knows the facts in advance to subvert the clear intent of this section favoring prior judicial authorization by sending an officer who does not possess the knowledge to make the application.

The House amendment provided that circumstances justifying dispensing with notice of identity and purpose exist where the officer reasonably believes, first, his identity or purpose is already known; second, notice is likely to result in evidence being destroyed or concealed; third, notice is likely to endanger the life of the officer; fourth, notice is likely to enable the person to be arrested to escape; and fifth, notice would be a useless gesture. The Senate amendment provided that circumstances justifying dispensing with notice of identity and purpose exist where the officer has probable cause to believe, first, notice will result in evidence being destroyed, and, second, notice will result in the life of the officer being in immediate danger.

The conference substitute in section 23-591(c) provides that circumstances justifying dispensing with notice of identity or purpose exist where the officer has probable cause to believe, first, notice is likely to result in evidence being destroyed; second, notice is likely to endanger the life of the officer; third, notice is likely to enable the person to be arrested to escape, and, fourth, notice would be a "useless gesture." Useless gesture is a legal term of art and codifies the exception to the announcement rule recognized by the Supreme Court and the U.S. Court of Appeals for the District of Columbia Circuit in *Miller v. United States*, 357 U.S. 301 (1958) and *Bosley v. United States*, No. 21, 513, D.C. Cir., decided April 9, 1970, and includes the exception where the officer's identity and purpose is already known. By using the "probable cause" and "is likely to" language, the conference substitute is intended to conform to the standard of the opinion of the Supreme Court in *Ker v. California*, 374 U.S. 23 (1963). It is likewise intended, in this regard, that this provision of the conference substitute shall not be bound by relevant and conflicting statements, if any, contained in House Report No. 91-907 and Senate Report No. 91-538.

The House version of a local wiretap statute contained in the court reform bill was debated at some length during the floor action on the bill. The conference substitute is substantially the same as that which this body passed earlier with some changes which clarify and therefore, I believe, improve the bill.

The formats of the House amendment and the Senate amendment providing for court-authorized interception of wire and oral communications were substantially different. Subchapter III of chapter 5 of title 23 of the conference substitute

conforms in large part to the more comprehensive format of the Senate amendment.

The Senate amendment contained a number of provisions not included in the House amendment which were adopted, as follows, in the conference substitute: First, any person who unlawfully intercepts or discloses a wire or oral communication is subject to a criminal penalty of 5 years and \$10,000; second, any person who unlawfully possesses, sells, distributes, manufactures, assembles, or advertises a wire or oral communication interception device is subject to a criminal penalty of 5 years and \$10,000; third, any intercepting device unlawfully possessed, used, sold, distributed, or manufactured or assembled may be seized and forfeited to the District of Columbia; fourth, immunity may be granted to witnesses testifying before a grand jury or court in the District of Columbia with respect to a violation of this law; fifth, standards and conditions are set out under which lawfully seized communications may be disclosed; sixth, any person whose communications have been lawfully intercepted may sue for civil damages, and seventh, in amendments to the Federal law, courts are authorized to order communications common carriers to assist law enforcement officers and good-faith reliance on a court order or legislative authorization is made a complete defense to civil or penal actions.

The Senate amendment contained several provisions, not included in the House amendment, which were adopted with amendment, as follows, in the conference substitute: First, A showing of special need is required for authorization or approval of any communications interception to be made or made from facilities of a physician, clergyman, or attorney, or, in the case of oral communications, also from facilities used as a place of habitation by husband and wife. The court must determine that the facilities were, are, or are about to be, used in connection with conspiratorial activities characteristic of organized crime and that the interception will be conducted to minimize interceptions of privileged communications. Second, A report must be filed by the authorizing or denying judge to the chief judge of the District of Columbia Court of Appeals within 30 days, and an annual report must be filed by the U.S. attorney with the chief judge of the District of Columbia Court of Appeals and Congress. The Senate amendment had proposed, in addition, the filing of reports with the District of Columbia Commissioner and the public and the form of the reports being prescribed by the District of Columbia Council, but these provisions were not included in the conference substitute.

The Senate amendment contained several provisions slightly different from the House amendment which were adopted, as follows, in the conference substitute: First, after an emergency wiretap, application for a court order must be initiated within 12 hours and completed in 72 hours; and, second, a motion to suppress an intercepted communication may be made on grounds that the communication was unlawfully intercepted, the order was insufficient on its face, the

interception was not made in conformity with the order, service was not made as required, and the seal was not present. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this subchapter and shall not be received in evidence in the trial, hearing, or proceeding. This does not change the attenuation rule. See *Nardone v. United States*, 127 F. 2d 521 (2nd Cir.), cert. denied, 316 U.S. 698 (1942); *Wong Sun v. United States*, 371 U.S. 471 (1963). Nor generally does it press the scope of the suppression role beyond present search and seizure law. See *Walder v. United States*, 347 U.S. 62 (1954).

The House amendment contained a provision, not included in the Senate amendment, which permitted interception in emergency situations for activities threatening the national security.

The conference substitute contains no such provision.

The House amendment provided, in addition to those crimes in the Senate amendment, the following crimes for which court-authorized interception could be authorized: abortion, arson, blackmail, burglary, destruction of property, receiving stolen property, and robbery.

The conference substitute conforms to the House amendment, except that the crime of abortion is deleted.

Pretrial detention is another controversial part of this conference report. The conference substitute while it changes somewhat the earlier House version is a strong and badly needed tool for local prosecutors and the courts.

The House amendment contained a comprehensive provision, not in the Senate amendment, delineating standards for release in criminal cases prior to trial, following conviction and pending appeal, and authorizing limited pretrial detention for specified categories of dangerous defendants.

The conference substitute adopts the House amendment with the following five amendments:

First, A prohibition against the detention of any defendant charged with a noncapital crime solely on the basis of the nature and circumstances of the present offense charged.

The House amendment authorizes pretrial detention for a maximum of 60 days on grounds of dangerousness to other persons or the community for three classes of defendants:

First, defendants charged with "dangerous crimes";

Second, defendants charged with "crimes of violence"; and

Third, defendants charged with any crime who threaten witnesses or otherwise obstruct justice.

For defendants in classes B and C, the House amendment specifies the minimum past conduct necessary to make such a defendant eligible for pretrial detention. For a defendant in class B, this minimum is that he have a prior conviction of a crime of violence within 10 preceding years, that he allegedly committed the crime of violence with which he is charged while released prior to trial, or while on probation, parole, or manda-

tory release, for a crime of violence, or that he has become a narcotic addict. For a defendant in class C, this minimum is a threat to witnesses or other conduct which obstructs justice. Moreover, while this minimum past conduct may, when considered together with the nature and circumstances of the offense charged, be sufficient to justify a defendant's pretrial detention, it may also not be sufficient since the judicial officer must find, based on all the facts set out in section 23-1321(b), that no condition or combination of conditions or release will reasonably assure the safety of the community.

Under the House amendment, a defendant charged under class A with a dangerous crime can be detained, even if he has never been convicted, arrested, charged, or even associated with any criminal conduct other than his present charge. The conference substitute eliminates this possibility. This is accomplished by providing that a person charged with a dangerous crime can be detained only if the judicial officer finds, after considering his pattern of behavior consisting of his past and present conduct, and other factors set forth in section 23-1321(b), that no condition or combination of conditions will reasonably assure the safety of the community. A judicial officer may not issue an order of detention based solely on the nature and circumstances of the dangerous crime charged. Such an order must be based at least in part on the past conduct of the defendant.

The conference substitute does not delineate the precise past conduct which may justify pretrial detention of a person charged only with a dangerous crime. Depending on the facts of the particular case, detention may be justified when further police investigation establishes that a defendant charged with a dangerous crime is responsible for other heretofore unsolved serious crimes. Detention may be justified for a defendant with a prior misdemeanor record. The decision is left to the sound judgment of the judicial officer, based on the facts of the particular case, and subject to appellate review.

Second, The elimination of the crimes of nonforcible rape and indecent liberties from the category of "dangerous crimes".

The purpose of this change is to prohibit the possibility of detaining a person charged only with nonforcible rape or indecent liberties, unless he has a prior conviction of or is on pretrial release for a violent felony or is a narcotic addict.

Third, The addition of a provision which guarantees that the 60-day period of detention cannot be extended by the filing of timely motions by the defendant other than motions for continuances.

The House provision authorizes extension of the 60-day period of detention if the trial is delayed at the request of the defendant. The filing by a defendant of timely motions, such as motions to suppress illegally obtained evidence or motions for discovery, may result in delay of the trial beyond the 60-day period. In order to make it perfectly clear that such a delay of the trial would not be considered "a delay at the request of the defendant," this provision was added.

Fourth. The strengthening of the House amendment which provided for expedited trials within the 60-day period by specifying that the cases of those detained shall be placed on an expedited calendar and, consistent with the sound administration of justice, given priority over all other cases. The conferees recognize that the success of an expedited calendar for pretrial detention cases depends on the readiness of the prosecution for trial and, therefore, urge that 25 additional prosecutors be appointed in the Office of the United States Attorney for the District of Columbia.

Fifth. The addition of the provision that for persons detained pending appeal pursuant to section 23-1325(c), the finding of the judicial officer that the appeal or petition for a writ of certiorari does not raise by clear and convincing evidence a substantial question of law or fact likely to result in a reversal or order for new trial, shall not be binding on the court in which review is sought; such a determination is one of law not subject to the traditional clearly erroneous standard of review.

Another important part of this court reform bill is greatly expanded Public Defender Service. The conference substitute conforms to the Senate provisions but there was very little real difference between the earlier House and Senate versions. In any case the Public Defender Service will be expanded so as to provide representation to 60 percent of all indigent individuals coming before the local courts, as well as the Federal courts.

Finally, we have added a Federal payment authorization—a one-time authorization—to pay for some of the costs of this act. This bill eventually is going to cost much more than this as I think we all know. But, this authorization will take care of the court and other related costs for this fiscal year. The transfer of Lorton Reformatory as provided for in the House amendment was changed in conference so as to provide for a study of the matter by the Department of Justice with recommendations to be made, concerning its future, to the Congress.

In conclusion, may I say that this is a good strong bill. It has the support of the President, the Attorney General, the U.S. attorney for the District of Columbia, many, if not most of the local and Federal judges, and Chief of Police Jerry Wilson. It is a bill which I believe will benefit the residents of this city and will abate the increase, if not in fact decrease, of the crime rate in this city.

I strongly urge you to support the strong endorsement the House conferees gave to this conference report. There has been enough delay. Let us act promptly in favor of this report by a larger vote than we did when we considered this matter earlier.

Mr. ABERNETHY. Mr. Speaker, I yield 5 minutes to the gentleman from Washington (Mr. ADAMS).

Mr. ADAMS. Mr. Speaker, I thank the gentleman from Mississippi.

Mr. Speaker, I have a series of questions to ask, because as I pointed out earlier, we have not seen the report of the conferees. I just now received a

statement of the managers of the House in the back of the Chamber and I have not had a chance, except during lunch, to read through it. So I want to know what is in it.

The chairman of the full committee said that this conference report is the House bill. I would like one of the conferees, since the conference also was in executive session and we never heard what they did or what happened—is this basically the House bill? I would like to ask the gentleman from Mississippi if that statement is correct, that the provisions of the House, as opposed to the Senate provisions, are basically what is in the bill?

Mr. ABERNETHY. First, I would like to state for the RECORD that it is customary for the House conferees to meet in executive session.

Mr. ADAMS. I agree with the gentleman and I did not mean by my remark to say anything different happened other than what is usual under the rules of the House—we just do not know.

Mr. ABERNETHY. I just wanted to have that clear in the RECORD.

This is basically the House bill. There are some slight changes in some of the provisions. The Lorton provision, I might say, did go completely out of the bill—not that we wanted it to go out—but we felt that in order to come to a complete concurrence with the Senate that was one of the essentials on which we felt compelled to yield. Otherwise this is the House bill with a few changes.

Mr. ADAMS. All right, I thank the gentleman. I asked the gentleman this question because in the remarks just made by the gentleman from Minnesota with regard to the no-knock provisions that were placed in it by the House, he said something about the no-knock provisions were not in—or were in—I have not been able to find them in my quickly going through the conference report. Is the House no-knock provision in the bill or is the Senate no-knock in the bill or is something else included?

Mr. ABERNETHY. There was a no-knock provision in the House bill. But, if the gentleman will yield to the gentleman from Maryland (Mr. HOGAN) to speak on that point.

Mr. HOGAN. I would suggest that the staff members would probably help the gentleman from Washington to find it in the conference report. But for his benefit, the version in the bill passed by the House included a no-knock provision. The version passed by the Senate included a no-knock provision. The drug bill passed by the Senate on a rollcall vote included a no-knock provision. It is in there in this conference report. It is not in the form passed by the other body nor exactly as passed by the House. What is provided now is that it states the general rule, which is that the police officer must announce—must knock and announce his identity before entering. Then it sets forth the exceptions as to when he may dispense with knocking.

Mr. ADAMS. And what are those exceptions? First, when his life is in danger; second—

Mr. HOGAN. If the gentleman will allow me to answer his question—

Mr. ADAMS. I just asked the gentle-

man that, and I will if he will help me to get additional time so I can do so. I have only 5 minutes.

Mr. ABERNETHY. I shall yield the gentleman from Washington additional time.

Mr. ADAMS. I yield to the gentleman from Maryland.

Mr. HOGAN. The gentleman's point is that he wishes an explanation of how it has been changed. I will explain to the gentleman what we have done. We have taken the language of the Senate which states, "when there is probable cause to believe." That is new.

Mr. ADAMS. Rather than "is likely to."

Mr. HOGAN. No. "Probable cause that it is likely to result in danger to his life," or "probable cause that evidence is likely to be destroyed," or "probable cause that the individual is likely to escape." The useless gesture is still included, and we eliminated one of the other provisions in the House bill that an officer may dispense with knocking when his identity and purposes are already known, specifying that it is included under useless gesture. The important thing to remember is, as we have said many times before, and as we said on the floor of the House, when we debated the bill, we are only clarifying and codifying existing law.

Mr. ADAMS. I thank the gentleman. I know that is the gentleman's opinion. We have a difference of opinion. I am trying to determine specifically what you have included. You said "useless gesture."

Mr. HOGAN. I have not finished answering the gentleman. One of the other things which was included and which was not in the House bill is that the police officer is required to get a warrant in advance when he knows of these exigent circumstances. He was not required to do so under the House bill. He was under the Senate bill. That is one of the provisions which the conference agreed to.

Mr. ADAMS. I see, but the tests for "no knock" as I understand it, under "no knock" are the House tests, including "useless gesture." I understand also that the wiretap provisions of the House stayed in which allow the U.S. attorney to authorize any officer who can arrest or any attorney who can prosecute to go in and get a wiretap. Is that correct? I got that from reading the House report. I assume that one of the gentlemen in charge of the report—

The SPEAKER. The time of the gentleman has expired.

Mr. ABERNETHY. Mr. Speaker, I yield the gentleman from Washington 3 additional minutes.

Mr. ADAMS. The next item, I understand, is on preventive detention. The preventive detention provisions of the House version are in the bill and remain in basically the form that they passed the House, is that correct?

Mr. ABERNETHY. I do not know exactly what the gentleman means by "basically," but I would say that the substance of the House provisions on preventive detention remain in the bill. There is a modification that they should

take into consideration the past conduct of the principal in the case. But in substance the House position is about the same.

Mr. ADAMS. In other words, it is 60 days—

Mr. ABERNETHY. The 60-day provision.

Mr. ADAMS. And the man can be detained if the judge determines from his past conduct and from the potential danger to the community that he thinks he should be held. Otherwise he cannot be held beyond 60 days.

Mr. HARSHA. Mr. Speaker, will the gentleman yield?

Mr. ADAMS. I have very little time.

Mr. ABERNETHY. Mr. Speaker, I yield 2 additional minutes to the gentleman from Washington.

Mr. ADAMS. I yield to the gentleman from Ohio.

Mr. HARSHA. There were four changes in the procedure for pretrial detention of persons charged with criminal offenses.

First, there is a prohibition against the detention of any defendant charged with a noncapital crime solely on the basis of the nature and the circumstances of the present offense charged.

A person charged with a dangerous crime, that is, those crimes defined in the bill—and, incidentally, there were two in the House version that were eliminated from that list, and that was indecent liberties and nonforcible rape. They are taken out of the conference report. But a person charged with a dangerous crime can be detained only if the judicial officer finds, after considering both his past and present record a pattern of conduct and other factors that no condition or combination of conditions will reasonably assure the safety of the community.

The decision of what constitutes past conduct sufficient to justify pretrial detention is left to the sound judgment and discretion of the court, the judicial officers, and is subject to appellate review.

Second, as I said before, we eliminated the two crimes of nonforcible rape and indecent liberties.

Third, the 60-day period of detention cannot be extended by the filing of time motions other than motions for continuance. If the defendant files a motion for continuance, then he would extend the 60-day time period.

Fourth, on expediting trial, we provide for expediting the calendar, and any person if he is detained under this provision of law has his case placed on that calendar, and insofar as consistent with good judicial practice, his trial is expedited, and his trial is to be considered first.

Those four changes are clearly made. They substantially tighten up the procedure and assure the defendant adequate protection under the law.

Mr. ADAMS. Mr. Speaker, I thank the gentleman.

I think what we are trying to do demonstrates the need for changes in the rules of the House, because we are trying in a period of 10 minutes or a very short extended time to illuminate a very complex bill. I know there are others who will want to speak—and I know this procedure follows the rules of the House,

but we have no conference report we can read, and we have just obtained the statement of the managers on the part of the House, and we have less than an hour to discuss some very controversial provisions of this bill.

I will say I understand the procedure on impeachment of witnesses is still in the bill, which means one can ask a man on the witness stand about all prior convictions and it also provides for a 3-year penalty for a man about breaking into a vending machine, and we have moved the juvenile age limit down to 15 years. I think we ought to spend more time on this bill. I know many will say that this is a District matter and not that important. That is why many of us say that we ought to move District of Columbia matters out of this House committee and down to the people who will spend more time on them because they will be governed by these laws.

Mr. Speaker, I appreciate the gentleman yielding time. I do not think we can put together a proper bill in this kind of procedure. As I said, this is not criticism of conferees for using the rules. They have the right to meet in executive session. But we just cannot consider a bill when they do this. I believe if Congress is going to govern the District and going to put in some very controversial measures: First, we ought to spend more time at it; or, second, we ought to let the local people act on it.

Mr. ABERNETHY. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I would like to say to the Members of the House the gentleman from Washington has just covered matters which have already been approved by the House. On the points he makes the identical language is still in the bill.

The gentleman seems to think there is something unusual about the procedure of the conferees. There is nothing unusual about what we did. We went through the identical procedure that is gone through by all committees of the House when they go to conference.

I might say that the gentleman from Washington did not ask to come into the conference. If he had, we would have admitted him. But certainly we should not be criticized for holding executive sessions when every conference committee of this Congress meets in a similar manner.

Mr. ADAMS. Mr. Speaker, will the gentleman yield?

Mr. ABERNETHY. I am sorry, I cannot yield further.

Mr. Speaker, I yield 3 minutes to the gentleman from Indiana (Mr. DENNIS).

Mr. DENNIS. Mr. Speaker, when this measure was originally before the House I voted for it—reluctantly, because there were provisions in the bill with which I seriously disagreed and which I sought unsuccessfully to correct by amendment on the floor; but, nevertheless, I decided, on balance, to support the bill, as with all its faults, a serious-minded effort toward correction of a bad situation.

Since then the measure has been improved in the conference—notably by the omission of a section providing for mandatory life sentences for certain offenders

which I considered extremely unwise and unjust, and which I had previously attempted to remove by amendment in this House. I certainly commend the House conferees for dropping that section; and, due to this action, I must agree that the present measure is an improvement over the one for which I voted.

Nevertheless, further reflection has convinced me that I cannot support this bill. This is for several reasons, but most notably and persuasively because the bill still provides for so-called "preventive detention", which I have also actively opposed, which I spoke against when this bill was first before us, and which I regard, on further and continued consideration, as so unwise and unsound that I simply cannot give it my approval, even when the beneficial purposes of this bill are considered.

Preventive detention may well violate the Constitution of the United States, as it certainly would violate the constitutions of a number of the States of the Union if it were attempted in the State courts; this is a question which the Supreme Court of the United States must ultimately decide. But whether unconstitutional or not it is, in my judgment, ineffective, unnecessary, and, as I believe, un-American.

It is ineffective because, under the bill, it requires a hearing and a determination of probable guilt before preventive detention can become operative—which means, in effect, two trials, and will clog the court system further; and because preventive detention operates for only 60 days and, if history is any guide, few of these cases can, or will be brought to trial within that period.

It is unnecessary because at best it can operate to prevent only a comparatively few possible crimes committed by persons waiting trial on bail, and because its objectives can be better accomplished by less drastic methods, such as better supervision of persons released on bail, various conditions of release, stiffer sentences for any offenses committed while released on bail, and, above all, more prompt trials.

Most of all, in my judgment—and with all deference to my friends who disagree—preventive detention is a fundamentally un-American concept.

In common, I think, with most Americans, I have always supposed that, in this country, we did not commit people to jail until and unless they had been found guilty and had been adjudged guilty of some crime. I have appeared in the courts for many years, and I must confess that I always supposed that if I represented an American citizen accused, but not convicted, of a crime, that I could secure his release either on bond or on his own recognizance until the question of his guilt or innocence had been determined. I believed that he was clothed with the presumption of innocence, and that he could not be committed and confined until and unless he had first been proved guilty beyond a reasonable doubt. It never occurred to me that some judge or magistrate, equipped I assume with some sort of judicial crystal ball, could decide ahead of time, not only that my client—this accused but not convicted American

citizen—was probably guilty as charged, but, moreover and in addition, that he would probably commit another crime while waiting trial and was consequently too dangerous to walk the streets in the meantime, and that he should therefore, on the basis of this judicial "guesstimate," be forthwith committed to jail, although he stood unconvicted of any sort of an offense.

This, however, is just exactly what we do under this bill. I say that it is un-American. Regardless of safeguards which are provided we will, inevitably, jail some innocent men. I say that it is a very sorry precedent—a prime example of the adage that a bad situation can breed bad law. I say that with the adoption of so-called preventive detention we are taking a first step in the abandonment of fundamental principles which, we have always thought, distinguished our system from the communistic and the fascistic dictatorships in other lands.

There is much that is good in this bill; much that I would like to support. Preventive detention is unnecessary to the purposes of this legislation. I had hoped that it, too, might be taken out in the conference. Unfortunately, however, it is now written permanently into the legislation and, in good conscience, I cannot let it become law without registering my protest, or with my consent or approval.

Mr. ABERNETHY. Mr. Speaker, I yield 4 minutes to the gentleman from Ohio (Mr. HARSHA).

Mr. HARSHA. Mr. Speaker, the conferees bring to this House a crime bill for the District of Columbia which is fair, just, and comprehensive enough to immeasurably aid the administration in curbing crime and violence in our Nation's Capitol.

This measure represents the best features of both the House and Senate versions of the original bill. It is not repressive but to the contrary very progressive and constructive and will be a valuable tool in the drive to eradicate crime from this Federal City.

Adequate safeguards are provided in this legislation that will assure every person, who finds himself involved with the law enforcement authorities, his fundamental constitutional rights. On the other hand the rights of the law abiding citizen and society generally are likewise fully protected.

For far too long we have been overly concerned with the rights of the criminal—so concerned that with some it has become an obsession. The rights of the victims of these criminals and of our law-abiding society have been neglected and shunted aside.

It is time these rights have had some consideration.

This conference report endeavors to protect the rights of society without infringing upon the rights of the accused. It represents the work of many legal scholars and persons highly knowledgeable and experienced in the field of criminology and rehabilitation.

In these troubled times there are many items which deserve our immediate attention. International crisis, domestic conflict, and social injustice plague our Nation. While many of our problems

seem to be beyond solution, today we have the opportunity to alleviate one of this Nation's most serious problems—the skyrocketing crime rate in our Nation's Capital. Within the shadows of the Capitol itself, vicious crimes are committed, visitors are robbed, and residents of the city are beaten. As the crime rate increases, the number of citizens willing to venture into the city to enjoy its many facilities decreases. Business suffers and what was a busy metropolis becomes, in the evening hours, a deserted maze of empty streets and buildings. Visitors from other lands must wonder how a nation with our resources can fail to protect its people from the common criminal.

We need not dwell on the problems created by the criminal element in this city; the story is all too familiar. What we need to do is to use our collective will to solve this crime problem. Our favorable action on the pending bill, the District of Columbia Court Reform and Criminal Procedure Act of 1970 will be a major step in the right direction. This carefully drafted legislation represents a comprehensive and coordinated attack on the District's crime problem. Despite irrational rhetoric to the contrary, careful analysis indicates that the approach this bill takes exemplifies rather than goes against our notions of criminal justice and due process.

Mr. Speaker, I will not attempt to describe each provision of this huge bill on the floor, but I would like to mention some of its major provisions.

Of the utmost importance is the provision reorganizing the District of Columbia's totally antiquated court system. This provision is absolutely essential. Court backlogs of 9 months and more cannot be tolerated. The court reorganization proposal is the result of very acute scrutiny and study by the Congress and by the Department of Justice. Careful consideration was given to various authorities including the National Crime Commission, the American Judicature Society and the American Bar Association's Minimum Standards for Criminal Justice. The result of these efforts is a proposal which completely revises the present court system and makes it more responsive to the pressing need for efficient and expeditious handling of criminal cases.

The proposed Code of Juvenile Procedure will enable the juvenile court system to more efficiently and realistically deal with the problems of modern day juvenile crime within the safeguards established by the Supreme Court in the now famous *re Gault* decision.

A much needed public defender program will be created by the bill—a program essential if the principle of criminal justice is to be a reality to all residents of the District. Under the provisions of the conference bill indigent defendants are assured that they will be skillfully and fairly represented by capable counsel.

To fully benefit from a new court system, it is also necessary that the present outmoded laws of criminal procedure be replaced by a modern Code of Criminal Procedure. This task, like all other provisions in this bill, was undertaken with

great care and study. A wide variety of sources were carefully examined, and the result is a modern, progressive, and functional Code of Criminal Procedure.

Within the proposed Code of Criminal Procedure are two provisions which have received widespread publicity by the press and news media. I am referring to the so-called no-knock provision and the pretrial detention proposal. Some have charged that these provisions fly in the face of our Constitution.

Mr. ADAMS. Mr. Speaker, will the gentleman yield for an inquiry?

Mr. HARSHA. I yield to the gentleman.

Mr. ADAMS. It is my understanding that we have an act already in existence that provides for the commitment of narcotics addicts if they have the habit and, second, if the man committed a previous crime and has a record he is generally on probation or parole and that can be revoked. Are not those two alternatives to the things you have mentioned?

Mr. HARSHA. There are several alternatives to the thing I mentioned. That is right.

Mr. Speaker, in regard to the no-knock provision, it is said that the police will be given broad unrestricted powers to break into homes. Mr. Speaker, it is time for us to look through the rhetoric and look at the provision itself. The provision limits—I repeat—limits the present powers of police officers to enter private dwellings. Under this provision, if an officer has knowledge of facts which justify an unannounced entry at the time he applies for a search or arrest warrant he must obtain judicial approval to make such unannounced entry. When the officer obtains information after obtaining a warrant which creates probable cause to believe that notice is likely to result in evidence being destroyed, or that notice will endanger the officer's life or permit escape, or where notice is a useless gesture, he may make an unannounced entry. In this situation the officer is merely acting under the existing authority of the Supreme Court's decision in *Ker v. California*, 374 U.S. 23 (1963). It is, therefore, clear that the only change in existing law created by the no-knock provision is the imposition of a statutory limitation on an officer's powers to make an unannounced entry by requiring that he obtain the approval of a neutral judicial officer when it is reasonable to require the officer to seek such advance approval. It is entirely proper, in an area as sensitive as police entry into a private dwelling, that we have explicit directions to our law-enforcement officers as to the proper method by which to carry out their increasingly difficult task of ferreting out crime.

An even more misunderstood provision in the bill is the provision dealing with pretrial detention of persons charged with criminal offenses. I wish at this point only to stress two aspects of this provision which are often overlooked by those who criticize this feature of the bill. First, this provision brings the issue of the dangerousness of an accused to the community from the present state of sub rosa pretrial detention by means of high

money bond into the light of a full adversary hearing. At this hearing the right to counsel, the right to present evidence and the right to appellate review and—most importantly—the right to have a clear determination of whether or not a person's release would endanger the community will all be afforded.

Under the present bail system a judge is often forced to release a person whom he believes will commit a crime of violence. Would any of us sleep well at night if we, as judges, were forced by adherence to the law to release a narcotic addict with a \$100-a-day habit charged with a crime of violence so that he can commit further violent crimes to maintain his addiction? Would any of us like to explain such a release to his next victim? Under the present system the only alternative in such cases is to impose a money bond beyond the ability of the addict to pay on the unjustified basis that he will not appear at his trial. Is it not infinitely fairer to grant such a person an honest determination on the real issue involved in the release decision—the question of the danger he poses to the community?

The second feature of the pretrial detention provision that I wish to emphasize is the fact that the number of potential persons covered by its provisions is exceedingly small. Great care has been taken to limit the detention categories to those defendants who appear to pose a real and substantial threat to the community. In this regard it should be noted that the fact that a defendant fits one of the categories of persons subject to pretrial detention does not mean that he will automatically be detained. If the judge finds that, despite the fact that the defendant fits into a specific detention category, that his conditional or unconditional release will not substantially endanger the community, he will be released.

In short, this provision simply lifts a hypocritical veil from the court's determination of whether or not to release a defendant prior to his trial.

Mr. Speaker, we have a duty to enact this bill. This duty extends to all the visitors mugged, to all the merchants shot, and to the hundreds of thousands of people who fear that they will become the next victim of this invidious fact of life in our Nation's Capital.

I urge the adoption of this conference report.

Mr. Speaker, I yield 4 minutes to the gentleman from Maryland (Mr. HOGAN).

Mr. HOGAN. Mr. Speaker, I rise as one of the conferees to speak in support of the conference report on the District of Columbia crime bill, which is now before us. It is my considered opinion that the conference report can best be described as a comprehensive and balanced piece of legislation to reorganize and modernize the criminal justice system in the District of Columbia. It considers both the safety of the Metropolitan Washington community and the rights of the individual. It is a bill badly needed to combat the intolerable crime rate in the Nation's Capital area, of which we are all well aware.

Mr. Speaker, in my opinion the con-

ference report now pending before us is an improvement over the bill which was passed by the House previously and the bill which was passed by the Senate. I think it deserves the support of every Member. It is important that we realize that this is a compromise. There was a good spirit of compromise on both sides. The House conferees gave and the Senate conferees gave, but, in sum, it is a very important and strong anticrime measure and will go a long way toward helping to reduce crime in this metropolitan area.

A great deal of attention has been focused upon the controversial aspects of the legislation, the so-called no-knock provision and the pretrial detention provision which my good friend and distinguished colleague, the gentleman from Ohio (Mr. HARSHA), explained so well. So there are many other important measures in this legislation.

It provides a comprehensive reorganization and modernization of the criminal justice system in the District of Columbia. The number of judges and their salaries are substantially increased. Jurisdiction of all local matters is placed in one court. An executive officer, a highly trained top caliber administrator, is made responsible for providing the court system with a unified and expert management. All of these proposals are designed to achieve the goal of swift and sure justice in the District.

In addition, the conference report provides for a full-fledged public defender service with authority to represent 60 percent of the indigent criminal defendants and juvenile offenders in the District. The District of Columbia Bail Agency is given additional authority to supervise and notify persons released prior to trial and authorization for additional funds.

Also provided for is a new juvenile code for the District which would replace outdated and incomplete methods for processing juvenile cases with modern and detailed procedures, and would incorporate the juvenile court itself into a newly created family division of the unified court system, this division will be empowered to deal with intrafamily offenses with civic tools rather than with inappropriate criminal penalties.

Equally as important to the fair and effective administration of criminal justice in the District are the provisions for updating and improving the District's criminal law procedures. Without these provisions, we cannot hope to maximize the benefits of the proposed court reorganization. As you are well aware, two criminal law provisions, pretrial detention and "no knock" entries, have received special attention by those who criticize the bill. Let me turn to some of those criticisms which unfortunately are based on a misunderstanding of what the legislation provides.

With respect to pretrial detention, critics have alleged that pretrial detention incorporates a concept contrary to "one of the fundamental traditions of Anglo-Saxon law," the presumption of innocence. With all due respect, I cannot agree with this allegation.

Detention prior to trial of defendants charged with certain crimes has been authorized in England by statute since 1275. The Supreme Court has recognized that the English Bill of Rights Act was never thought to accord a right to bail in all cases. Indeed, as recently as 1967, the English Parliament authorized pretrial detention on grounds of dangerousness of persons accused of misdemeanors. In view of this history, I am at a loss to understand how pretrial detention can be considered inconsistent with the presumption of innocence, which is generally recognized only as a rule of evidence in a criminal trial that places upon the prosecution the burden of proving guilt beyond a reasonable doubt and allows the defendant to stand mute. Indeed, in the United States, Federal law has authorized the pretrial detention of defendants charged with capital crimes since 1789. Surely, their pretrial detention is consistent with the presumption of innocence and the foes of the proposal do not challenge the constitutionality of pretrial detention in capital cases.

Nor does the eighth amendment require pretrial release of all arrested persons, a fact specifically acknowledged by the Supreme Court in 1952 in the case of Carlson against Landon. Appropriate provisions in the pretrial detention section providing for access to counsel and release to prepare for trial assure that such legislation does not contravene the sixth amendment right to counsel. Finally, provisions providing such procedural protections as a full hearing, right to counsel, right to present evidence, and right of review, and limiting detention only to a narrow category of defendants charged with the most serious crimes guarantee compliance with the fifth amendment.

Contrary to the assertion of some critics, there can be no doubt of the urgent need for pretrial detention in the District of Columbia. In the 3 years since the Bail Reform Act of 1966 was enacted requiring the release of noncapital defendants prior to trial no matter how dangerous, the number of robberies in the District has more than tripled; burglaries and forcible rape have more than doubled. The rate of increase from fiscal 1967 to fiscal 1968 in Washington, the only city in the United States exclusively governed by the Bail Reform Act of 1966, was more than double the national rate for cities of comparable size.

Of course, I do not mean that all this increase in crime is solely attributable to crime committed by individuals on bail, but recent studies have demonstrated an abnormally high rearrest rate for defendants released prior to trial, a rate which in view of the estimated 10 percent rate of cases which police actually clear, represents but the tip of the iceberg of crime on bail. A study by the Metropolitan Police Department in fiscal 1967 demonstrated a reindictment rate of 35 percent for indicted armed robbers. A study by the U.S. attorney's office in 1968 revealed a 70 percent rearrest rate for indicted robbers released prior to trial.

The critics cite what they consider the

low rearrest rate of the National Bureau of Standards study as proof that pretrial detention is not needed. The report itself, however, cautions that it is only a pilot or exploratory study, its sample being too small, its data and time frame too limited to constitute a thorough statistical study. Moreover, the low arrest rate by police, the failure of a significant percentage of victims to report crimes are factors which should be assessed. Also the failure of the study to examine records for rearrest other than in the District of Columbia itself. When a high percentage of crime in the Maryland and Virginia suburbs is committed by individuals on bail from District of Columbia courts clouds the picture. In addition, the fact that 35 percent of the defendants studied were never released prior to trial, a percentage which include those with worse prior records and who were charged with more serious crimes than those who were released should be considered. All these factors demonstrate that the rearrest rate figures of the study do not accurately reflect the actual crime committed by those on bail, but are far too low. Indeed, it is suggested in the report itself that due to data limitation and other facts the true rate for crimes on bail for both felonies and misdemeanors would approach 40 percent.

A second equally important reason for a pretrial detention provision is the need to eliminate the present practice of judges, notwithstanding the Bail Reform Act of 1966, to detain defendants by setting high money bond. This is hypocrisy. Detention should occur only after an open hearing on the record, with a right of review, in which the issue of dangerousness is confronted openly and honestly and rich and poor are treated alike. Detention should not be restricted to those who lack sufficient funds to buy their way out.

Turning to the so-called no-knock provision, I would like to point out that the House, on March 19, 1970, decisively approved the no-knock provision in the District of Columbia crime bill and the Senate, on January 25, 1970, approved by a vote of 70 to 15 a "no-knock" provision in the controlled dangerous substances bill—S. 3246—and also approved the "no-knock" provision in their version of the District of Columbia crime bill. These votes overwhelmingly established certain principles and guidelines which are also contained in the conference report.

These principles and guidelines are as follows: First, the general rule is that an officer must knock and announce before entering private premises to execute a warrant or to make a felony arrest; second, there are certain limited exceptions to this rule which have been recognized and approved by the Supreme Court, many State courts and several State legislatures, including New York; and third, when possible, the police should be required to obtain prior judicial approval of an entry without notice. Some criticize the authorization for police officers to secure no-knock warrants in advance and state their preference for police officers

justifying their no-knock entry after the fact. This is directly contrary to the spirit and purpose of the fourth amendment which requires officers whenever possible to secure prior judicial approval for arrests, searches and seizures.

The Senate and House District Committees have been diligently studying the crime problem in the Nation's Capital. One thing is clear from studying the crime situation in Metropolitan Washington is action is needed now. During the last 12 years the number of murders in the District of Columbia has increased threefold, the number of rapes has increased fivefold and the number of robberies has increased sixteenfold. In 1958, there were 79 murders, while in 1969, there were 289 murders; in 1958, there were 65 rapes, while in 1969, there were 336 rapes; and in 1958, there were 709 robberies, while in 1969, there were 12,423 robberies.

Thus, I hope that now that the bill has been reported out of the conference committee, it will promptly be approved by both bodies and be sent to the President for his signature. It is long overdue.

Mr. ADAMS. Mr. Speaker, will the gentleman yield?

Mr. HOGAN. I yield to the gentleman from Washington.

Mr. ADAMS. I want to agree with the statement that the gentleman just made. I think the gentleman is correct. There are some very good things in this bill. I agree with the gentleman in supporting the public defender provision, the court reform provision, and the bail agency. That is the reason there has been no controversy about those provisions in the course of this colloquy.

Mr. HOGAN. I thank the gentleman from Washington.

I might say to the gentleman from Washington who is concerned about the "useless gesture" provision that this is and has been specifically approved by the Supreme Court in Miller against United States and by the U.S. Circuit Court for the District of Columbia in the case of Bosley against United States.

I also want to corroborate what the distinguished gentleman from Mississippi said with reference to this matter and to which the gentleman from Washington alluded during the course of his formal remarks, these matters were specifically approved by the House when the bill was originally debated. In addition, all of the gentleman's amendments designed to strip out of the bill the provisions the gentleman objects to were resounding, defeated.

Mr. ADAMS. Mr. Speaker, if the gentleman will yield further, that is what I was trying to determine, whether the House provisions which have already been voted on were in the bill or whether the Senate provisions, some of which I support, were in the bill. It is my understanding based upon what the gentleman from Maryland has said and based upon what the chairman of the subcommittee said, that the House provisions prevailed. That is why I will probably oppose this conference report. That is the reason.

I thank the gentleman for yielding.

Mr. HOGAN. Mr. Speaker, as a sponsor of the omnibus District of Columbia crime bill and several of the separate bills it absorbed, and as one of the House conferees I would like to discuss, on behalf of all the House conferees, some specific provisions in the bill for purposes of legislative history. These statements should assist the trial judges in the new Superior Court and the appellate judges in the expanded District of Columbia Court of Appeals in reaching the results intended by Congress as set forth in the language of the conference report. These statements represent the solid position of the House conferees, all of whom signed the conference report, on the intent of the language in several provisions of the bill.

The conference report adopts the entire subchapter of the House bill dealing with pretrial detention with only five modifications. Only two of these require comment.

The conference report requires that a person charged with a dangerous crime—forcible rape, robbery, burglary, arson, and unlawful sale of depressant or stimulant drugs—can be detained only if the judicial officer finds, on the basis of his pattern of behavior, consisting of his past and present conduct, and other factors set forth in section 23-1321(b) that no condition or combination of conditions of release will reasonably assure the safety of the community. The House bill permitted a finding of dangerousness based solely on the nature and circumstances of the offense charged; it did not require, as does the conference report, that the finding of dangerousness be based at least in part on the past conduct of the defendant.

It is important to understand just what this new provision requires. It does not require a prior conviction or even arrest for any offense, felony or misdemeanor, on the part of the defendant. As explained in the House report, past conduct need not consist of prior involvement with the law. Through testimony and other reliable sources of information, a judicial officer may be informed of conduct on the part of the defendant, which while dangerous to the community, never resulted in his arrest or conviction.

The past conduct may consist of a number of serious offenses charged to the defendant following his arrests on the charge before the court, offenses committed prior to his arrest but not solved until after his arrest. Prior arrests, even those which did not result in convictions, may be considered. Nor need the past conduct by itself support a finding of dangerousness. The more serious the present offense charged, the less extensive the defendant's past conduct need be. For example, for a defendant charged with shooting a policeman in the course of an armed robbery, the evidence of past conduct need be relatively slight. The significant fact is that all the facts before the judge—the past conduct of the defendant, the nature and circumstances of the offense charged, and all other factors listed in section 23-

1321(b) when considered together, justify a finding by the judicial officer that no condition of release or combination of conditions of release will reasonably assure the safety of the community.

The second point which warrants comment concerns the provision in the conference report which specifies that a delay in the trial caused by the filing by the defendant of timely motions other than motions for continuance shall not be considered delays of the trial requested by the defendant. Under the House-passed bill, pretrial detention on grounds of dangerousness to the community alone was allowed for 60 days unless the trial is in progress or the trial is delayed at the request of the defendant. This provision, specifying that timely motions resulting in delay would not be considered a delay requested by the defendant, was added by the conference committee to make clear that a defendant's detention on grounds of dangerousness alone could not be extended by his filing timely motions, such as motions to suppress or for discovery. Emphasis is on the word timely. If a detained defendant files motions after the time allowed by court rule or by the judge and this delays his trial, then such delay is to be considered at his request. This provision added by the conference report does not, of course, apply to defendants detained because of likelihood of flight since the 60-day detention limit has no applicability to them.

The conference report adopts a provision authorizing entry without notice of identity and purpose limited circumstances modeled after the House bill. One major improvement was made to the House-passed provision. The conference report provides that an officer is required to obtain prior judicial approval when at the time of application for an arrest or search warrant he knows of circumstances justifying entry without notice.

The House conferees adopted this provision primarily because we recognized that there will be a number of cases, especially narcotics and gambling cases, where an officer at the time of application for a search warrant will have "probable cause" to believe that if notice is given the evidence "is likely to" be destroyed. Such a conclusion can be based on the officer's general knowledge and experience in the area of narcotics or gambling activity that such evidence is easily disposed of and frequently destroyed if the police give advance warning by announcing. See *Ker v. California*, 374 U.S. 23 (1963) (Opinion of the Court by Clark, J.); *Henson v. State*, 204 A. 2d 516 (Md. 1964).

The House conferees felt that it was in the best spirit of the fourth amendment to require prior judicial approval when the officer knew at the time of application for a warrant circumstances justifying entry without notice. The procedure of having an officer obtain prior judicial approval has had success in a number of States including New York. An example of such a success was described by the New York Court of Appeals, the State's highest court, in *People v. Delago*, 16 N.Y. 2d 289, 113 N.E. 2d 659

(1965), cert. denied, 383 U.S. 963 (1966). In *Delago*, a no-knock entry, pursuant to the New York statute, was authorized along with a search warrant for gambling paraphernalia. The no-knock authorization was based wholly on the general experience of the police officers that gambling records are frequently quickly destroyed if announcement is given. The search of the premises, which had been entered without announcement, was successful and the suspect was convicted. The New York Court of Appeals upheld the entry. Such a result has been incorporated in the language of the conference report.

The conference report, while adopting a number of time limits for juvenile proceedings, specifically rejected time limits for the factfinding and dispositional hearings. The conferees did suggest in the House statement of managers general goals to be sought by the court in reaching the factfinding and dispositional hearings. However, these goals are not obligatory in any way and must not be construed to create any rights on behalf of the child to have his case heard within a specified time period. The conferees, however, agreed that if after the family division of the superior court has been operating 2 years, the present backlog in the present juvenile court has not significantly improved it, would be appropriate for Congress to review the need for alternative ways to effect the faster processing of cases including the possibility of the establishment of time limitations for factfinding and dispositional hearings.

Of course, the conferees understand that what will be appropriate and practicable 2 years from now can only be determined at that time and a future Congress will have to reinvestigate the situation in the family division. Only then will anyone really know if time limitations will be helpful for faster processing of cases through the family division and if so what specific times are desirable. The only intention of the conferees at this time is to express our concern and our hopes for what this bill should effect so that the present outrageous delays will no longer exist.

The provision in the conference report on impeachment of witnesses by evidence of a prior criminal conviction originated with a bill I introduced in the House of Representatives—H.R. 15340. This rule is essentially the same as that proposed in March 1969 by the Advisory Committee on Rules of Evidence to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States and is consistent with the rules in at least 80 percent of the States. While recognizing the soundness of this rule, the conferees agreed that it would be appropriate for the District of Columbia Committees of the Congress, in its responsibility for overseeing the new, local, District of Columbia judicial system, to review the rule adopted by the conference substitute, should the Supreme Court of the United States subsequently promulgate as part of prescribed rules of evidence for all Federal courts a different rule of impeachment.

Mr. Speaker, as was said by the gentleman from Minnesota (Mr. NELSEN) under whose leadership I am honored to serve on the District Committee, this is one of the most important matters the Congress has considered regarding the Nation's Capital. I hope it will be promptly approved.

The SPEAKER pro tempore (Mr. Boggs). The time of the gentleman from Maryland has expired.

Mr. McMILLAN. Mr. Speaker, at this time I yield 3 minutes to the gentleman from Texas (Mr. CABELL).

Mr. CABELL. Mr. Speaker, I do not come before you as an attorney who is versed in all of the legalistic language of the judiciary. I do not come before you as a psychiatrist or a psychologist who has any opinions concerning penology and matters involved in those fields. I come before you as a member of the conference committee, one of the conferees on this bill, and I come to you to support the position of the House which was made very clear in the debate on this floor when the House passed the original bill, by a vote of 294 to 47.

It was my position and it was my intent that as a member of this conference committee I would support the position of the House that was taken by a preponderant vote of this body, and I felt an obligation to support that position.

I also come before you as a Member of this House who believes that the rights of the citizen are paramount to the rights of the criminal in this matter of criminal jurisprudence and criminal acts. This bill that we bring before you today in this conference report is essentially that, that the House voted on by a preponderant majority. Certainly we made certain concessions, we eased up some of the provisions of the House bill, but I want to tell you, and I may be violating a rule of protocol, but may I tell you that the other body did not want a criminal bill, they did not want a crime prevention bill, they wanted about 15 or 20 new judges upon whose appointments they could pass, and let it go at that. But I am interested in protecting the rights of the citizens on the street, as opposed to the rights of the criminal. I hope and I pray that the wisdom of this body will prevail, and that you will accept and approve the conference report that has been brought to you after some 26 meetings of that conference committee.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. ABERNETHY. Mr. Speaker, I yield 2 additional minutes to the gentleman from Texas.

Mr. CABELL. I thank the chairman for this additional time.

Mr. Speaker, I come before you to ask that you quit listening to the ACLU, that you quit listening to those people who spoke before our committee, and who spoke before the House, who were repudiated by the House, and who are only rehashing the same questions that were rehashed and repudiated by this body when the House bill was passed.

Mr. ADAMS. Mr. Speaker, will the gentleman yield?

Mr. CABELL. I will not yield at the

moment. The gentleman has his own time.

Mr. Speaker, I will spend what little time I have left to implore this body to, for once—not for once, because this body is much more responsible than the other body—I am imploring you to think about the citizens of the United States, the citizens of the District of Columbia, their rights, and their privileges as citizens, and quit shedding crocodile tears for the criminals who have been rampant in this District for the past several years, and let us have a real revision of the criminal codes.

I ask your approval of this conference report.

The SPEAKER pro tempore. The time of the gentleman has again expired.

Mr. ABERNETHY. Mr. Speaker, in order to answer some of the questions that have been raised, I yield 5 additional minutes to the gentleman from Maryland (Mr. HOGAN).

Mr. HOGAN. Mr. Speaker, a number of questions have been asked by the gentleman from Washington in addition to those concerning the pretrial detention and the no-knock provision, but I just thought that I should bring out these additional items.

Regarding "no knock," we replaced the clause in the House bill concerning "reasonable belief," and it became the "probable cause" phrase which the Senate put in. On the wire-tapping provisions, we have accepted the provisions closer to the Senate's version rather than the House provisions.

We have eliminated the provision to transfer the administration of the Lorton Reformatory to the U.S. Bureau of Prisons. That was not in the Senate bill. It was in the House bill, and we gave up on that.

The provision calling for payment of fees to private attorneys for defending police officers was very much modified. Now the Corporation Counsel is to defend these police officers and only when he is unable to do so are fees to private attorneys for defense authorized.

As to the vending machine provisions, which the gentleman is interested in, that was changed substantially.

Mr. ADAMS. It is still in the bill?

Mr. HOGAN. It is in the bill in an entirely different form. The offense is not now second degree burglary but it becomes a felony with a maximum penalty of 3 years.

Mr. ADAMS. Mr. Speaker, will the gentleman yield?

Mr. HOGAN. Mr. Speaker, I would like to answer the questions that the gentleman has already asked before hearing additional questions because I might run out of time.

Mandatory penalties for crimes have been severely changed from the House version. There are no mandatory minimum penalties for a first offense in the bill at all, as it now stands, and there are no mandatory life sentences in the bill at all.

Mr. BIAGGI. Will the gentleman yield?

Mr. HOGAN. I have a commitment to yield to the gentleman from Washing-

ton first, but I will be happy to yield, if I have any time remaining.

I yield to the gentleman from Washington (Mr. ADAMS).

Mr. ADAMS. As to the vending machine provision, it is still in as I read the bill and has a 3-year penalty. Is a penalty for the type of violation carried over as a violent or dangerous crime for purposes of other parts of the bill.

Mr. HOGAN. No, it is not.

Mr. ADAMS. Is it specifically applicable as to the no-knock provision, it is my understanding under the original version by which you can go in without knocking, include the useless gesture; is that correct?

Mr. HOGAN. No, that is not correct. If the gentleman will read the bill as originally passed by the House and compare it with the conference report, he will find that there was a provision in the House bill that said when the identity of the police officer was known, he need not knock and announce. That has been eliminated although it was stated by the managers that we do intend to have that exception included under "useless gesture."

I repeat again—the Supreme Court has specifically approved the "useless gesture" exception. I will give the gentleman a sample of what a "useless gesture" is.

Suppose a police officer sees a crime being committed and he pursues the individual down the street and the individual runs into a house and slams the door in the police officer's face. It is a "useless gesture" for the police officer at that time to pause and to knock on the door and to say that he is a police officer.

Mr. ADAMS. If the gentleman will let me reply to that, I agree that that is an exception. It was so held in certain crimes in the Ker case. However, when you place this in statutory form that the police officer can make a decision prior to arriving at the door as to whether or not it is a useless gesture, you have a different situation.

Then the decision is not made by the court, after the fact. The decision is made by the officer before he arrives and you have statutorily authorized him to do it, and there has been no judicial standard established to determine what an officer must have in his mind regarding useless gesture before he breaks in.

If I were an officer, I would say it is a useless gesture in order for me to get through that door. I have supported the Ker case. I think that is all right. But I think the no-knock provision you are putting in is extremely dangerous.

Mr. HOGAN. I am sure the gentleman knows the only no-knock provision that is being put in is already specifically authorized by Supreme Court decisions, including the "useless gesture," which I mentioned while in the well.

Mr. ADAMS. That is where we happen to disagree because the useless gesture is after the fact, and it is to determine the situation of the officer pursuing the man, as to whether he should break through the door. Now the Supreme Court can make decision. Under this bill the Court must now interpret the statute.

Mr. HOGAN. I would suggest to the gentleman that he read the Supreme Court cases. I insert the opinion in Bosley against United States at this point in the RECORD:

[U.S. Court of Appeals for the District of Columbia Circuit, No. 21,513]

DAVID E. BOSLEY, APPELLANT v. UNITED STATES OF AMERICA, APPELLEE—APPEAL FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Decided April 9, 1970]

Mr. R. Timothy Hanlon, with whom Mr. Murdaugh Stuart Madden (both appointed by this court) was on the brief, for appellant.

Mr. Donald T. Bucklin, Assistant United States Attorney, with whom Messrs. Thomas A. Flannery, United States Attorney, Roger E. Zuckerman and Victor W. Caputy, Assistant United States Attorneys, were on the brief, for appellee. Messrs. David G. Bress, United States Attorney at the time the record was filed, and John A. Terry, Assistant United States Attorney, also entered appearances for appellee.

Before WILBUR K. MILLER, Senior Circuit Judge, and WRIGHT and MACKINNON, Circuit Judges.

MACKINNON, Circuit Judge: Appellant was charged in a three count indictment with housebreaking (D.C. CODE § 22-1801), rape (D.C. CODE § 22-2801), and sodomy (D.C. CODE § 22-3502). He was found guilty by a jury of housebreaking and sodomy as charged and of the lesser included offense of assault with intent to commit rape. He was sentenced to four to twelve years for housebreaking, four to twelve years for assault with intent to commit rape, and three to nine years for sodomy, the sentences for the assault with intent to commit rape and sodomy to run concurrently but consecutively to the sentence for housebreaking.

The Government's evidence may be briefly summarized. The complaining witness, a young lady, testified that she resided by herself in an apartment on Connecticut Avenue, N.W. in Washington, D.C. She testified that on the night of March 16, 1966, she went to bed around 11:30 P.M., having locked both the door and window to her apartment. She testified that she was awakened later that night by a man standing over her bed. Her testimony that Bosley entered her apartment without her consent is corroborated by a broken window glass in her apartment opposite the fire escape. Both complainant and a girl friend testified this was not broken earlier in the evening. Thus the fact that the window was broken in a manner to permit unlatching the lock from the outside is corroborative of the Government's contention that Bosley had gained admission to the apartment in this manner. Also corroborative of an outside entrance by Bosley into the apartment is complainant's testimony that he was wearing gloves when she first noticed him standing by her bedside. Bosley admitted he had gloves with him at the time.

The complaining witness recognized the intruder as appellant, whom she had met on two previous occasions,¹ and who lived in

¹ At the first meeting, the complaining witness had locked herself out of her apartment. She went upstairs to the apartment of another girl she knew and was surprised to find appellant staying there also. The appellant then assisted her in gaining entry by climbing from the upstairs apartment via the fire escape to her apartment, going in through the window, and opening the locked door. The second meeting was apparently a brief encounter in front of the building, more properly described as a rooming house than as an apartment building.

the apartment above her. She screamed and was told by appellant that he would kill her if she continued to scream. She testified that appellant then raped her and forced her to engage in oral sodomy. She testified that a cycle of rape and sodomy continued throughout the night. Her description of the rape and sodomy can only be described as bestial. She further testified that appellant left her apartment by way of the fire escape the next morning, and she then promptly went to a girl friend's apartment and called the police.

A detective of the Metropolitan Police arrived at her girl friend's apartment in answer to her call, and together they proceeded to her apartment. Shortly thereafter, another detective arrived at complainant's apartment and the two officers then went upstairs to appellant's apartment. As testified to by the detective:

"We knocked on the door. The door was a little bit ajar. We knocked on the door. No answer. We could look through and see someone laying on the couch. So we just pushed the door open and walked in." The officers then shook the appellant awake,² placed him under arrest, and took him to the police station. Here certain items of appellant's clothing were seized and a sample of his pubic hair was taken.³ Apparently no evidence was taken from the appellant's apartment.

Appellant defended on the claim of consent. He testified that he had twice met the complaining witness in or about their apartment building,⁴ that preceding the early morning hours of March 17th he had been to a bar and, upon returning to his apartment, had felt lonely. The girl in whose apartment he was staying was out of the city. He further testified that he went downstairs to the apartment of the complainant, knocked on the door, was admitted and that after some conversation, he made advances which were accepted by her, after which he fell asleep, that when he awoke the next morning, complainant was upset about the possibility of pregnancy and about her fiancé

It was an older home that had been subjected to some remodeling. Appellant testified that he was invited to the complainant's apartment during this encounter but this was denied by her.

²An indication of how soundly appellant was sleeping can be gained from the testimony that the police awakened him at about 8:45 A.M. on March 18th and that he had a hangover at the time; that from 10 P.M. of the day previous he had been out celebrating his birthday and had consumed 13 cans of beer, a couple of mixed drinks and some sherry; engaged in three acts of sexual intercourse and several acts of sodomy and had been awake until about 7:45 A.M. when he went to sleep. He had about one hour's sleep according to this version. His own testimony reduced the instances of sexual intercourse to one and stated he had slept from about 3:00 A.M. to 6:00 A.M. The jury did not believe his testimony in other particulars and the other version of his night's activity seems to be the most reliable.

³The items taken from the appellant at the police station included a shirt, T-shirt, undershorts, handkerchief, sweater and trousers. This property was turned over to the FBI for analysis. This analysis revealed that the fibers taken from appellant's trousers and sweater were similar to those found on the complainant's sheets, nightgown, and panties. Public hairs which matched the sample taken from appellant were found on complainant's nightgown and sheets. Evidence of these and similar analyses were introduced into evidence by stipulation. Appellant here challenges the introduction of this evidence. See note 8 *infra*.

⁴ See note 1 *supra*.

learning of the episode; that he was feeling poorly and could offer her little sympathy, so he left her apartment by the window and returned to the upstairs apartment where he was staying by way of the fire escape. He stated he took this route because he had left the keys to his apartment in his apartment. When he found there was no food in his apartment, he went to a nearby store and picked up some groceries, then returned and fell asleep on the couch, and the next thing he remembered was being awakened by the police.

I

The appellant first argues that the trial court erred in admitting, over objection, a certain statement allegedly made by him while in police custody and before he had been advised of his rights as required by *Miranda v. Arizona*, 384 U.S. 436 (1966).

The statement in question was allegedly made by appellant in his apartment after the police had entered and shaken him awake. The detective was allowed to testify that after they had awakened him they first informed him that the girl downstairs had charged him with rape and appellant stated that he had not been in the apartment of the complaining witness but rather had been in a tavern until 2:00 A.M. at which time he had come home and gone to bed. The appellant denied making this statement; rather he testified as follows:

"As far as I can recall, when they came in, he said the girl downstairs . . . complained I had broken into her apartment and raped her.

"The only thing I can recall telling him was I didn't know what he was talking about, that I did not break in and I had not raped anybody."

Appellant was next arrested and taken to the police station.

The Government first argues that the trial court properly admitted the detective's testimony as impeachment evidence; the defense argues that the statement was used to discredit appellant's consent defense. In any event, we need not dwell long on this point since *Miranda*, if violated, under our decisions would prohibit the introduction of the statement even if it were used only for impeachment purposes. *Miranda v. Arizona*, *supra*, 384 U.S. at 477; see also *Proctor v. United States*, 131 U.S. App. D.C. 241, 404 F.2d 819 (1968); *Blair and Suggs v. United States*, 130 U.S. App. D.C. 322, 401 F.2d 387 (1968).

The Government next argues that appellant's statement was voluntary and as such comes within the "volunteered statement" exception to *Miranda*. On this point *Miranda* states:

"[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." 384 U.S. at 444.

We note that the Court drew no distinction between voluntary and involuntary statements, and we may assume that *Miranda* applies to all statements that come within its purview whether volunteered or not.

However, the Court also made it clear that not all statements come within the purview of its rule. We quote (384 U.S. at 478):

"In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police

without the benefit of warnings and counsel, but whether he can be interrogated. There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today." (Emphasis added).

The emphasized portion of the quote shows that the question to be asked is not solely whether the statement was voluntary, but rather in what circumstances was the voluntary statement made.⁵ The rest of the quote sheds light on this question. It would indeed be a harsh rule with respect to a volunteered statement made by one who walked into the police station in order to confess, or who volunteered his confession over the telephone, to prohibit its admission in evidence because the volunteered statement was offered before the police could give the required warning. In these situations, there would be no opportunity for overreaching or other abusive practices on the part of the police and consequently one of the main purposes of the *Miranda* decision—the deterrence of such police practices—would not be involved. Exclusion in such situations would serve no useful purpose and the Court wisely limited its rule to those statements "stemming from custodial interrogation."⁶

Turning to the case at bar, we note that appellant's statement whatever its exact content⁷ was a spontaneous denial of guilt which he volunteered when the police informed him of the charges levelled against him. We consider the reasoning of *Miranda* is applicable here which allows the admission of a voluntary statement that is not the result of "in-custody interrogation." We note here that there was no opportunity for the police to employ any abusive practice in order to obtain an incriminating statement. At the time the statement was made, there had been no interrogation whatsoever, and thus appellant's statement could not have been one "stemming from custodial interrogation." And no claim is made that appellant was subjected to any custodial interrogation.

We are not ready to condemn the police practice of announcing to a person they may seek to arrest the charges against him as early as possible in the encounter. In this instance the police were only doing what was required of them by 18 U.S.C. § 3109. Upon learning the charges, the arrested person may quite naturally make a spontaneous statement of innocence or noninvolvement. At this point, the police may have had no opportunity to give the *Miranda* warnings or to prevent the statement from being made. They had no such opportunity here. Exclusion of a statement made in these circumstances would not effectuate the purposes of the *Miranda* decision.

We recognize that at some point in time during the course of the arrest it could no longer be contended that the police were without opportunity to give the *Miranda* warning. We believe that *Miranda* does re-

⁵In *Orozco v. Texas*, 394 U.S. 324, 326 (1969), the police "officers questioned petitioner about incriminating facts" in his own room without advising him of his rights. The facts there are thus distinguishable from this case because here the police never questioned Bosley about the crime either at his own room or at the police station and no evidence was offered or admitted as to any response Bosley gave to any question by the police.

⁶*Miranda v. Arizona*, 384 U.S. 436, 444. (1966).

⁷ See p. 4, *supra*.

quire the police to warn an arrested suspect of his rights as immediately as practicable after arresting him. A heavy burden rests on the Government to prove any contention that the arrested suspect volunteered a statement without any "interrogation," explicit or implicit, on the part of the police and before he could be warned of his rights. See *Miranda v. Arizona*, *supra*, 384 U.S. at 475. We also recognize that the case before us would be quite different had the police interrogated the appellant in conjunction with informing him of the charges against him, *i.e.*, had the police informed the appellant of the charges and then asked him to respond to these charges. But the case at bar is not such a case. Here the appellant's statement was a spontaneous denial of guilt which he volunteered in response to the announcement of the charges levelled against him before the police had an opportunity to give the usual warning. We do not think the *Miranda* decision was intended to apply to such facts. Its entire thrust, as it reiterates so many times, is at "in-custody interrogation."

The appellant next argues that the statement allegedly made by him, along with certain physical evidence,⁸ should not have been admitted on the grounds that they were obtained following his arrest which was in violation of 18 U.S.C. § 3109 (1964). That statute provides:

"The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant."

It is clear that appellant's point does not raise constitutional issues because it is unquestioned that the police did have probable cause to enter to arrest Bosley for felonies. What is raised is the application of the statute to the entry and its effects on certain evidentiary matters. In *Miller v. United States*, 357 U.S. 301 (1958), the Supreme Court held section 3109 to be applicable to arrests,⁹ and the Court has since broadly construed the section to proscribe an "unannounced intrusion." *Sabbath v. United States*, 391 U.S. 585, 590 (1968).

On the other hand, the Supreme Court has left open the question of whether there may be exceptions to the requirements of section 3109 in certain circumstances. See *Sabbath v. United States*, *supra*, 391 U.S. at 591; *Ker v. California*, 374 U.S. 23, 40 (1963); *Wong Sun v. United States*, 371 U.S. 471, 482-83 (1963); *Miller v. United States*, *supra*, 357 U.S. at 309-10. Mr. Justice Brennan was clearly of the opinion there would be certain exceptions to any constitutional ruling on the subject, *Ker v. California*, *supra*, 374 U.S. at 47, and Mr. Justice Marshall has suggested that these exceptions may be applicable to section 3109. *Sabbath v. United States*, *supra*, 391 U.S. at 591 n.8. Lower courts have, in fact, engrafted certain exceptions onto sec-

⁸ See note 3, *supra*. We note that this physical evidence was not seized at the appellant's apartment, but rather was taken from him at the police station after his arrest. Appellant argues that this evidence should have been suppressed as "fruits of the poisonous tree" under *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963). However, granting *arguendo* the primary illegality, we are far from clear that the seizure of this evidence was not so remote so as to be "purged of the primary taint." *Id.* In any event, our disposition on the merits of the § 3109 question renders decision of this question unnecessary.

⁹ This circuit had reached a similar result prior to *Miller* in *Accarino v. United States*, 85 U.S. app. D.C. 394, 179 F. 2d 456 (1949).

tion 3109.¹⁰ One of these may be termed the "useless gesture" exception. Cf. *Miller v. United States*, *supra*, 357 U.S. at 310; *Hair v. United States*, 110 U.S. App.D.C. 153, 155 n.9, 289 F.2d 894, 896 n.9 (1961). In the past it has been applied when the arresting officers were justified in being virtually certain that the person to be arrested knew their purpose, and hence compliance with section 3109 would be a "useless gesture." See, *e.g.*, *Wittner v. United States*, 406 F.2d 1165, 1166 (5th Cir. 1969); *Der Garabedian v. United States*, 372 F.2d 697, 699 (5th Cir. 1966); *Chappell v. United States*, 119 U.S.App.D.C. 356, 358-59, 342 F.2d 935, 937-38 (1965).

We think application of the "useless gesture" exception to the case at bar is appropriate. We note that the officers originally attempted to comply with section 3109 by knocking on the partially open door. They received no response and apparently knocked again. Then, noting that appellant was asleep on the couch they entered the apartment through the open door, awakened appellant and announced their purpose. Since appellant had not been awakened by their knocking, the officers could reasonably have concluded that further knocking or verbal announcement would be a "useless gesture." Indeed, it appears that at this point the most practical means available to the officers to carry out their duty of giving notice of their authority and purpose was to enter the apartment and awaken the appellant. We note that the officers, after they had awakened the appellant, did immediately state their purpose (and impliedly their authority) by informing the appellant of the charges levelled against him.¹¹ To have done so before entry would have been useless gesture as the person the statute is designed to protect, the occupant, was asleep and the indications to the officers were that he was not capable of hearing them as he had not been awakened by their knocking. We conclude that the entry through the open door in these circumstances did not violate section 3109.

Affirmed.

Mr. BIAGGI. Mr. Speaker, will the gentleman yield?

Mr. HOGAN. I yield to the gentleman.

Mr. BIAGGI. Mr. Speaker, I thank the gentleman for yielding.

On this particular question, in connection with the question raised by the gentleman from Washington, if that particular officer did wrongfully utilize the useless gesture provision, would he not be subject to a civil suit and to disciplinary charges?

Mr. HOGAN. Yes; and he would be subject to civil suit for false arrest and he would be subject to the payment of damages and prosecution for breaking and entering.

Mr. ABERNETHY. I yield 3 minutes to the gentleman from Missouri (Mr. HUNGATE).

Mr. HUNGATE. Mr. Speaker, I rise as a lawyer and one who is not a conferee. The American system of jurisprudence is not designed to make us comfortable. It is designed to make us free. I wish to pay particular praise to the gentleman from Indiana (Mr. DENNIS) who has pointed out some of the weak-

¹⁰ See, *e.g.*, *Gilbert v. United States*, 366 F. 2d 923, 932 (9th Cir. 1966) (peril to officers); *Wayne v. United States*, 115 U.S.App.D.C. 234, 241-43, 318 F. 2d 205, 212-14 (1963) (emergency situations; here a report of a "dead, dying, or unconscious woman"); *United States v. Fair*, 176 F. Supp. 571, 573-74 (D.D.C. 1959) (destruction of evidence).

¹¹ See p. 4, *supra*.

nesses and the problems in the bill. I think he is a constitutional conservative in the House in the sense that the late Senator Taft was when he stood against the Nuremberg trials at a time when it was not popular politically to do so.

I have supported this bill. I will support the bill, because on balance I think it is a good bill. But we have a "no knock" provision in the bill which disturbs me greatly. We should try to remember always that we have been a nation in which citizens have been free from unlawful arrest. We were free from unreasonable searches and free from "no knock" provisions. Let us not give that up too easily. We have been a nation in which we once thought it was better that nine guilty men should escape rather than that we should imprison one who is innocent.

Mr. ABERNETHY. I yield 1 minute to the gentleman from Ohio (Mr. HARSHA).

Mr. HARSHA. I thank the gentleman for yielding.

I would just like to point out that you are not free from "no-knock" provisions in the law right now. They exist in the law. They are in case law. We are merely trying to codify what the Supreme Court has said the law is to provide additional safeguards to the individual by this codification method. The individual is further protected by the fact that you must get judicial sanction before you go in under those circumstances.

Mr. HUNGATE. Mr. Speaker, will the gentleman yield?

Mr. HARSHA. I yield to the gentleman from Missouri.

Mr. HUNGATE. Are the "no-knock" provisions which the gentleman describes in the current state of the law as broad as those which would be extended in the statute?

Mr. HARSHA. They are as broad, subject to the flexibility of interpretation placed on the circumstances involved in each case by the judge ruling on the legality of an arrest or the suppression of certain evidence obtained in the execution of such warrants.

Mr. HUNGATE. Then the provisions in the bill would extend only to narcotics and gambling cases, is that correct?

Mr. HARSHA. Sir?

Mr. HUNGATE. Then the provisions in the bill would extend themselves only to narcotics and gambling cases?

Mr. HARSHA. No, the provisions are general in nature, but their use would undoubtedly be limited to those types of cases.

Mr. ABERNETHY. Mr. Speaker, I yield 1 minute to the gentleman from Arizona (Mr. STEIGER).

Mr. STEIGER of Arizona. I thank the gentleman for yielding.

Mr. Speaker, I wish to pay particular commendation to the members of the conference committee because they have endured perhaps more than the majority of the body is aware. I should like to address a question to the gentleman from Mississippi. How long has this bill been in conference, approximately?

Mr. ABERNETHY. I would say approximately two or two and a half months. We had 23 meetings with the Senate conferees, and they were very lengthy.

Mr. STEIGER of Arizona. I do not know if that is a record, but it is certainly entitled to be noted.

Mr. ABERNETHY. I think we were in conference for 3 months.

Mr. STEIGER of Arizona. I note that now the senior Senator from Maryland is saying that the bill is really as he likes it and his provisions are an important part of the bill. Then I note that those who have espoused the same concern he has espoused are still espousing them. I wonder if the gentleman can tell me if he feels that in the main the House was successful in retaining the substance of what we passed here.

Mr. ABERNETHY. I think we have retained the substance of the House-passed bill.

Mr. Speaker, I yield 1 minute to the gentleman from New York (Mr. PODELL).

Mr. PODELL. Mr. Speaker, I am disturbed by a number of things in the bill, preventive detention, and particularly the "no knock" provision. I wish to bring to the attention of the House the possibility of an officer breaking into a home where he thinks he has probable cause to believe that narcotics are present, and the owner of that home is in possession of a revolver. The owner of that home in possession of a revolver will have every right to shoot the officer because that officer broke into his home without announcing himself as an officer of the law.

I would like to ask the gentleman from Ohio (Mr. HARSHA) or the gentleman from Maryland (Mr. HOGAN) whether or not the bill provides for any safety for that officer?

Mr. HARSHA. The provision of no-knock is designed to provide safety for the officer. One of the reasons he would use the no-knock provision or not identify himself in language to the suspect is because he fears he may be shot if he does that. We have had many occasions when the officer has identified himself and been shot. He says, "I have a warrant for your arrest," and he is shot through the door. This is designed to prevent the very thing the gentleman thinks might prevail.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. ABERNETHY. I yield the gentleman from New York 1 additional minute.

Mr. PODELL. Mr. Speaker, if I am alone during the course of the evening, and I own a pistol, and a man breaks into my home during that evening without announcing he is a police officer, I am going to shoot him.

Mr. HARSHA. In the first place, unless the gentleman is a known criminal or there is some evidence to cause the officer to know the gentleman has illicit narcotics in his possession or other unlawful contraband, the officer is not going to break into the gentleman's home.

Mr. PODELL. Is it not possible the officer may have a mistaken impression the owner of the apartment has narcotics? And is it not possible for an officer to break into the wrong one or a string of identical homes or the wrong apartment for instance, 2A instead of 2B?

Mr. HARSHA. That can happen now under present law.

Mr. PODELL. And it has happened in two recent cases.

Mr. ABERNETHY. Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. MIKVA).

Mr. MIKVA. Mr. Speaker, the cheeses of preventive detention and no-knock and minimum-mandatory sentences do not smell any better as a result of the time they aged while the conference committee sat.

Where we should be setting up a model for the country in terms of what they ought to do to solve the local crime problems, we are telling the country, in effect, that the only provisions Congress can come up with are those which belie the belief that we can achieve a system that recognizes that justice and order go together. I find it sad that we are saying that the only way to be secure is to create conditions where freedom and repression are equated, and balanced against each other.

Mr. Speaker, I intend to vote "no."

Mr. ABERNETHY. Mr. Speaker, I yield two minutes to the gentleman from Michigan (Mr. GERALD R. FORD).

Mr. GERALD R. FORD. Mr. Speaker, President Nixon assumed office pledging a relentless struggle against crime in the District of Columbia.

Eleven days after his inauguration, he outlined a comprehensive program of crime control designed to restore a decent measure of security to residents and visitors in the Nation's Capital.

The President's program envisioned a partnership with Congress. Many of his recommendations required congressional action.

Specifically, the President proposed a massive reorganization and expansion of the local courts, featuring added manpower and modern court administration to reduce the scandalous backlogs and delays that have characterized the present system.

He supported an enlargement of the District of Columbia Bail Agency to improve surveillance of defendants before trial.

He advocated a full-fledged public defender service to assist indigent defendants in criminal proceedings.

He called for sweeping reforms in the operation of the juvenile court and in the Juvenile Code.

And he asked for changes in the Bail Reform Act to correct manifest deficiencies which had become apparent through experience.

In subsequent weeks and months, other suggestions to improve the District's criminal justice system were forthcoming—from the Department of Justice, from Members of the House and Senate, and from the public at large.

In time, each Chamber produced and passed a bill.

Last Monday, after more than 3 months of spirited debate, after 24 sessions of conference and compromise, the best in these disparate measures was at last brought together in a single omnibus crime bill for the District of Columbia.

We should send this first major crime legislation of the 91st Congress to the

President's desk for signature without further delay.

The legislative process has taken a long time—too much time for any of us to be proud or satisfied. Almost 18 months have passed since the President's crime message. These long months have been a tragic loss when we consider the urgency and magnitude of the present crisis.

But a bill has emerged—a sound, constitutional bill of great depth and dimension that will make history as one of the most progressive crime control measures ever enacted by the Congress.

The members of the conference committee who hammered out this compromise legislation deserve our thanks. Special tribute should be paid to Congressmen JOHN McMILLAN, TOM ABERNETHY, JOHN DOWDY, EARLE CABELL, ANCHER NELSEN, BILL HARSH, JOEL BROYHILL, and LARRY HOGAN, who faithfully represented the interests of the House.

The District of Columbia crime bill is long overdue—not months overdue but years overdue—in a city where crime has increased more than 600 percent during the past decade.

The bill is not a panacea for every problem in this crime-beleaguered capital. But it is a reasoned response to rampant lawlessness—an immediate response to immediate problems. It is needed now. It is needed for the future.

The House of Representatives was not satisfied with just a court reorganization bill because a comprehensive crime bill was the medicine needed.

This bill is sound, progressive, bipartisan legislation. The provision authorizing pretrial detention is designed to meet the problem of dangerous felony defendants whose past and present record of behavior demonstrates that they cannot be trusted to refrain from additional criminal conduct during the period between arrest and a speedy trial. Crime on bail is an undeniably serious problem in the District of Columbia, and it will not disappear through wishful thinking.

The no-knock provision in the bill codifies the law of the land as set out by the Supreme Court in *Ker* against California. Exaggerated concern about police barging into private homes is competely unfounded in the accumulated experience of 29 States. Authority to enter a premises in exigent circumstances without first knocking is often essential to the life and safety of an officer or the preservation of critical evidence.

The wiretapping provision in the bill implements the authority granted to local jurisdictions by the Omnibus Crime Control and Safe Streets Act of 1968. There is no truth whatever to charges that the provision exceeds the careful standards set out in 1968.

Idle talk about repression contributes nothing to the sober resolution of serious problems.

The District of Columbia crime bill will contribute significantly to peace, liberty, and order in the Capital City of our Nation. It merits the support of the Congress.

Mr. ABERNETHY. Mr. Speaker, I yield

1 minute to the the gentleman from California (Mr. WALDIE).

Mr. WALDIE. Mr. Speaker, I would like to ask the gentleman from Ohio (Mr. HARSHA) a question if I may.

I understood the gentleman to suggest that the no-knock provisions were merely a compilation of the existing Supreme Court decisions on that subject with the added extension that it gave more protection to the individual. Is that a fair statement?

Mr. HARSHA. That is correct.

Mr. WALDIE. Am I correct in saying that in effect what has been done in this bill is to tie the policeman's hands even further than they are presently tied with the case law that exists in the field?

Mr. HARSHA. We have limited his discretion.

Mr. WALDIE. So, in effect, we have made it easier on the criminal and tougher on the policeman by this provision?

Mr. HARSHA. We have not made it easier for the criminal.

Mr. WALDIE. Have we made it tougher for the policeman?

Mr. HARSHA. We have defined the avenues within which the policeman may operate.

Mr. WALDIE. And that made it tougher over the existing case law, did it not?

Mr. HARSHA. It made it more difficult but it does not follow that it made it easier for the criminal. It clearly defines the circumstances under which the no-knock procedure may be used and it takes the guess work out of the present law. Thus permitting the police to use no-knock with more assurance and legal sanctity.

Mr. WALDIE. If it is tougher for the policeman, we have made it easier for the criminal, have we not?

Mr. HARSHA. That does not necessarily follow.

Mr. WALDIE. Not necessarily, but it does in this case and I am disturbed that the committee would make the policeman's task more difficult.

I say, if we have made it tougher for the policeman have we not made it easier for the criminal?

Mr. HARSHA. No; that does not follow.

Mr. ABERNETHY. Mr. Speaker, I yield 1 minute to the gentleman from Maryland (Mr. GUDE).

Mr. HOGAN. Mr. Speaker, will the gentleman yield?

Mr. GUDE. I yield to my colleague from Maryland.

Mr. HOGAN. I wish to answer the gentleman from California. The difficulty is, because there is so much confusion about this at the present time the U.S. attorney and the police are confused and they do not use this even though they are authorized to do so under the case law.

Mr. GUDE. Mr. Speaker, I rise particularly to commend the remarks of the gentleman from Missouri in regard to the no-knock provision. I regret that the conference did not strike this unnecessary provision altogether.

I wish I could exercise an item veto before voting on this huge report. There are still serious defects in the sections relating to juveniles, wiretapping, and pre-

ventive detention, although some of the more egregious parts of the bill have been modified. However, I sponsored and supported most of the major sections of this legislation. These include court reorganization, expanding the legal aid agency into a full-fledged public defender service, strengthening of the District of Columbia Bail Agency, and authorizing the District to enter into the interstate compact on juveniles. We must get on with these reforms. I am relieved to see that the conferees have dropped the ill-considered provision to transfer Lorton Reformatory to the Federal Bureau of Prisons. Our goal is to upgrade all of the institutions in the system of criminal justice, not to fragment and weaken it.

I am pleased that the conferees have amended the preventive detention section of the bill to require that the cases of persons detained be placed on an expedited trial calendar. I proposed this amendment on the floor, but it was rejected. It is essential that any provision for preventive detention be coupled with a speedy trial requirement. Other amendments which I proposed to the preventive detention section would have strengthened the provision against constitutional attack, and I regret that no one insisted on them.

Despite its defects, I support this bill because it will give the District of Columbia the institutional resources it needs to reduce the crime that shadows District citizens and visitors to this great city.

Mr. OTTINGER. Mr. Speaker, I regret that the House-Senate conferees on the District of Columbia crime bill have reached agreement on a version that retains so many provisions of H.R. 16196 which are unconstitutional and which I opposed when the bill passed the House on March 19.

The answer to our rising crime does not lie in repression, and certainly not in tossing out the basic liberties embodied in the Constitution for which our forefathers fought.

The answer to crime lies first in an effective attack on drug addiction. Between 50 percent and 80 percent of violent crime in our cities is attributable to addicts having to steal, burglarize, mug, and hold up people to get the money to feed their habits. I have proposed comprehensive legislation to deal with this menace to our society, including stiff mandatory sentences for drug suppliers and distributors, doubling the customs staff assigned to stopping smuggling, cutting off aid to countries that fail to take effective measures to stop drug exportation, licensing and regulating U.S. drug manufacturers and distributors, and taking the incentive to steal out of the traffic in drugs by treating addicts as the health problems they are.

Another sound answer to crime is to beef up our local police forces and improve their training and equipment. To carry this out, I proposed legislation to provide \$3 billion for the Crime Control and Safe Streets Act rather than the \$216 million proposed by the administration, and to distribute these funds in accord-

ance with the incidence of crime rather than on a per capita basis.

Lastly, we must attack more effectively the conditions in our society which lead to crime—slum housing, inadequate education, and training which lead to joblessness.

The answer definitely does not lie in throwing out basic constitutional protections for the many who are innocent to get at the few who are guilty.

It is just unthinkable that the widespread alarm of American citizens over rising crime should create the emotional climate for passage of a bill that includes preventive detention, no-knock searches by law enforcement personnel, the trying of 16-year-olds as adults, and creation of special discriminatory sentences.

These provisions assault the most cherished principles of American democracy as set forth in our Constitution: the presumption of innocence, right to privacy in the home, and selective sentencing of convicted criminals on the basis of the facts in each individual case. As I pointed out in prior debate on this bill, offenses by persons released on bail comprise approximately 6 percent of the total crime incidence, and more than half of this percentage involves crimes committed more than 60 days after release. A 60-day preventive detention authorization will succeed in crowding the jails even more than they are now, will establish a presumption of guilt, injure the suspect's ability to receive a fair trial, and will clutter an already badly backlogged court docket by adding the time and preparations for preventive detention hearings.

Likewise, the no-knock provision has frightening implications for the security of citizens in their own homes. There have been several instances of such entry in the District area in recent months, one of them a breaking into the wrong apartment. I am convinced that this practice is going to lead to tragic unnecessary deaths, both among the public and for police officers as well.

As I have pointed out so often before, the problems in our crime prevention and detention procedures could be greatly alleviated by the institution of speedier trials, a reform which would obviate the objectionable features of the bill before the House today. Until we clean up our center cities, provide employment opportunity for every American, make our prisons rehabilitative, give every accused person the right to a speedy trial, and help local jurisdictions to upgrade the quality of law enforcement personnel, we shall not have taken the truly necessary steps to rid ourselves of the high crime rate which makes so many Americans insecure when walking the streets. That security will not be gained by the incursions into civil liberties authorized under S. 2601, and I urge defeat of this legislation today.

Mr. ABERNETHY. Mr. Speaker, I wish to express my appreciation to the members of the conference and to the Members of the House for the consideration they have given this measure both at the

time it was originally considered and at this time on the consideration of the conference report. Each of you deserve commendation for your participation and effort.

We have reached the point of a final vote. I urge that you support this legislation. The District and the Nation need it.

PARLIAMENTARY INQUIRY

Mr. ADAMS. Mr. Speaker, a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. ADAMS. How much time is left for this debate?

The SPEAKER pro tempore. Eight minutes.

Mr. ADAMS. I would ask the gentleman handling the bill, since there are 8 minutes remaining, that we in opposition have an opportunity to continue our inquiry on several matters. I understood that the time had been exhausted by the proponents of the bill. I would ask now, with the time remaining, if I might be recognized?

Mr. ABERNETHY. Mr. Speaker, I yield myself 1 minute to respond to the gentleman.

It is impossible to preliminarily work out to the exact minute the time that is allotted in the consideration of a conference report. Some must be held in reserve for late requests. I have yielded time to every Member who sought it. I do not feel that further debate on the report would contribute a thing. The gentleman from Washington has had more time than anyone in the Chamber. With all deference, I feel that we now ought to get on with the vote.

Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HARSHA. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 332, nays 64, not voting 35, as follows:

[Roll No. 216]

YEAS—332

Abbutt	Barrett	Broyhill, N.C.
Abernethy	Beall, Md.	Broyhill, Va.
Adair	Belcher	Buchanan
Albert	Bell, Calif.	Burke, Fla.
Alexander	Bennett	Burke, Mass.
Anderson	Betts	Burleson, Tex.
Anderson, Calif.	Bevill	Burlison, Mo.
Anderson, Ill.	Blaggi	Burton, Utah
Anderson, Tenn.	Blester	Bush
Andrews, Ala.	Blackburn	Button
Andrews	Blanton	Byrnes, Wis.
Andrews, N. Dak.	Boggs	Cabell
Annunzio	Boland	Camp
Arends	Bow	Casey
Ashbrook	Brademas	Cederberg
Ashley	Brinkley	Chamberlain
Aspinall	Brooks	Clark
Ayres	Brotzman	Clausen
Baring	Brown, Mich.	Don H.
	Brown, Ohio	Clawson, Del.

Cleveland	Howard
Collier	Hull
Collins	Hungate
Colmer	Hunt
Conable	Hutchinson
Conte	Ichord
Corbett	Jacobs
Coughlin	Jarman
Cowger	Johnson, Calif.
Cunningham	Johnson, Pa.
Daddario	Jonas
Daniel, Va.	Jones, Ala.
Daniels, N.J.	Jones, N.C.
Davis, Ga.	Jones, N.C.
Davis, Wis.	Karh
de la Garza	Kazen
Delaney	Kee
Dellenback	King
Denney	Kleppe
Dent	Kluczynski
Derwinski	Kuykendall
Devine	Kyl
Dickinson	Kyros
Donohue	Landgrebe
Dorn	Landrum
Dowdy	Langen
Downing	Latta
Dulski	Lennon
Duncan	Lloyd
Dwyer	Lujan
Edmondson	McClary
Edwards, Ala.	McCloskey
Erlenborn	McClure
Esch	McCulloch
Eshleman	McDade
Evans, Colo.	McDonald, Mich.
Evins, Tenn.	McEwen
Fallon	McFall
Fascell	McKneally
Feighan	McMillan
Findley	Macdonald, Mass.
Fish	Madden
Fisher	Mahon
Flood	Mailliard
Flowers	Mann
Flynt	Marsh
Ford, Gerald R.	Martin
Foreman	Mathias
Fountain	May
Frelinghuysen	Mayne
Frey	Michel
Fulton, Pa.	Miller, Calif.
Fulton, Tenn.	Miller, Ohio
Fuqua	Mills
Gallifanakis	Minish
Garmatz	Minshall
Gaydos	Mize
Gettys	Mizell
Gialmo	Mollohan
Gibbons	Monagan
Goldwater	Montgomery
Goodling	Morgan
Gray	Morton
Green, Oreg.	Mosher
Griffin	Murphy, Ill.
Griffiths	Natcher
Gross	Nelsen
Grover	Nichols
Gubser	Obey
Gude	O'Konski
Hagan	Olsen
Haley	O'Neal, Ga.
Hall	Passman
Halpern	Patman
Hamilton	Patten
Hammer-schmidt	Pelly
Hanley	Perkins
Hanna	Pettis
Hansen, Idaho	Philbin
Hansen, Wash.	Pickle
Harsha	Pike
Harvey	Pirnie
Hastings	Poage
Hays	Poff
Hébert	Preyer, N.C.
Hechler, W. Va.	Price, Ill.
Hendler, Mass.	Price, Tex.
Henderson	Pryor, Ark.
Hicks	Pucinski
Hogan	Purell
Horton	
Hosmer	

NAYS—64

Adams	Cohelan
Addabbo	Conyers
Eingham	Corman
Bolling	Culver
Brasco	Dennis
Brown, Calif.	Dingell
Burton, Calif.	Eckhardt
Byrne, Pa.	Edwards, Calif.
Carter	Elberg
Celler	Farbstein
Chisholm	Foley

Qule	Holifield
Quillen	Kastenmeyer
Rallsback	Koch
Randall	Leggett
Reid, Ill.	Long, Md.
Rhodes	Lowenstein
Rivers	McCarthy
Roberts	Meeds
Robison	Melcher
Rodino	Mikva
Roe	Mink
Rogers, Colo.	
Rogers, Fla.	
Rooney, Pa.	
Rostenkowski	
Roth	
Roudebush	
Rousselot	
Ruppe	
Ruth	
St Germain	
Sandman	
Satterfield	
Saylor	
Schadeberg	
Scherle	
Schmitz	
Schneebell	
Schwengel	
Scott	
Sebellius	
Shipley	
Shriver	
Sikes	
Sisk	
Skubitz	
Slack	
Smith, Calif.	
Smith, Iowa	
Smith, N.Y.	
Snyder	
Stafford	
Staggers	
Stanton	
Steed	
Steiger, Ariz.	
Steiger, Wis.	
Stephens	
Stratton	
Stubblefield	
Sullivan	
Symington	
Taft	
Talcott	
Taylor	
Teague, Calif.	
Teague, Tex.	
Thompson, Ga.	
Thomson, Wis.	
Tiernan	
Udall	
Ullman	
Van Deerlin	
Vander Jagt	
Vanik	
Vigorito	
Waggonner	
Wampler	
Watkins	
Watson	
Watts	
Welcker	
Whalen	
Whalley	
White	
Whitehurst	
Whitten	
Wiggins	
Williams	
Wilson, Bob	
Winn	
Wold	
Wolf	
Wright	
Wyatt	
Wylder	
Wyllie	
Wyman	
Yatron	
Young	
Zablocki	
Zion	
Zwach	

Moorhead	Reuss
Morse	Riegle
Moss	Rooney, N.Y.
Nedzi	Rosenthal
Nix	Roybal
O'Hara	Stokes
O'Neill, Mass.	Thompson, N.J.
Ottinger	Tunney
Podell	Waldie
Rees	Yates
Reid, N.Y.	

NOT VOTING—35

Berry	Dawson	Pepper
Blatnik	Diggs	Pollock
Bray	Edwards, La.	Powell
Brock	Hawkins	Rarick
Broomfield	Keith	Relfel
Caffery	Kirwan	Ryan
Carey	Long, La.	Scheuer
Chappell	Lukens	Springer
Clancy	MacGregor	Stuckey
Clay	Matsunaga	Widnall
Cramer	Meskill	Wilson,
Crane	Murphy, N.Y.	Charles H.

So the conference report was agreed to.

The Clerk announced the following pairs:

On this vote:

Mr. Chappell for, with Mr. Ryan against.

Mr. Long of Louisiana for, with Mr. Powell against.

Mr. Edwards of Louisiana for, with Mr. Dawson against.

Mr. Murphy of New York for, with Mr. Diggs against.

Mr. Pepper for, with Mr. Kirwan against.

Mr. Widnall for, with Mr. Matsunaga against.

Mr. Rarick for, with Mr. Scheuer against.

Mr. Stuckey for, with Mr. Hawkins against.

Mr. Bray for, with Mr. Carey against.

Mr. Cramer for, with Mr. Clay against.

Mr. Crane for, with Mr. Charles H. Wilson against.

Until further notice:

Mr. Blatnik with Mr. Pollock.

Mr. Caffery with Mr. Brock.

Mr. Broomfield with Mr. Relfel.

Mr. Clancy with Mr. MacGregor.

Mr. Springer with Mr. Lukens.

Mr. Meskill with Mr. Keith.

Mr. CARTER changed his vote from "present" to "nay."

The result of the vote was announced as above recorded.

The doors were opened.

A motion to reconsider was laid on the table.

GENERAL LEAVE TO EXTEND

Mr. ABERNETHY. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to extend their remarks on the adoption of the conference report.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

CONFERENCE REPORT ON H.R. 16595, NATIONAL SCIENCE FOUNDATION AUTHORIZATION ACT OF 1971

Mr. DADDARIO. Mr. Speaker, I call up the conference report on the bill (H.R. 16595) to authorize appropriations for activities of the National Science Foundation, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there

objection to the request of the gentleman from Connecticut?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of July 13, 1970.)

Mr. DADDARIO (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

Mr. GROSS. Reserving the right to object, Mr. Speaker, I assume in lieu of the reading the gentleman will take some time to explain the conference report.

Mr. PADDARIO. Mr. Speaker, in reply to that, I shall be happy to take as much time as necessary to answer any questions the gentleman from Iowa and other Members may have.

Mr. GROSS. Mr. Speaker, I withdraw my reservation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. DADDARIO. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of the conference report on the bill H.R. 16595, to authorize appropriations for the activities of the National Science Foundation, and for other purposes, for fiscal year 1971.

The managers on the part of the House met in conference with the managers on the part of the Senate on Thursday last, July 9.

The results of that conference were not only a reasonable compromise with the views of the other body, but were in keeping with the sentiment of the House as expressed in its action in passing the authorization bill, H.R. 16595 on May 11 of this year.

The House conferees did an admirable job in working out the details of this compromise and I should like to compliment them for their efforts in this regard.

After House passage of H.R. 16595 on May 11, the Senate Committee on Labor and Public Welfare reported this bill with amendment on June 11. The Senate committee struck out all after the enacting clause in H.R. 16595 and inserted a Senate amendment. This amendment differed from the House passed version in two substantive ways:

It increased the amount of the authorization from \$527,630,000 to \$548 million, and it did not include the House approved "student unrest" provision. The full Senate approved the bill on July 1 as reported by the Senate Committee on Labor and Public Welfare, but did not request a conference. The House disagreed to the amendment of the Senate, requested a conference, and appointed conferees on July 6. The conference agreed to a compromise figure of \$539,730,000, including \$2,000,000 in excess foreign currencies. The Senate approved the conference report yesterday. I hope we shall do likewise today.

As I have already noted, there were two substantive differences between the House and Senate versions which were reconciled by the conferees on July 9.

Let me explain first of all the differences between the two bodies over the amount of the authorization.

Mr. GROSS. Mr. Speaker, would the gentleman be good enough to yield?

Mr. DADDARIO. I yield to the gentleman from Iowa.

Mr. GROSS. I thank the gentleman for yielding.

I ask him how much above the budget the conference figure is.

Mr. DADDARIO. Mr. Speaker, the administration's budget for the National Science Foundation was \$500 million including \$2 million in excess foreign currencies. The increase, then, is \$39,730,000 above the request.

Mr. GROSS. Some \$35 million, then, with or without the foreign currencies?

Mr. DADDARIO. That is correct. If the gentleman will recall, over the course of the last few years the Committee on Science and Astronautics and the Subcommittee on Science Research and Development, which holds the authorization hearings, has cut back on the budgets which were originally proposed by the administration. On this occasion, as we demonstrated during the debate on the authorization bill when it was before the House, there were numerous transfers of programs which we on the subcommittee believed to be of tremendous value to the country. They were being transferred to the National Science Foundation, but only a small share of them could be supported. We have added \$20 million for that purpose, which is the largest change in the administration budget.

As I pointed out, the administration requested for the National Science Foundation a total authorization of \$500 million, not including \$13 million for the national sea grant program which is authorized separately. The House action added \$27.63 million to the administration request. The additional funds were added specifically for five programs.

The House added \$9.5 million for graduate traineeships: The administration budget provided no funds for first year trainees. These stipends are distributed on a geographical basis to 244 institutions, and furnish a basic strength and quality to the graduate education programs in the sciences throughout the country. Termination of the program would have serious consequences to the graduate education programs at many emerging universities. Analysis of the fiscal year 1971 budgets of other agencies indicates an overall reduction in direct Federal support to first year graduate students of one-half as compared to fiscal year 1970. Projections of scientific manpower requirements 6 to 8 years from now, when these graduate students would be entering the manpower pool, indicate that the Nation will require more rather than fewer scientists. Restoration of this program to its fiscal year 1970 level reduces the impact of these reductions, and will permit an orderly review of future scientific manpower requirements during the coming year.

The sum of \$10 million was added by the House to support academic science projects transferred to NSF from mission agencies: Shifts in program emphasis by

agencies other than the National Science Foundation are causing a reduction in the support of academic research in colleges and universities by approximately \$54.1 million in fiscal year 1971, not including changes in the programs of the National Institutes of Health. Information indicates NSF expects to fund projects previously supported by NIH at a level of \$3.8 million in fiscal year 1971. Present plans of agencies other than NIH include the termination of research grants or contracts in more than three-quarters of the States. Most, and perhaps all, of the remaining States will be affected since many of these projects will be of very high quality and will compete successfully for Foundation support.

Hearings were held on March 19 on this subject. Four witnesses from the academic community related the effects of current policy on the Nation and their own institutions. Dr. Benjamin Lax of MIT warned about the danger of losing the lead in important scientific disciplines to other nations. Dr. Charles Hosler of Penn State noted the cutback of research and training in areas related to environmental problems. Dr. Thomas Jones of the University of South Carolina described how modest percentage cutbacks at the "excellent" institutions turn into catastrophic reductions at the "emerging" universities. Dr. Ivan Bennett, of New York University, related how cutbacks in the support of the life sciences would affect our medical education now and in the future.

The action of the House increased funding for the college science improvement program by \$4 million to a total of \$8 million for fiscal year 1971: Our undergraduate colleges have historically furnished a large proportion of the undergraduate science majors who go on to graduate study. The effectiveness of COSIP has been well demonstrated in the past. The need for this program is demonstrated by the fact that proposals totaling \$24 million were submitted to NSF in fiscal year 1969.

The House attempted to deal with the demonstrated need for more basic research regarding environmental problems by adding \$4 million for environmental research in Federal laboratories.

This is a new budget item which did not appear in the proposals put forth by the administration. The pattern of building new laboratories to solve each major new problem is not an efficient way of utilizing our limited scientific and fiscal resources. In the area of research on environmental quality, competence can be found in existing Federal laboratories. This competence should be brought to bear in a coherent manner to solve some of these pressing problems. We need laboratories of a certain "critical mass" to provide comprehensive studies and multidisciplinary approaches.

Many environmental problems require research and pilot plant capabilities beyond the resources of individual universities. A recognition of this need for environmental laboratories of significant size has been reflected in legislation introduced in both Houses of Congress. The problems, however, are of such magnitude and importance that delay seems

unwise. The NSF already has the necessary jurisdiction to take the needed first steps, and a unique set of circumstances existing at the Oak Ridge National Laboratory makes this alternative feasible.

This \$4 million provides the necessary first steps toward a viable research program in those areas most important to the preservation and restoration of our physical environment.

The final item for which funds were added by the House was the State and local intergovernmental science policy planning program. The House added \$130,000 to this program, bringing it to a total level of \$500,000.

The State and local intergovernmental science policy planning program was formally initiated in fiscal year 1969. It supports projects designed to assist State and local governments in planning for better utilization of science and technology.

Effective measures for dealing with many environmental problems can be most effectively generated at the State and local levels. This NSF program has been extremely valuable in providing the necessary capability for attacking these problems by demonstrating the value of effectively organizing science and technology to cope with local conditions.

The Senate sustained all of the additions of the House to the administration request, and added funds to three of the programs which the House increased. With respect to the House approved figures, the Senate added \$20 million for support of academic science projects transferred to NSF from mission agencies; \$500,000 for the college science improvement program, and \$370,000 to the State and local intergovernmental science policy program. The Senate also added \$1.5 million to the Foundation's program for institutional support for science.

The compromise worked out by the conference committee reflected the differences in funding for these four programs, over which there was disagreement, as follows:

The difference of \$20 million between the House and Senate for support of academic science projects transferred to NSF from mission agencies was resolved by agreeing to a figure precisely midway between the House and Senate figures. The \$10 million added to the House figure will allow the Foundation to support approximately half of the high quality research projects that are being terminated by mission agencies in fiscal year 1971.

The House conferees agreed to the Senate addition of \$500,000 over the House level for the college science improvement program. The conferees concurred with the Senate figure, which will permit the Foundation to more adequately cope with the needs in quality science education which exist in our undergraduate colleges.

Mr. MILLER of California. Will the gentleman yield?

Mr. DADDARIO. I yield to the chairman of the committee.

Mr. MILLER of California. The gentleman has not said anything about the fact that we retained in the House bill the language that restrains persons from

rioting or violating the laws and rules and regulations of universities or institutions, which language the House very much insisted upon and the Senate deleted from the bill. Part of the agreement with the Senate, you know, involved this: We made concessions to them on the budget in order to retain this language in the bill. I hope the gentleman touches on that.

Mr. DADDARIO. I am pleased that the chairman has called that to the attention of the House. I shall touch on it after going through the remaining budget changes. That language concerning "student unrest" was kept as passed in the House version.

Mr. FULTON of Pennsylvania, Mr. Speaker, will the gentleman yield?

Mr. DADDARIO. Yes, I am glad to yield to the distinguished gentleman from Pennsylvania.

Mr. FULTON of Pennsylvania. This year as well as last, the House has insisted upon certain limits in order to prevent disturbances and rioting at educational institutions. So, there are these limits that have been gained on the control of the spending of the money. Nonetheless, the money amount has gone up. So, in the give and take there was a money increase. However, I would like to discuss briefly this matter of an increase and ask my colleague from Connecticut a question.

Actually, the amount under the Mansfield amendment limited the DOD research programs to those that have only a direct and apparent relationship to the mission of the Department of Defense. The total amount of transfer would be about \$60 million. Under the amount requested in this bill, the National Science Foundation would be able to assume only \$30 million of that. We are only giving them just over 50 percent of it. Is that not correct?

Mr. DADDARIO. If I may reply to the gentleman from Pennsylvania, Mr. Speaker, I think the question he has raised is one of extreme importance. I would add to that that the figure of \$60 million is an extremely low estimate. My own judgment on that is that the total for the programs which have been dropped out of the Department of Defense, the National Institutes of Health and the Atomic Energy Commission may run over \$100 million. The figure that we are adding in support of these programs will support only a portion of the very best programs.

Mr. FULTON of Pennsylvania. So, that on the academic science projects transferred to the National Science Foundation from mission-oriented agencies, the House added \$10 million and the Senate added \$20 million more. Therefore, what we come up with is really one-half of what would be necessary for Department of Defense research programs?

Mr. DADDARIO. That is correct.

Mr. FULTON of Pennsylvania. Mr. Speaker, if the gentleman will yield further, all of us on the House floor are interested in making more progress toward environmental quality. I think one of the chief things that should be emphasized here is a small increase of \$4 million for environmental research in Federal laboratories.

Improvement of our environment through scientific research can be given an enormous boost by utilizing the existing competence that can be found in our Federal laboratories. The National Science Foundation already has the necessary jurisdiction to make use of these laboratories. At the same time, it has the necessary authorization to provide the highly specialized laboratories where they are required.

Many environmental problems require research and pilot plant capabilities beyond the resources of our individual universities and laboratories. For these reasons, the committee of conference agreed to our recommendations to add \$4 million for this purpose.

I believe everyone in the House, regardless of party or affiliation, would favor such an increase and emphasis at this time. This is also in step with the new movements toward environmental legislation and the new Environmental Protection Agency that has been proposed by President Nixon in his Reorganization Plans Nos. 3 and 4.

Mr. DADDARIO. Mr. Speaker, on that particular point I think it ought to be emphasized that the Subcommittee on Science and Research and Development has for some time laid emphasis on the idea that Federal laboratories ought to be more flexible than they have been in the past; that they are the repository of both brains and equipment that can be used for present day problems. This action is a manifestation of that concern, one which I believe will pay great dividends in the years ahead.

Mr. FULTON of Pennsylvania. Mr. Speaker, if the gentleman will yield further, in the planning and policy studies program of the NSF there is the State and local intragovernmental science policy planning program.

One of the purposes of this program is to assist State and local governments to plan for better utilization of science and technology.

It has been increasingly evident in the past few years that State and local authorities are better equipped organizationally to deal with their particular local problems.

The conference committee added \$230,000 to this program which puts a part of our Government research money to work back in the States so that, on a local basis, States can expand their science programs to conform to local conditions. This is really a part of the President's policy of returning a part of the Federal funds to the States.

We are taking the lead in scientific research and development by emphasizing these programs which will be of assistance to the science and research departments in these various States. Therefore, those people who are States' rights minded should certainly feel that the increase of money for these State programs, which totals \$600,000 for fiscal year 1971, should be retained.

Would the gentleman agree with that?

Mr. DADDARIO. Mr. Speaker, the program that the gentleman from Pennsylvania is referring to is one in which he has shown great interest over the course of many years. It is at this time a very small program, and has been for the

last few years, because the States are not in condition as yet to do any more than to develop a planned capability which these amounts of money are directed toward accomplishing.

The difference of \$370,000 between the House and Senate figures for the State and local intergovernmental science policy planning program was compromised to a figure of \$100,000 above the House figure. The conferees agreed that this program has been productive and will continue to be increasingly valuable in providing increasing capability at the State and local levels for dealing with such problems as environmental quality and pollution abatement. However, testimony presented by the NSF to the House Committee on Science and Astronautics indicated that the Foundation could utilize in an effective manner not more than \$600,000 for this purpose in fiscal year 1971. Therefore, in order to assure maximum efficiency in the expenditure of these funds, the total budget for this program was kept to the \$600,000 level.

The Senate added \$1.5 million to the administration request of \$55.5 million for institutional support for science. The House did not provide any increase in this program. The Senate expressed a strong desire to assure the further strengthening of the capabilities of our universities in the social sciences, and stipulated that this \$1.5 million increase in institutional science support should be for this purpose. The House conferees concurred with the Senate position with respect to their position.

The other major disagreement between the House and the Senate versions of H.R. 16595 was the inclusion of the "student unrest" provision in the House version but not in the Senate version. In essence, the House approved a provision stating that no funds under the act could be paid by the institution to such persons if they: First, willfully refused to obey a lawful regulation or order of such institution and such refusal was of a serious nature and contributed to the disruption of the administration of such institution; or, second, had been convicted in any Federal, State, or local court of competent jurisdiction of inciting, promoting, or carrying on a riot, or convicted of any group activity resulting in material damage to property, or injury to persons, found to be in violation of Federal, State, or local laws designed to protect persons or property in the community concerned.

The House conferees insisted strongly upon retaining the provision as approved by the House. This provision is similar to others enacted into law in connection with major Federal programs of higher education, and, identical to a provision included in last year's NSF Authorization Act.

The Senate conferees receded on this point of disagreement, and the "student unrest" provision was retained in precisely the same form as passed by the House.

Summing up the results of the conference, the House and Senate versions differed by \$22.37 million. The amount agreed to by the committee of conference is \$12.1 million more than authorized

by the House and \$10,270,000 less than authorized by the Senate and totals \$539,730,000. In other words, the House conferees gave in slightly to the Senate on the amount of the authorization, but with respect to the other major item in disagreement, the "student unrest" provision, the Senate receded and the House position prevailed.

I would like to compliment the gentleman from Pennsylvania (Mr. FULTON) on giving his support to this report and also to recognize that he has made an extremely valuable contribution to the work of the Science and Astronautics Committee, and to the conference committee as well. His fine spirit and keen insight have made our deliberations truly bipartisan in nature, and have shown his dedication to the pursuit of scientific excellence in this country.

Mr. FULTON of Pennsylvania. Mr. Speaker, I thank the gentleman.

Mr. DADDARIO. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. MILLER).

Mr. MILLER of California. Mr. Speaker, I merely want to express my appreciation to the Subcommittee on Research and Development for the work that they have done on this bill.

I also want to compliment the gentleman from Connecticut (Mr. DADDARIO), the gentleman from Ohio (Mr. MOSHER), and the other members of the subcommittee, along with my colleague, the gentleman from Pennsylvania (Mr. FULTON). We have tried to handle this on a strictly bipartisan basis because of its great importance to the country.

I also want to thank the staff of the committee for the very fine work they have done.

Mr. FULTON of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Pennsylvania.

Mr. FULTON of Pennsylvania. Mr. Speaker, I also wish to compliment the gentleman from Connecticut (Mr. DADDARIO). As chairman of the distinguished Subcommittee on Science, Research and Development, he has been, perhaps, the leading congressional figure in support of our national scientific research and development effort. His dedication and insights into these matters have been extraordinary. I also want to compliment the gentleman from California (Mr. MILLER) on his cooperation and on the forward-looking views he has taken in the work he has done on this particular legislation.

Mr. Speaker, will the gentleman yield further?

Mr. MILLER of California. I yield further to the gentleman from Pennsylvania.

Mr. FULTON of Pennsylvania. Mr. Speaker, I would also like to point out to the House one further thing. For those people who are interested in expenditures and who are concerned that this is above the President's budget, it must be remembered that \$20 million of the \$37.5 million above the President's budget is for research work that is being transferred from the Department of Defense and allied agencies. The National Science Foundation is picking up pro-

grams that would otherwise have been done for the defense of this country. Secondly, another \$4 million of this total is to emphasize environmental research in our Federal laboratories. These are two major areas of support that I think everybody should agree on at this time.

Mr. Speaker, I thank the gentleman for yielding.

Mr. MILLER of Ohio. Mr. Speaker, I yield back the balance of my time.

Mr. EVINS of Tennessee. Mr. Speaker, I want to commend the distinguished gentleman from Connecticut (Mr. DADDARIO), chairman of the Subcommittee on Science, Research and Development of the Committee on Science and Astronautics, for this bill and this conference report providing authorization for programs of the National Science Foundation.

Mr. Speaker, it would seem that after November we will be referring to the distinguished committee chairman as Governor DADDARIO.

We will miss him as he leaves the House following an outstanding career of public service in the House for further service to the great State of Connecticut.

The gentleman from Connecticut is able, diligent, capable—and this conference report reflects his great talent and ability.

I commend this conference report and urge its approval.

Mr. DADDARIO. Mr. Speaker, I have no further requests for time, and I move the previous question on the conference report.

The previous question was ordered. The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HALL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 311, nays 77, not voting 43, as follows:

[Roll No. 217]

YEAS—311

Abbitt	Bolling	Collier
Adair	Brademas	Conte
Adams	Brasco	Conyers
Addabbo	Brinkley	Corbett
Albert	Brooks	Corman
Alexander	Brotzman	Culver
Anderson	Brown, Calif.	Cunningham
Calif.	Brown, Mich.	Daddario
Anderson, III.	Broyhill, N.C.	Daniel, Va.
Andrews,	Broyhill, Va.	Daniels, N.J.
N. Dak.	Buchanan	Davis, Ga.
Annunzio	Burke, Mass.	de la Garza
Aspinall	Burlison, Mo.	Delaney
Ayres	Burton, Calif.	Dent
Baring	Burton, Utah	Derwinski
Barrett	Bush	Dingell
Beall, Md.	Button	Donohue
Belcher	Byrne, Pa.	Dorn
Bell, Calif.	Cabell	Downing
Bennett	Casey	Dulski
Bevill	Celler	Duncan
Blaggi	Chamberlain	Dwyer
Blester	Clark	Eckhardt
Bingham	Clausen,	Edmondson
Blanton	Don H.	Edwards, Calif.
Boggs	Cleveland	Ellberg
Boiland	Cohelan	Esch

Eshleman	Lennon	Robison
Evans, Colo.	Long, Md.	Rodino
Evins, Tenn.	Lowenstein	Roe
Fallon	McCarthy	Rogers, Colo.
Farbstein	McCloy	Rogers, Fla.
Fascell	McCloskey	Rooney, N.Y.
Feighan	McClure	Rooney, Pa.
Fish	McCulloch	Rosenthal
Fisher	McDade	Rostenkowski
Flood	McDonald,	Roth
Flowers	Mich.	Roudebush
Foley	McEwen	Roybal
Ford,	McFall	Ruppe
William D.	McKneally	St Germain
Fraser	Macdonald,	Satterfield
Frey	Mass.	Saylor
Friedel	Madden	Schadeberg
Fulton, Pa.	Mahon	Scheuer
Fulton, Tenn.	Maillard	Schwengel
Fuqua	Mann	Scott
Gallifanakis	Marsh	Sebellus
Gallagher	Martin	Shipley
Garmatz	Mathias	Shriver
Gaydos	May	Sikes
Gettys	Meeds	Sisk
Glaimo	Melcher	Skubitz
Gibbons	Mikva	Slack
Gilbert	Miller, Calif.	Smith, Iowa
Goldwater	Miller, Ohio	Smith, N.Y.
Gonzalez	Minish	Stafford
Gray	Mink	Staggers
Green, Oreg.	Minshall	Stanton
Green, Pa.	Mize	Steed
Griffin	Monagan	Steiger, Ariz.
Griffiths	Moorhead	Steiger, Wis.
Grover	Morgan	Stephens
Gude	Morse	Stokes
Haley	Mosher	Stubblefield
Halpern	Moss	Sullivan
Hamilton	Murphy, Ill.	Symington
Hammer-	Natcher	Taft
schmidt	Nedzi	Talcott
Hanley	Nichols	Taylor
Hanna	Nix	Teague, Calif.
Hansen, Idaho	O'Hara	Teague, Tex.
Hansen, Wash.	O'Konski	Thompson, N.J.
Harrington	Olsen	Thomson, Wis.
Harvey	O'Neill, Mass.	Tierman
Hastings	Ottinger	Tunney
Hathaway	Passman	Udall
Hays	Patman	Ullman
Hechler, W. Va.	Patten	Van Deerlin
Heckler, Mass.	Pelly	Vander Jagt
Helstoski	Perkins	Vank
Hicks	Pettis	Vigorito
Hollifield	Philbin	Waggonner
Horton	Pickle	Waldie
Hosmer	Pike	Wampler
Howard	Pirnie	Watkins
Hungate	Poage	Watson
Hunt	Podell	Watts
Ichord	Poff	Weicker
Jacobs	Preyer, N.C.	Whalen
Jarman	Price, Ill.	White
Johnson, Calif.	Price, Tex.	Whitehurst
Johnson, Pa.	Pryor, Ark.	Widnall
Jones, Ala.	Pucinski	Wiggins
Jones, Tenn.	Purcell	Winn
Karth	Quile	Wolf
Kastenmeier	Quillen	Wright
Kazen	Rallsback	Wyatt
Kee	Randall	Wyder
Kluczynski	Rees	Wyman
Koch	Reid, N.Y.	Yates
Kuykendall	Reuss	Yatron
Kyros	Rhodes	Young
Landrum	Riegle	Zablocki
Langen	Rivers	Zion
Leggett	Roberts	Zwach

NAYS—77

Abernethy	Edwards, Ala.	Mayne
Andrews, Ala.	Erlenborn	Michel
Arends	Findley	Mills
Ashbrook	Flynt	Mizell
Ashley	Ford, Gerald R.	Montgomery
Betts	Foreman	Morton
Blackburn	Fountain	Myers
Bow	Goodling	Nelsen
Brown, Ohio	Gross	O'Neal, Ga.
Burke, Fla.	Hagan	Reid, Ill.
Burleson, Tex.	Hall	Rousselot
Byrnes, Wis.	Harsha	Ruth
Camp	Henderson	Sandman
Carter	Hogan	Scherle
Cederberg	Hull	Schmitz
Clawson, Del.	Hutchinson	Schneebeli
Collins	Jonas	Smith, Calif.
Colmer	Jones, N.C.	Snyder
Conable	King	Thompson, Ga.
Coughlin	Kleppe	Whalley
Cowger	Kyl	Whitten
Davis, Wis.	Landgrebe	Williams
Dellenback	Latta	Wilson, Bob
Denney	Lloyd	Wold
Dennis	Lujan	Wyllie
Devine	McMillan	

NOT VOTING—43

Anderson,	Dawson	Meskill
Tenn.	Dickinson	Mollohan
Berry	Diggs	Murphy, N.Y.
Blatnik	Dowdy	Obey
Bray	Edwards, La.	Pepper
Brock	Frelinghuysen	Pollock
Broomfield	Gubser	Powell
Caffery	Hawkins	Rarick
Carey	Hébert	Reifel
Chappell	Keith	Ryan
Chisholm	Kirwan	Springer
Clancy	Long, La.	Stratton
Clay	Lukens	Stuckey
Cramer	MacGregor	Wilson,
Crane	Matsunaga	Charles H.

So the conference report was agreed to.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Bray.
 Mr. Blatnik with Mr. Frelinghuysen.
 Mr. Chappell with Mr. Dickinson.
 Mr. Murphy of New York with Mr. Broomfield.
 Mr. Carey with Mr. Clay.
 Mr. Long of Louisiana with Mr. Berry.
 Mr. Charles H. Wilson with Mr. Gubser.
 Mr. Pepper with Mr. Cramer.
 Mr. Anderson of Tennessee with Mr. Brock.
 Mr. Kirwan with Mr. Dawson.
 Mr. Matsunaga with Mr. Keith.
 Mr. Obey with Mr. Hawkins.
 Mr. Dowdy with Mr. Lukens.
 Mr. Edwards of Louisiana with Mr. MacGregor.
 Mr. Ryan with Mr. Diggs.
 Mr. Caffery with Mr. Meskill.
 Mr. Mollohan with Mr. Powell.
 Mr. Stratton with Mrs. Chisholm.
 Mr. Rarick with Mr. Clancy.
 Mr. Stuckey with Mr. Pollock.
 Mr. Springer with Mr. Reifel.

Messrs. FLYNT, HENDERSON, NELSEN, ARENDS, DENNIS, BROWN of Ohio, and DENNEY changed their votes from "yea" to "nay."

The result of the vote was announced as above recorded.

The doors were opened.

A motion to reconsider was laid on the table.

GENERAL LEAVE TO EXTEND

Mr. DADDARIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

TO AMEND TITLE II OF THE MARINE RESOURCES AND ENGINEERING DEVELOPMENT ACT OF 1966

Mr. LENNON. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 11766) to amend title II of the Marine Resources and Engineering Development Act of 1966, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

"That section 203(b)(1) of the National Sea Grant College and Program Act of 1966 is amended by inserting after 'for the fiscal year ending June 30, 1970, not to exceed the sum of \$15,000,000,' the following: 'for the fiscal year ending June 30, 1971, not to ex-

ceed the sum of \$20,000,000, for the fiscal year ending June 30, 1972, not to exceed the sum of \$25,000,000, and for the fiscal year ending June 30, 1973, not to exceed the sum of \$30,000,000.'"

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Senate amendment was concurred in.

A motion to reconsider was laid on the table.

LEGISLATIVE REORGANIZATION ACT OF 1970

Mr. SISK. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 17654) to improve the operation of the legislative branch of the Federal Government, and for other purposes.

The SPEAKER pro tempore. (Mr. Boggs). The question is on the motion offered by the gentleman from California.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 17654, with Mr. NATCHER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on yesterday, the Clerk had read through section 106, ending on page 13, line 24, of the bill. If there are no further amendments to that section, the Clerk will read.

The Clerk read as follows:

SUPPLEMENTAL, MINORITY, AND ADDITIONAL VIEWS

Sec. 107. (a) Section 133(e) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190a(e)) is amended to read as follows:

"(e) If, at the time of approval of a measure or matter by any standing committee of the Senate (except the Committee on Appropriations), any member of the committee gives notice of intention to file supplemental, minority, or additional views, that member shall be entitled to not less than three calendar days in which to file such views, in writing, with the clerk of the committee. All such views so filed by one or more members of the committee shall be included within, and shall be a part of, the report filed by the committee with respect to that measure or matter. The report of the committee upon that measure or matter. The report of the committee upon that measure or matter shall be printed in a single volume which—

"(1) shall include all supplemental, minority, or additional views which have been submitted by the time of the filing of the report, and

"(2) shall bear upon its cover a recital that supplemental, minority, or additional views are included as part of the report.

This subsection does not preclude—

"(A) the immediate filing and printing of a committee report unless timely request for the opportunity to file supplemental, minority, or additional views has been made as provided by this subsection; or

"(B) the filing by any such committee of any supplemental report upon any measure or matter which may be required for the correction of any technical error in a previous report made by that committee upon that measure or matter."

(b) Clause 27(d) of Rule XI of the Rules of the House of Representatives, as amended by section 105(b) of this Act, is further amended by adding at the end thereof the following subparagraph:

"(3) If, at the time of approval of any measure or matter by any committee (except the Committee on Rules) any member of the committee, gives notice of intention to file supplemental, minority, or additional views, that member shall be entitled to not less than three calendar days in which to file such views, in writing and signed by that member, with the clerk of the committee. All such views so filed by one or more members of the committee shall be included within, and shall be a part of, the report filed by the committee with respect to that measure or matter. The report of the committee upon that measure or matter shall be printed in a single volume which—

"(A) shall include all supplemental, minority, or additional views which have been submitted by the time of the filing of the report, and

"(B) shall bear upon its cover a recital that supplemental, minority, or additional views are included as part of the report. This subparagraph does not preclude—

"(1) the immediate filing or printing of a committee report unless timely request for the opportunity to file supplemental, minority, or additional views has been made as provided by this subparagraph; or

"(2) the filing by any such committee of any supplemental report upon any measure or matter which may be required for the correction of any technical error in a previous report made by that committee upon that measure or matter."

AMENDMENT OFFERED BY MR. STEIGER OF WISCONSIN

Mr. STEIGER of Wisconsin. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STEIGER of Wisconsin: On page 15, line 17, after the word "days" insert "(excluding Saturdays, Sundays, and legal holidays)."

Mr. STEIGER of Wisconsin. Mr. Chairman, the bill of the Committee on Rules is a major improvement over the present situation, because it does grant to the minority 3 calendar days in which to file supplemental, minority, or additional views. I think this provision as it stands in the committee bill is a good one.

The amendment I offer simply inserts a phrase found in almost every other section of the rules amended under this bill, to provide that we would exclude Saturdays, Sundays, and legal holidays. I would hope the Committee on Rules and the distinguished chairman of the subcommittee, the gentleman from California (Mr. SISK) and the ranking Republican member, the gentleman from California (Mr. SMITH) would be willing to accept the amendment.

I offer the amendment because I would hope it would be possible for those who wish to have the 3 calendar days not to be forced into the situation in which on a Friday, for example, if a bill is reported, it would mean one would have to work on Saturday and Sunday in order to get any views he wished to include in the committee report prepared within the 3-calendar-day limitation.

As a result, it seems to me for an orderly process in the House and for the benefit of those who wish to have supplemental, minority, or additional views, this one change, which is consistent with

other rules changes being proposed by the Committee on Rules, can be adopted in order to make it possible for the Members to have the time without having the constraint of weekend work in order to file their views.

It seems to me the House is well served by such a provision.

Mr. SISK. Mr. Chairman, will the gentleman yield?

Mr. STEIGER of Wisconsin. I am happy to yield to the distinguished gentleman from California.

Mr. SISK. I appreciate the gentleman's yielding.

Let me simply say that I appreciate the amendment which the gentleman is offering. I am sure, as my colleague from Wisconsin knows, this is the first time in the rules where the right of the minority for any period of time has been recognized.

I might say that the gentleman is correct, in that in most cases where we use the words "calendar days" we have put in the idea of excluding Saturdays, Sundays, and legal holidays.

I recall the discussion which occurred. There was a general feeling, at least, that this was 3 days, and more than heretofore had been granted as a matter of fact under the rules, and that in many areas of the bill we have recognized for the first time the rights of the minority—as I believe they should be recognized—and that we had gone far enough at the beginning.

So far as I am personally concerned, I see no great objection to the gentleman's amendment. I believe at the time there was some feeling, of course, that this could possibly delay the reporting of a bill by as much as 2 or 3 days, when there was a long weekend involved. I know at the time there was some thought expressed that if there was a desire to file minority views perhaps it would not hurt to work on Saturday. I am being a little facetious in saying that; I am sure many of us do work on Saturdays.

I do appreciate the amendment. I believe it would not be an insurmountable problem even if we did delay a report by 1 day or perhaps a couple of days. So far as I am concerned, I have no personal objection to the amendment. I would be glad to hear the comments of my colleague from California.

Mr. STEIGER of Wisconsin. I very much appreciate the gentleman's statement.

Mr. SMITH of California. Mr. Chairman, will the gentleman yield?

Mr. STEIGER of Wisconsin. I yield to the distinguished gentleman from California.

Mr. SMITH of California. I appreciate very much the statement by the distinguished gentleman from California (Mr. SISK). I argued at great length for this in the committee. As I said when I presented the bill, I was pleased the majority were so kind as to give me the 3 days. Since the gentleman from California (Mr. SISK) goes along now, I will be happy to accept it.

Mr. STEIGER of Wisconsin. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin (Mr. STEIGER).

The amendment was agreed to.
The CHAIRMAN. The Clerk will read.
The Clerk read as follows:

AVAILABILITY OF COMMITTEE REPORTS AND PRINTED HEARINGS ON MEASURES AND MATTERS BEFORE FLOOR CONSIDERATION THEREOF

SEC. 108. (a) Section 133(f) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190a(f)) is amended to read as follows:

"(f) A measure or matter reported by any standing committee of the Senate (except the Committee on Appropriations) shall not be considered in the Senate unless the report of that committee upon that measure or matter has been available to the Members of the Senate for at least three calendar days (excluding Saturdays, Sundays, and legal holidays) prior to the consideration of that measure or matter in the Senate. If hearings have been held on any such measure or matter so reported, the committee reporting the measure or matter shall make every reasonable effort to have such hearings printed and available for distribution to the Members of the Senate prior to the consideration of such measure or matter in the Senate. This subsection—

"(1) may be waived by joint agreement of the majority leader and the minority leader of the Senate; and

"(2) shall not apply to—

"(A) any measure for the declaration of war, or the declaration of a national emergency, by the Congress, and

"(B) any executive decision, determination, or action which would become, or continue to be, effective unless disapproved or otherwise invalidated by one or both Houses of Congress."

(b) Clause 27(d) of Rule XI of the Rules of the House of Representatives, as amended by sections 105(b) and 107(b) of this Act, is further amended by adding at the end thereof the following subparagraph:

"(4) A measure or matter reported by any committee (except the Committee on Appropriations, the Committee on House Administration, the Committee on Rules, and the Committee on Standards of Official Conduct) shall not be considered in the House unless the report of that committee upon that measure or matter has been available to the Members of the House for at least three calendar days (excluding Saturdays, Sundays, and legal holidays) prior to the consideration of that measure or matter in the House. If hearings have been held on any such measure or matter so reported, the committee reporting the measure or matter shall make every reasonable effort to have such hearings printed and available for distribution to the Members of the House prior to the consideration of such measure or matter in the House. This subparagraph shall not apply to—

"(A) any measure for the declaration of war, or the declaration of a national emergency, by the Congress; and

"(B) any executive decision, determination, or action which would become, or continue to be, effective unless disapproved or otherwise invalidated by one or both Houses of Congress."

(c) Clause 6 of Rule XXI of the Rules of the House of Representatives is amended to read as follows:

"6. No general appropriation bill shall be considered in the House until printed committee hearings and a committee report thereon have been available for the Members of the House for at least three calendar days (excluding Saturday, Sunday, and legal holidays)."

MOTIONS FOR CONSIDERATION BY THE HOUSE OF MEASURES PREVIOUSLY MADE IN ORDER BY RESOLUTION FOR CONSIDERATION

SEC. 109. Clause 27(d) of Rule XI of the Rules of the House of Representatives, as amended by sections 105(b), 107(b), and 108(b) of this Act, is further amended by

adding at the end thereof the following subparagraph:

"(5) If, within seven calendar days after a measure has, by resolution, been made in order for consideration by the House, no motion has been offered that the House consider that measure, the Speaker may, in his discretion, recognize any member of the committee which reported that measure to offer a motion that the House shall consider that measure, if that committee has duly authorized that member to offer that motion."

COMMITTEE FUNDS

SEC. 110. (a) Section 133 of the Legislative Reorganization Act of 1946 (2 U.S.C. 190a), as amended by sections 102 to 108, inclusive, of this Act, is further amended by adding at the end thereof the following new subsection:

"(g) Each standing committee of the Senate (except the Committee on Appropriations) which, in any year beginning on or after January 1, 1971, requires authorization for the expenditure of funds in excess of the amount specified by section 134(a) of this Act shall offer one annual authorization resolution to procure such authorization. Each such annual authorization resolution shall include a specification of the amount of all such funds sought by such committee for expenditure by all subcommittees thereof during that year and the amount so sought for each such subcommittee. The annual authorization resolution of any such committee of the Senate for each year beginning on or after January 1, 1971, shall be offered not later than January 31 of that year, except that, whenever the designation of members of standing committees of the Senate occurs during the first session of any Congress at a date later than January 20, such resolution may be offered by any standing committee of the Senate at any time within thirty days after the date on which a majority of the members of such committee have been designated during that session. After the date on which an annual authorization resolution has been offered by any such committee in any year, or the last date on which such committee pursuant to the preceding sentence may offer such a resolution, whichever date occurs earlier, such committee in any year may procure authorization for the expenditure of funds in excess of the amount specified by section 134(a) of this Act only by offering a supplemental authorization resolution. Each such supplemental authorization resolution shall specify with particularity the purpose for which such authorization is sought, and shall contain an explicit statement of the reason why authorization for the expenditures described therein could not have been sought at the time of, or within the period provided for, the submission by such committee of an annual authorization resolution for that year. The minority shall receive fair consideration in the appointment of staff personnel pursuant to any such annual or supplemental resolution."

Mr. SISK (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the language of section 110 regarding the Senate provisions be dispensed with and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

AMENDMENT OFFERED BY MR. ROGERS OF FLORIDA

Mr. ROGERS of Florida. Mr. Chairman, I offered an amendment.

The Clerk read as follows:

Amendment offered by Mr. ROGERS of Florida: Beginning on page 19 after line 5: That

rule XXI of the Rules of the House of Representatives is amended by adding at the end thereof the following new subparagraph:

"7. No bill or joint resolution of a public character making an appropriation shall be finally passed, and no amendment of the Senate to, or report of a committee of conference on, such a bill or resolution shall be agreed to, unless the vote of the House is determined by yeas and nays."

POINT OF ORDER

Mr. SMITH of California. Mr. Chairman, I make the point of order that we have read past the place in the bill where this particular amendment would be in order.

The CHAIRMAN. Does the gentleman from Florida wish to be heard?

Mr. ROGERS of Florida. I do not, Mr. Chairman.

The CHAIRMAN (Mr. NATCHER). The Chair is prepared to rule.

The Chair would like to inform the gentleman from Florida that the Clerk has read beyond that point to the extent of about a page and a half. Therefore, the amendment comes too late and the Chair sustains the point of order.

Mr. ROGERS of Florida. Mr. Chairman, I ask unanimous consent that the amendment may be submitted at this point.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

Mr. SMITH of California. Mr. Speaker, I object.

The CHAIRMAN. Objection is heard.

AMENDMENT OFFERED BY MR. THOMPSON OF NEW JERSEY

Mr. THOMPSON of New Jersey. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. THOMPSON of New Jersey: On page 23, line 15, strike out the words "and shall receive fair consideration in", and insert in lieu thereof the following: "if they so request not less than one-third of the funds provided for".

And make the appropriate and necessary technical changes in the bill.

PARLIAMENTARY INQUIRY

Mr. SISK. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. SISK. The unanimous-consent request made earlier pertained only to the Senate—the language concerning the Senate rules—and did not apply to the language concerning the House rules. It is not my understanding that this has been read.

Mr. Chairman, my parliamentary inquiry is this: Has it been read or has it not been read?

The CHAIRMAN. The Chair will state that the gentleman from California is correct. The Clerk has not completed the reading of the section and the amendment is not in order at this particular point.

Mr. SISK. Mr. Chairman, a further parliamentary inquiry.

Th CHAIRMAN. The gentleman will state it.

Mr. SISK. At what point is the Clerk beginning to read?

The CHAIRMAN. The Clerk will report the page and the line.

The Clerk read as follows:

Page 21, line 14.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

(b) Rule XI of the House of Representatives is amended by adding at the end thereof the following new clause:

"32. (a) Whenever any standing committee (except the Committee on Appropriations) is to be granted authorization for the payment, from the contingent fund of the House, of its expenses in any year, other than those expenses to be paid from appropriations provided by statute, such authorization initially shall be procured by one primary expense resolution for that committee providing funds for the payment of the expenses of the committee for that year from the contingent fund of the House. Any such primary expense resolution reported to the House shall not be considered in the House unless a printed report on that resolution has been available to the Members of the House for at least one calendar day prior to the consideration of that resolution in the House. Such report shall, for the information of the House—

"(1) state the total amount of the funds to be provided to the committee under the primary expense resolution for all anticipated activities and programs of the committee; and

"(2) to the extent practicable, contain such general statements regarding the estimated foreseeable expenditures for the respective anticipated activities and programs of the committee as may be appropriate to provide the House with basic estimates with respect to the expenditure generally of the funds to be provided to the committee under the primary expense resolution.

"(b) After the date of adoption by the House of any such primary expense resolution for any such standing committee for any year, authorization for the payment from the contingent fund of additional expenses of such committee in that year, other than those expenses to be paid from appropriations provided by statute, may be procured by one or more additional expense resolutions for that committee, as necessary. Any such additional expense resolution reported to the House shall not be considered in the House unless a printed report on that resolution has been available to the Members of the House for at least one calendar day prior to the consideration of that resolution in the House. Such report shall, for the information of the House—

"(1) state the total amount of additional funds to be provided to the committee under the additional expense resolution and the purpose or purposes for which those additional funds are to be used by the committee; and

"(2) state the reason or reasons for the failure to procure the additional funds for the committee by means of the primary expense resolution.

"(c) The minority party on any such standing committee is entitled to and shall receive fair consideration in the appointment of committee staff personnel pursuant to each such primary or additional expense resolution.

"(d) The preceding provisions of this clause do not apply to—

"(1) any resolution providing for the payment from the contingent fund of the House of sums necessary to pay compensation for staff services performed for, or to pay other expenses of, any standing committee at any time from and after the beginning of any year and before the date of adoption by the House of the primary expense resolution providing funds to pay the expenses of that committee for that year; and

"(2) any resolution providing in any Congress, for all of the standing committees of the House, additional office equipment, air-mail and special delivery postage stamps,

supplies, staff personnel, or any other specific item for the operation of the standing committees, and containing an authorization for the payment from the contingent fund of the House of the expenses of any of the foregoing items provided by that resolution, subject to and until enactment of the provisions of the resolution as permanent law."

PARLIAMENTARY INQUIRY

Mr. THOMPSON of New Jersey (during the reading). Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. THOMPSON of New Jersey. Mr. Chairman, is it appropriate for me to offer my amendment at this point, or at the end of the section?

The CHAIRMAN. The Chair will state to the gentleman that the amendment will be in order at the end of the section.

Mr. THOMPSON of New Jersey. I thank the Chairman.

The Clerk concluded the reading of the section.

AMENDMENT OFFERED BY MR. THOMPSON OF NEW JERSEY

Mr. THOMPSON of New Jersey. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. THOMPSON of New Jersey: on page 23, line 15, strike out the words "and shall receive fair consideration in", and insert in lieu thereof the following: "if they so request not less than one-third of the funds provided for".

And make the appropriate and necessary technical changes in the bill.

Mr. THOMPSON of New Jersey. Mr. Chairman, I also have an amendment to page 73 of the bill which I ask unanimous consent to be considered at this time, since the first amendment I offered relates to granting to the minority certain professional staff, and the other relates to the granting to the minority of a certain percentage of the investigative staff.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

Mr. SISK. Mr. Chairman, based upon the problems involved here inasmuch as the one amendment pertains to financing and the other has to do with staffing, I would necessarily have to object.

The CHAIRMAN. Objection is heard.

The gentleman from New Jersey is recognized for 5 minutes in support of his amendment.

Mr. THOMPSON of New Jersey. Mr. Chairman, this is a bipartisan amendment worked on principally by the gentleman from New Hampshire (Mr. CLEVELAND), myself, and some others.

Very simply, this first amendment to page 23, line 15, strikes out the words, "shall receive fair consideration in" for the minority, and inserts "if they so request not less than one-third of the funds provided for."

Now, in essence the effect is simple. The language, "shall receive fair consideration" is susceptible of a different interpretation in each and every committee because what might be considered fair in one committee might not be so considered in another committee. Therefore the minority could possibly, under the existing language which I hope to amend, be deprived of what I consider

to be a very necessary right, the right to have a reasonable share of the staff.

I might point out that the Committee on Education and Labor, which in my judgment has the most forward-looking rules of any committee in the House, has so provided for the minority over a period of years. It has worked out extremely well. It is conducive to a close working relationship between the majority and the minority.

The minority is guaranteed under such provision the staff help that is necessary to prepare its work.

It has been my experience on that committee and on the subcommittees as well that this arrangement has brought about an extremely harmonious relationship between the majority and minority members. The preparation of the legislative work, the reports and the amendments and all of the work incident to the legislative process is much more efficient because of the fact of the minority having the staff and the cooperation between the minority and the majority.

Mr. SCHWENGEL. Mr. Chairman, will the gentleman yield?

Mr. THOMPSON of New Jersey. I yield to the gentleman.

Mr. SCHWENGEL. I am very interested in this amendment and have pursued this problem for some years as the gentleman from New Jersey knows.

The minority cannot be an effective minority unless they have the wherewithal. One of the things we have not had is adequate staffing—and we have not had adequate staffing because we have not had adequate funds.

Mr. THOMPSON of New Jersey. In other words, the gentleman from Iowa supports the amendment?

Mr. SCHWENGEL. Yes, I do. I have some questions, if I may.

Mr. THOMPSON of New Jersey. I yield to the gentleman.

Mr. SCHWENGEL. Your amendment reads, "at least one-third." Is that what I understand?

Mr. THOMPSON of New Jersey. No, it reads "not less than one-third." There is a very distinct difference.

Mr. SCHWENGEL. This says "not less than one-third," and as I would interpret it, it could mean more than one-third?

Mr. THOMPSON of New Jersey. Obviously.

Mr. SCHWENGEL. That is what I wanted to have clear for the record because I had an idea about this and my bill would provide up to 40 percent, at the request of the minority. But this is a step in that direction.

Mr. THOMPSON of New Jersey. This says "not less than one-third" which is going to be an awful lot better than an attempt to enlarge it in the statutory language.

Mr. SCHWENGEL. If the gentleman will yield further, I want first to commend the gentleman and I support him. I think we are making a very fine forward step here in improving the legislative process. I join him in his effort to get the amendment passed.

Now—one further question. This comes at the request of the minority, so that it does not interfere with a committee

that has a completely bipartisan arrangement.

Mr. THOMPSON of New Jersey. That is quite so.

Mr. SCHWENGEL. I just want to clear those two points.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. THOMPSON of New Jersey. I yield to the distinguished gentleman from New York (Mr. CELLER).

But first, Mr. Chairman, I ask unanimous consent that I may proceed for 3 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The CHAIRMAN. The gentleman from New Jersey is recognized for 3 additional minutes.

Mr. CELLER. Suppose we have a House—and I am not going to mention parties—but suppose we have a House where one party has let us say 300 Members and there are 135 Members of the other party. Would the proportion be the same—one-third to the minority and two-thirds to the majority despite that disproportion of the numbers?

Mr. THOMPSON of New Jersey. Yes.

Mr. CELLER. Why would that be so?

Mr. THOMPSON of New Jersey. In circumstances like that, I should think the minority would need even additional protection.

Mr. CELLER. Additional protection?

Mr. THOMPSON of New Jersey. Yes.

Mr. CELLER. Who is going to be in control?

Mr. THOMPSON of New Jersey. The majority, under the rules of the House, and assuming that there is some degree of party discipline always in control in that situation if there is a majority of one or more than one. I think it will be greater in the next Congress.

Mr. CELLER. I am not speaking in any partisan manner, but certainly if one particular party has a preponderant number of the Members, how can that party be properly served if they are going to have a minuscule number of the staff?

Mr. THOMPSON of New Jersey. If the distinguished gentleman from New York will look carefully, as I see this thing, we are talking about the one-third, and not any of the statutory employees at this point—but not less than one-third of the investigating employees.

Mr. CELLER. I understand but I do not think you have to have a situation as inflexible as you indicate. Of course, we all speak from our own experience. In my own committee, we have not the slightest bit of trouble and I am very generous in parceling out the number of clerks, investigative staff and so forth.

Mr. THOMPSON of New Jersey. I am sure the gentleman always is.

Mr. CELLER. Would it not be better to leave the discretion with the chairmen themselves?

Mr. THOMPSON of New Jersey. No, I do not think so, and had I obtained unanimous consent to discuss the amendment relating to the committee professional staff which really ties in with this, I would explain that this

would do the same thing for the minority, and we are going to take another look at the language before we get to page 73. But the purport of these two amendments is essentially to guarantee to the minority party certain staff people, and under the amendments a majority of the majority on a committee will hire their employees and the majority of the minority will hire the minority employees.

Mr. GROSS. Mr. Chairman, will the gentleman yield?

Mr. THOMPSON of New Jersey. I yield to the gentleman from Iowa.

Mr. GROSS. I have not consulted with my good friend and colleague from Missouri, but I wonder if the amendment would do anything for the minority of the minority.

Mr. THOMPSON of New Jersey. It could not hurt. After all, you are in pretty bad shape now, and any remote possibility might help you and your distinguished personal physician, the gentleman from Missouri (Mr. HALL).

Mr. SISK. Mr. Chairman, I rise in opposition to the amendment. I guess we are getting down to the meat of the coconut, as I mentioned yesterday. The amendment which is now pending before us is of considerable importance if we are really interested in passing legislation, if we are interested in making progress in connection with procedures of the House, and I think Members have been. I think that the debate has gone very well, and personally I was most impressed with the attendance on the floor yesterday and the interest shown by Members, the tone of the debate, and the discussion. Yesterday some amendments were adopted; some were defeated. Again, I think that was an excellent demonstration of the House working its will.

But we are now coming to some issues that, if I may be permitted to say so, are pretty important issues, and basically depending on how we handle these issues the ultimate status or fate of this legislation could very well be determined.

The whole question of minority staffing, of the rights and privileges of the minority under the Rules of the House, was discussed at great length by your subcommittee. I frankly admit that we do not possess all wisdom, and I am sure none of the members of the subcommittee or of the Rules Committee itself would claim that we did. We were dealing with a very difficult subject. Very frankly, whatever we did would be too much for members of one party, in all probability; in all probability whatever we did would be not enough for members of the other party.

I made a remark on one occasion that I understood that the party in the minority today was making quite an effort to win control of the House. Therefore, I assume that sometime in the future they expected to be the majority party, and therefore, keeping that in mind, I think that this amendment and possibly some others along this line should be of just as much concern to the members of the Republican Party as such amendments are to the Democratic Party. The mere fact that the situation

for the past 16 years has been one in which the Democratic Party has been in control and the Republican Party has been the minority party may or may not continue. That, again, is up to the will of the people.

Of course, I suppose that if any change should occur this next January, those of us on our side would be most happy to have an amendment of this kind, because apparently it is unlimited. In essence, according to the statements made by the distinguished gentleman offering the amendment, the amount could go up to almost any amount which would be set aside specifically and completely for the use of the minority. In no event could it be less than one-third.

Mr. ALBERT. Mr. Chairman, will the gentleman yield?

Mr. SISK. I yield to the distinguished majority leader.

Mr. ALBERT. Mr. Chairman, I thank the gentleman from California for yielding.

Of course, this is a subject on which there has been a great deal of discussion in recent years. If I recall correctly, the 1946 reorganization act undertook to set up a nonpartisan committee for the staffs. That action was first implemented by the 80th Congress, which was under Republican control. I cannot speak for all the committees, but I can for some of the committees. Most of the top people that were selected were selected by the Republican chairman and usually with the advice and agreement of the ranking Democratic Members. Many of those who were selected were outstanding men and women and are still serving their committees after all these years, and I have not heard any complaint about them.

I know we ought to protect the rights of the minority, but I just wonder if—and the gentleman and his fine committee in their work have gone into this question—the time has come when we should depart from the principle of a professional as against a partisan type staff and go into one where our staffs might be divided into opposing camps.

Mr. SISK. Let me say, Mr. Chairman, I deeply appreciate the comments of our majority leader.

I wish to say that if I have said something in my earlier remarks that may sound partisan, I did not mean them in that way, because I firmly and frankly believe this is a matter we should all deal with in as bipartisan an approach as possible.

The CHAIRMAN. The time of the gentleman from California has expired.

(On request of Mr. WAGGONER, and by unanimous consent, Mr. SISK was allowed to proceed for 5 additional minutes.)

Mr. SISK. Mr. Chairman, I recall very well I came to the Congress 16 years ago when the Democratic Party became the majority party, after the preceding 83d Congress under the control of the Republican Party, and the committee on which I requested assignment and was fortunate enough to be assigned on that occasion had a very excellent professional staff selected under what I understand was the intent of the 1946 Reorgani-

zation Act. It was a professional staff. It was bipartisan. I might say there was not one single member of that professional staff changed during the first or even the second year of Democratic control of that particular committee. Again it seems to me it was being carried on in the spirit of the 1946 act.

I would hope and trust, although the committee has gone a little way here in working with our good friend and my distinguished colleague, the gentleman from California (Mr. SMITH) and others in recognizing certain concerns in connection with the minority problems and the minority needs, that we do not run away here and sink the ship, because really what this does—and this, in my opinion, goes back to the old era of political hacks, and that is exactly what we had in connection with most committee staffs before 1946. If that is what we wish to return to, of course, we could go down that road, but I do not believe the Members, either Republicans or Democrats, desire to do that.

Mr. WAGGONER. Mr. Chairman, will the gentleman yield?

Mr. SISK. I yield to the gentleman from Louisiana.

Mr. WAGGONER. Mr. Chairman, I thank the gentleman for yielding.

This subject, like all others in this reorganization proposal, is a coin with two sides. I think through the years, sitting on the House Committee on Administration Subcommittee on Accounts, where the committee chairmen, majority and minority, come for their investigative money and investigative funds for the year, we have found that there is a great deal of discrepancy or variation from committee to committee. We also have found a great deal of divisiveness between the committees, because their practices are so different. I have been the No. 1 defender on the committee of what we are doing in allocating staff members but I have some doubts as to the pending amendment.

We are coming to the point, it seems to me, when something must be done to protect the minority and to provide for some staff members. Something is going to have to be done but I am not convinced that this is the way to go.

I have mixed feelings about this proposal. As a committee member of the Subcommittee on Accounts, we have heard a diversity of opinion from committee to committee, to believe that we are going to have to take some positive action to protect the minority.

It was amusing when the gentleman from New Jersey spoke a minute ago, as to the example given of a House which had 300 Members of one party and 135 Members of the other party, that perhaps under those circumstances they needed more protection and more assistance than under any other.

This is not an argument without two sides. I personally believe every staff member should assist any Member any time and under any circumstances, but it just does not seem we are moving in that direction.

Mr. SISK. I appreciate the comments of my good friend from Louisiana.

Of course, I have not had these experi-

ences. I have served, I believe, on eight or nine different legislative committees and procedural committees, including the committee on which I am a member now, and I have enjoyed the services of good professional staff, of people dedicated to the job, of people who work for Republicans or work for Democrats as the case might be.

As I say, it was my understanding that was the spirit and intent of the 1946 act. I would hope that we do not here take a position to totally reverse that situation. Certainly to me, if we are going to divide the funds, that is exactly what we are going to do.

Mr. CLEVELAND. Mr. Chairman, I rise in support of the amendment.

This amendment is one of the bipartisan amendments referred to on several occasions here, as shown in the extension of remarks in the CONGRESSIONAL RECORD for July 13, on page 24009. The RECORD shows a copy of the amendment, with the principal sponsors besides myself and Congressmen THOMPSON of New Jersey, SCHWENGLER, and WAGGONER. There is a group of other Members who also sponsored this amendment. They are: Messrs. COUGHLIN, CRANE, DELLENBACK, DENNIS, ERLÉNORN, HOGAN, KEITH, KUYKENDALL, LUKENS, MACGREGOR, MAYNE, MORSE, RIEGLE, ROTH, STEIGER of Wisconsin, WINN, and WYDLER.

The amendment, which was printed in the RECORD at that time, failed to include the words I suggested to the gentleman from New Jersey (Mr. THOMPSON). He has included them. Those words are, "if they so request."

I want to make very clear that I also serve with the gentleman from Louisiana (Mr. WAGGONER), on the Committee on House Administration. It is not always that the minority party will request more than one or two staff members. There are some committees where there is no difference between the two parties insofar as staff members are concerned.

The majority leader made a remark about suggesting we may be getting away from a totally professional staff. The answer is, in some committees no, but in other committees yes.

In my own Committee on Public Works we have been desperately trying to get needed additional staff, which we would certainly make available to the majority, but we in the minority feel we need them. An example, you ask? I will give an example. The Public Works Committee now deals with Appalachia and deals with economic development. We are in fields where we need the services of economists and we need the services of statisticians, and we do not have them. We are traditionally a dam building, public works type of committee, but now we have gotten into other fields and we need new expertise and we are not getting it.

We have to consider water pollution, which is a hot ticket, as Members know, but we have been able to get only one real expert in that field.

There is a desperate need for the minority to be more adequately staffed, if they request it.

Mr. Chairman, I could discuss the need

for increased minority staffing at some length.

In the general debate on Monday, I discussed the book "We Propose: A Modern Congress," with selected proposals by the House Republican Task Force on Congressional Reform and Minority Staffing, of which I was chairman. My own chapter in that book details the case for increased minority staffing. In that chapter I offered support for the proposition that came from many political scientists and distinguished members of the majority party of this body, such as Representative JOHN S. MONAGAN and Representative David S. King.

Time does not permit me to present the entire case here, but I submit that the case is a strong one which has won wide and well deserved support.

It is difficult for me to conceive of any congressional reform bill worthy of the name that does not absolutely assure to the minority a reasonably adequate staff.

I want to make clear that in some committees the majority is already being very generous, and there is no need for this mandate written into the rules of the House.

However, as the gentleman from Louisiana (Mr. WAGGONER) pointed out, unfortunately, in some of the other committees sad experience has shown that without this type of relief you are stripping the minority of what should be a very important right.

Let me point out something else here. The gentleman from California (Mr. SISK), the very distinguished chairman of the committee, expressed a little surprise yesterday about what happened in connection with proxy voting. Now, if you go back and do your homework on the Legislative Reorganization Act of 1967, you will find that there are not too many surprises coming along. Many of these things were carefully considered by that Joint Committee on Reorganization of the Congress. Minority staffing was carefully considered by the joint committee. Two years of hearings and thousands of pages of testimony, with political scientists from every shade of the spectrum, from all over the country, testified before that joint committee. Many members testified. The record will show that that committee came up with a very strong, solid recommendation in this area of guaranteeing to the minority certain staffing privileges. It is the guts of the two-party system and the guts of the legislative system. If you will turn to page 22 of the report of that joint committee, you will find it right there in writing. We should do great harm if we turn our back on the hard work done by that joint committee, and an extension of that work is what I understand is being done here. You have told me publicly, Mr. SISK, that your committee was building on the findings of that committee and not going over the whole area all over again.

Mr. SISK. Mr. Chairman, will the gentleman yield?

Mr. CLEVELAND. Certainly. I yield to the gentleman.

Mr. SISK. I think, yes, that statement is still true. We did use a lot of that material. But to get it straight, the

gentleman is not saying that S. 355 had language such as here proposed in connection with the division of committee funds.

Mr. CLEVELAND. I am sorry. I did not get the gentleman's point.

Mr. SISK. The gentleman is not saying that S. 355 proposed a division of the funds such as is proposed here in the amendment we are now considering. We recognize minority staffing, of course.

Mr. CLEVELAND. This amendment does go just one step further, because it pertains to investigatory staffing for committees which come before the Committee on House Administration, but in the professional committees it guaranteed one-third of it to the minority. All this does is—

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. CLEVELAND was allowed to proceed for 3 additional minutes.)

Mr. CLEVELAND. Mr. Chairman, I want to inquire of the gentleman from California (Mr. SISK), if I have been responsive to his question.

Mr. SISK. I appreciate the gentleman yielding.

Let me say that nowhere in S. 355 do I find any language with reference to a division of funds as provided here where actually the minority party could get 50 percent or, I suppose, 75 percent of the funds, at least, if some committee chose to give it to them. In other words, there is a floor of one-third and an unlimited amount above that. Nothing in this bill has anything like that. It is recognizing minority staffing as your subcommittee recognized it in the findings that it proposed.

Mr. CLEVELAND. There is a difference here because this amendment offered by Mr. THOMPSON and myself and others has to do with the so-called investigatory staff of committees. But listen to what the report says on the standing staff. Here it is. This is page 21 from that report of the Joint Committee on the Organization of the Congress:

The language of section 202 with respect to the appointment of professional staff without regard to political affiliations shall be retained and emphasized. However, at least two of the authorized professional staff positions—

And there were six authorized, so that is two out of the six or one-third—and one clerical position shall be appointed and assigned to the minority on request.

Mr. SISK. All right. Is that not exactly or just about what we are providing in our bill?

Mr. CLEVELAND. That is correct except that we are extending it to the investigatory staff, which is just as important.

Mr. SISK. Yes. And, of course, as the gentleman knows, there was a request to combine this amendment with the other matter pertaining to professional staff. I recognize here we are talking about funds for investigating staffs, but they were also attempting to connect it to the other. We do require and provide in this legislation—and I hope we will continue it under any set of circumstances—whatever we give would certainly pro-

vide that a majority shall control that staff in the final analysis.

Mr. CLEVELAND. That, excuse me, is a departure from the Reorganization Act of 1967 and insofar as you have taken that position you have retreated from the Legislative Reorganization Act of 1967 and I think that is wrong.

Mr. SISK. If the gentleman will yield further, of course there is no Reorganization Act of 1967. There was some proposed legislation.

Mr. CLEVELAND. It passed the Senate by a vote of 75 to 9.

Mr. SISK. As the gentleman knows it never cleared the committee on this side and I might say that some of the things that were contained therein, as my good friend knows, affected its clearing the House of Representatives. I appreciate my friend's concern and I am sympathetic with his position. However, we have gone down the road with you in this bill and I think we have gone further than some people realize.

Mr. FRASER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it seems to me that as we consider an amendment of this kind, we face a trade off that is inevitable in all of the amendments we are considering. There is no amendment to any of these bills that does not tend to tip the balance one way or the other, to gain something and lose something. But I would make the observation, based upon my relatively short time in the House of Representatives, that what is proposed through the adoption of this amendment has not been the practice in the House. I know that "professionalism" is sometimes interpreted to be inconsistent with partisanship. I think that is an erroneous point of view. On the committees on which I serve, contrasting points of view on the part of the staff are very important if not vital in making our committee work more effective. I would judge it important that the minority have the right to have professional staffs who may have points of view different from the professional staff that may be retained by the majority. In no case does this amendment deprive the minority and the majority from working together in developing the kind of staff to best fill the needs of the committee. This is designed to provide a minimum protection from the minority point of view. I would hope that the Democratic side would never be forced to rely upon that protection as a minority. However, I think it is well to establish that principle.

I think, on balance, this is a wise and judicious amendment which I hope will have the support of the committee.

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. FRASER. I yield to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. I appreciate the gentleman's yielding and I wish to commend the gentleman upon the statement which he has made, along with the remarks of the gentleman from New Jersey (Mr. THOMPSON).

May I ask the gentleman from Minnesota for clarification on the statement made by the distinguished majority lead-

er, the gentleman from Oklahoma (Mr. ALBERT). These funds for which this amendment is intended are not the funds provided under the 1946 Reorganization Act; that is, the so-called professional staff?

Mr. FRASER. This amendment does not affect that staff. We will come to that later. All this affects are the funds adopted by the Committee on House Administration for investigative professionals.

Mr. STEIGER of Wisconsin. The Committee on Education and Labor, for example, has a breakdown of about 60-40 and I see no reason why the minority should have 75 percent of the funds. I am sure the majority would not allow that to happen. I would hope, however, that the record is clear that this amendment does not go to the 1946 Reorganization Act professional staff.

Mr. FRASER. I used the term "professional" in the general sense and not in the technical sense. I agree that we are dealing with investigative staffing but I think, in fact, that often these funds are used for our professional people and they are retained for assistance to the committee members.

Mr. ALBERT. Mr. Chairman, will the gentleman yield?

Mr. FRASER. I am glad to yield to the distinguished majority leader.

Mr. ALBERT. Of course, what the gentleman has said is technically correct. I was talking about the spirit and intent of the act. I think that was intended with respect to all staffs. That is my recollection of it. But, beyond that I think the statement which has been made by the distinguished gentleman from Minnesota (Mr. FRASER) is very good.

And he has viewpoints that are very fine and sound. That is one of the things that bothers me about this, but I think this is primarily the function of the Members, and I think the professional—and I use it in a broad sense—is primarily to function as a staff.

Mr. FRASER. I thank the majority leader. I can only say in my own experience that a good staff person who holds strong points of view and is well qualified, can be of enormous assistance to Members in suggesting questions and presenting viewpoints, so that I think diversity is of help to the committee.

Mr. KYL. Mr. Chairman, I move to strike the requisite number of words, and I rise in favor of the amendment.

As one who has received requests of individual Members and chairmen for a number of years, I would like to put this whole thing in a little different context. To me this is not a partisan matter, it is not a matter of representation of one party or the other. It is a matter of getting adequate staffing for a committee.

In case No. 1 you have a committee which does not have an adequate staff to perform its functions for either the majority or the minority. We have had chairmen who have simply refused to add additional staff members. We have had those committees in which the chairmen—and I am speaking from experience here, and not from fancy—we have had other chairmen who have had a staff which was unavailable to either majority

or minority members. We have had extra staffing situations in which a chairman has as many as 32 consultants doing work for that chairman of the committee, committee work and legitimate committee work, about which only the chairman knew, and not even the majority members knew, only the chairman knew what they were working for on the committee.

I view this as an opportunity to get adequate staffing for all members of the committee, regardless on which side of the aisle they sit. And to the extent that we provide that adequate staff, I think this is an excellent amendment, and I yield back the balance of my time.

Mr. DENT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I view this pretty much in the same sense as the previous speaker did. Out of the 22-year term that I have served, at one time, I served 18 of them as a minority leader, and the first 12 years of that period we operated somewhat like the loose screws we operate here insofar as staffing for the minority is concerned.

I finally convinced the majority they ought to set up some kind of a staffing procedure for the minority.

This House would be surprised if they knew how much easier the work became between the minority and the majority leaderships when the staffs were given to the minority on the committees, as well as a staff provided for the minority leadership.

Even today I personally believe that we have on the Committee on Education and Labor, and any of its autonomous committees, better understanding, and I do not believe that they would contradict what I say in that the work of the subcommittees and the work of the full committee is oftentimes expedited because the minority is given a significant, self-appointed staff membership of their own based on somewhere near the percentages the gentleman from New Jersey (Mr. THOMPSON), has in this particular amendment.

The function of being a legislator demands certain knowledge that you cannot get if it is going to be a question of always having to rely on a person who is not in some way allied to your viewpoint. If we did not have different viewpoints there would be no difference between our political parties. The Republicans have to have a philosophy somewhat different than ours, and Democrats of course have a philosophy of their own. So there is no reason why their staff members should not be in the committee meetings, and in the markup meetings and everything else, as they are for those in the majority, and give the viewpoints that they know and that they are able to give, based upon the philosophical differences in legislative enactments.

I would say that it would be a big mistake if this House today did not take advantage of an opportunity of establishing a sound principle in this legislative body of giving the minority a staff to work with that understands the minority viewpoint.

I might say very frankly to you that the minority staff of my own subcommit-

tee that I can speak for, and I believe for the others, is very helpful in the work done when we get down to the nitty gritty parts of really writing the legislation and what is going to be presented to this House. Many times these staff people work way into the night trying to get the language that meets the desire of the minority as well as the majority needs and desires.

I would beg of you to give very serious consideration to this and not try to hide the issue by saying it will be partisan.

I do not believe the minority members of our Committee on Education and Labor are any more partisan than any of the other committees' minorities are, or majorities are, whether they get the staff or they do not get the staff. Partisanship is what causes elections to have to happen and you cannot wipe away partisanship by denying proper staffing to a committee.

Mr. HARVEY. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I have expressed many times since I have been in here in the House the hope that if, and when, my own party takes control of this House that this would be the first act that they would perform—that is to be generous and to allot a specific standard insofar as allowance of staffing is concerned.

Today we have an opportunity to do that while the party in which I belong is still in the minority. The spirit of fairness demands it.

I have heard many references here at this time by our more senior members and some in the leadership to the Republican controlled 88th Congress and to that time many years ago when the reorganization bill was passed. But the facts of the matter are very simple, Mr. Chairman. The facts of the matter are that within the last 40 years the Republicans have only controlled the Congress in 4 of those years, or in two Congresses.

The facts of the matter are that in most staffs, I would say in all of the legislative staffs, the investigatory members are not bipartisan. Those who are hired to investigate know who control the pursestrings. They know who has the power to hire and fire. The minority cannot do its job unless it is allotted a specific number of persons. The standard of one third is fair and reasonable.

In my years in the Congress, I have concluded that this subject is widely misunderstood by the people back home. They seem to think that the person they elect and send down here regardless of his party or regardless of whether he serves in the minority or the majority can perform equally as well as any other person they send down here.

I hate to confess to my people that this is not true. We, in the minority party have not over the years, and do not now have adequate staff and the necessary staff to do this in many cases.

I heard it mentioned by the chairman of a committee, for whom I have the greatest regard, that my party might possibly get as much as 75 percent under the words that are used in the bill. I would say to him with all respect, I think this is a joke. In all the years I have been here, I have never seen anything even

approaching such an award, nor in the time I have served on the Committee on House Administration have I seen any such figure approaching such an award. I cannot conceive of it.

Mr. SISK. Mr. Chairman, will the gentleman yield?

Mr. HARVEY. I am glad to yield to the gentleman.

Mr. SISK. I would agree with the gentleman on that and I would doubt seriously that it would happen anyway, and the language that is here before the House would preclude that, as the gentleman would very frankly admit; would he not?

Mr. HARVEY. I would admit it but the gentleman would agree with me, I am sure, that there is nothing in the language which would assure the minority of getting 5 or 10 percent. It would depend on what the gentleman's spirit of fairness might construe it to mean.

Mr. SISK. Will the gentleman yield further?

Mr. HARVEY. I yield to the gentleman.

Mr. SISK. It is my understanding that it guarantees one-third—not less than one-third?

Mr. HARVEY. This is what we are specifically asking for—the investigative personnel. That is what I am talking about.

Mr. SISK. If the gentleman will yield further for the purpose of making a correction—and I am sure the gentleman did not mean to leave the wrong impression—but a little while ago I understood he referred to what the joint committee did. The joint committee made no recommendation in connection with the investigative staff, in connection with minority hiring or minority rights. They did discuss the subject in connection with professional staffing, as we have in this bill, but I think we should keep that matter in perspective.

Mr. HARVEY. I am sure the gentleman will have ample time to answer that statement. I just want to close by saying I believe a spirit of fairness should compel adoption of the amendment. I want to applaud those on the other side of the aisle, some of whom I have had the pleasure of serving with on the House Administration Committee, and the others as well who have spoken for this particular amendment.

During my time in Congress I have served on four committees: The Committee on Public Works, the Committee on Banking and Currency, the Committee on Interstate and Foreign Commerce, and the Committee on House Administration. Those committees cover a variety of subjects. I have seen the allotment of staff abused over and over again, and I have often considered how our work could have been that much better if the staff had been available. I hope the House will see fit to adopt the amendment.

Mr. HOLIFIELD. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, we are faced here today with a very practical question. The question is, Who has the responsibility for the legislative program of the House? The people of this country make their choice when they choose as President a member of one political party for serv-

ice in the executive branch. He has the responsibility for the program of the executive branch. Only recently the President asked for and received, under Reorganization Plan No. 2, 90 political appointees in the Office of the President for the express purpose of studying programs and setting priorities on those programs for funding and implementation, programs which the Congress has authorized.

In the legislative branch the majority party, whichever it may be, has the responsibility for producing the legislative program which their party stands for and their party platform stands for. In order to do that, they have traditionally been given, whether it was a Republican administration in power or a Democratic administration, they have been given the privilege of appointing the staffs of the different committees.

Speaking from my own personal experience as Chairman for 6 years of the Joint Committee on Atomic Energy, there is no Republican member of that committee who can rise and accuse me of partisanship in the setting of staff. The staff have the explicit order from me as Chairman to respond to every inquiry and to give every assistance to the minority members that they have given to the majority.

In my Subcommittee on Military Operations of the House Committee on Government Operations the same identical direction is given to the staff. I have never had a member of the minority party come to me and say that the staff did not respond to their request and did not try to serve them.

Frequently I have consulted with the minority and got their approval of different members who were put on the staff, but I could not tell you today if I was requested, the political affiliation of the members of my staff. I have never asked them. I do not hire them on that basis. They are hired on the basis of professional competence, and I expect them to serve the committee and to serve the majority program of the majority party in putting the emphasis on the legislation which is being developed. But this task of majority program implementation does not preclude them from giving reasonable professional service to the minority.

The amendment that has been offered by Mr. THOMPSON would actually give exclusive staff to the minority in addition to the general staff which is provided for under the Reorganization Act of 1946.

I assume that the minority staff would serve the minority members only.

If that be the case, would the minority members cease requesting service from the general professional staff and the two-thirds "investigative" and "clerical" staff hired by the chairman and assigned to the various subcommittees?

Would a sharply divided staff responsible to the minority party and its different political philosophy, result in staff division and staff dissension?

Frankly, I do not know what the result would be. But I do know that it would make the majority party's task of discharging their responsibility more difficult.

I was here in the 80th Congress, and I was here in the 83d Congress, and I lived under the rules of that time when the House was controlled by the Republicans, and I made no protest.

I say that the responsibility in the executive branch belongs to the President, and he has the right to fire every political nonclassified employee that he wants to—and there have been many of them who have walked the plank voluntarily or by request. I go along with that.

In the legislative branch the majority has the legislative responsibility. The legislative game is not a croquet game or a pink tea tennis game. This is a game where we are legislatively carrying out the mandate of the people in the respective branches of Government, whether it be the executive or the legislative, and there is bound to be some conflict between the philosophies on both sides of the aisle. I say when the majority is Republican, they should control the tools to put the program which the people have approved by electing them into effect, and I say when the Democrats are in power that they have to program legislation on the basis of their platform pledges, their programs, and their policies, and they should have the right to have the control of the tools to put their philosophy into effective legislative form.

With due regard to fairness and with due regard to the rights of the minority, I believe this can be obtained under the present situation, and I ask that the Thompson amendment be defeated.

Mr. DELLENBACK. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, may I say just a few words in response to the gentleman who preceded me in the well. Without any doubt, it is the responsibility of the majority party in the Congress to take the leadership so far as the pushing of a legislative program is concerned. But more than half of this body has received at least a portion of its professional training in the law. And any of us who has served in the law and has participated in trial work is aware of the fact that with the goal being justice, the advocacy system calls for the best possible presentation of both sides of the issues which come before the court. With the goal being justice, justice is better achieved if there be the best possible presentation of the case for the plaintiff as well as the case for the defendant. There is no intention that, in our system of justice, merely because of the fact that one side has a certain responsibility, the other side should be deprived of the tools that are necessary to make the best possible presentation in opposition to that which is presented by the one side.

Nobody is suggesting that the chairmanships be divided. Nobody is suggesting that the responsibility should be divided so that in some instances the minority shall be pushing and shall be in charge of the mechanics of the legislative process.

All we are requesting is that with the goal on both sides of the political aisle being the best possible legislation, the minority—whichever party it may be,

Republican or Democrat—have the chance to go into committee deliberations with staff doing investigative work so that the best possible case can be made in opposition to the program of the majority party.

The votes are still in the majority. If, after the best possible case has been made by both the majority and the minority, the majority are unpersuaded that the legislation would be any better as advocated by the minority, then the votes are in the hands of the majority to pass the final legislative product.

But this amendment which is here proposed and which has been advocated by Members on both sides of the political aisle merely says we are all better served if in the committee's deliberation it has had the chance to have brought before it the best possible evidence, some dug out by staff for the majority and some dug out by staff for the minority.

With the full facts laid out before the committee, the decision will be made by the majority, so long as it remains unpersuaded of the case which the minority makes.

We do not ask for going beyond that, but we feel justice and better legislation will be forthcoming with the adoption of the amendment here proposed.

AMENDMENT OFFERED BY MR. DINGELL TO THE AMENDMENT OFFERED BY MR. THOMPSON OF NEW JERSEY

Mr. DINGELL. Mr. Chairman, I offer an amendment to the amendment offered by the gentleman from New Jersey (Mr. THOMPSON).

The Clerk read as follows:

Amendment offered by Mr. DINGELL to the amendment offered by Mr. THOMPSON of New Jersey: Add a new paragraph as follows:

"(d) The majority party on any such standing committee shall receive not less than one-third of the funds provided for the appointment of committee staff personnel pursuant to each such primary or additional expense resolution."

Remember succeeding paragraphs accordingly.

Mr. DINGELL. Mr. Chairman, this amendment is not offered in the spirit of partisanship. Frankly, I have always thought that the minority needed and deserved staff. I have always felt it was appropriate that every Member of this body should have committee staff. But I believe it is time this body recognized that the amendment offered by my good friend from New Jersey is a remarkable change of direction and orientation from that which we have seen during my 16 years of service in this body.

It effectively says we are going to have a committee staff and says we are going to have a minority staff.

As I have indicated, I believe it is desirable that the minority should have a staff. I believe it is also desirable that we should have a staff for the majority if we are to have a staff for the minority, because, if the amendment offered by my good friend from New Jersey carries in the form in which it is written, we will have a committee staff.

Under the rules of every committee I have served on—and I have served on four; the Committee on Public Works, Interstate and Foreign Commerce, Small Business and Merchant Marine and

Fisheries—every member of the committee, regardless of his position and regardless of his partisan position in the House or in the Congress, is entitled to call in full upon the staff of the committee and to achieve equal treatment in terms of receiving service from that staff. That is how I believe it should be.

During my years in this Congress I have never heard a Member on either side of the aisle complain about the quality or kind of service given by members of the staff.

As to each of these committees, I have no way of knowing what the partisan designation or political philosophy of the members of the professional staff happens to be. However, each of them does have a minority staff which is available only to the members of the minority. This is something about which I do not complain.

I will say that if this amendment goes through as offered by my good friend from New Jersey (Mr. THOMPSON), we will have a highly preferential set of circumstances where members of the minority will achieve a highly preferential treatment in terms of services of the staff. They will be able to call in the future as they have in the past, upon the services of the committee staff and receive equal treatment therein. The members of the majority, whoever they might be, whether my party or the other political party, will continue to have the right to call only on the committee staff. But the minority will also have the special minority staff designated for their particular service.

I believe a student of political science or the House of Representatives or the Congress of the United States can recognize with some clarity that this is a set of circumstances which does not work to further the very desirable goal of majority rule, and does not give the majority party in this body an opportunity to achieve an ability to work its will and to function effectively.

During my years in the Congress I cannot recall a single instance when the staff behaved in a partisan fashion on any of the committees on which I have served.

I would point out something else. During my years of service in this body I can recall no instance when the staff functioned as a majority or minority staff, or when it failed to give due recognition and due dignity to requests by members of the minority.

As a matter of fact, I believe it would be uniformly agreed to by the members of the committee on which I serve that the committee staff has provided equal and equally valuable and equally dignified service in response to the requests of members of both the majority and the minority. So, if we are going to take this rather extraordinary departure from the practices and the rules and the way in which this body has behaved over the years and increase the staffs here, I believe it becomes very plain that we should do one thing more, namely, see to it that the majority has a staff upon which they may call so that we may have a professional staff for the committee and a staff

for the minority, which I think is desirable, but also that we should have a staff for the members of the majority so that they might have somebody to whom they might look at any given time on any project on which they have embarked which would be in the unique position of being a staff that reflects a viewpoint. While I discuss this question of viewpoint I believe it would be worthwhile to make it very plain that during my years of service here I have never permitted staff on any committee on which I served to exercise a policymaking function. I believe this to be hopelessly undesirable, but if we are going to do so, then I would urge we make it available to the members of the majority.

Mr. PREYER of North Carolina. Mr. Chairman, I would like to draw the attention of the House to a number of editorials from around the country in support of the antisecrecy amendments being offered to the Legislative Reorganization Act of 1970. While the editorials support the antisecrecy amendments generally, all also urge adoption of the O'Neill-Gubser amendment to record teller votes. Most of the editorials remark on the irony of voting by secret vote on this proposal to abolish secret voting.

These nine editorials are only a representative sampling of those appearing around the country as we consider this bill. Editorial opinion from papers serving large urban areas and rural areas alike is favorable to the abolition of secrecy in the House. I am sure Members have noticed other insertions of editorials supporting the antisecrecy amendments, both in the Extensions of Remarks and the body of the RECORD.

I hope, Mr. Speaker, that we heed these messages from the people and adopt the antisecrecy amendments, particularly the O'Neill-Gubser proposal to record teller votes. To do otherwise is to mock our obligations as representatives of the people in a democratic institution. I include at this point editorials from the Chicago Sun-Times, the St. Petersburg Times, the Plain Dealer, the Daily Oklahoman, the Washington Post, the St. Louis Dispatch, the Detroit News, the Richmond Times-Dispatch, and the Youngstown Vindicator:

[From the Chicago Sun-Times, July 13, 1970]

AGAINST SECRECY IN CONGRESS

For many years this newspaper has argued long and often for the public's right to see and hear the deliberations of its elected officials. Illinois now has on its statute book a law requiring all public meetings to be public, including committee meetings, with certain reasonable exceptions.

We therefore are particularly pleased that the anti-secrecy movement is taking hold in Congress where members have notoriously ignored the people's right to know.

This week action is scheduled in the House on H.R. 17654, the Legislative Reorganization Act of 1970. A group of Congressmen, including Illinois Republicans John N. Erlenborn and Thomas F. Railsback, are sponsoring amendments which would require a public recording of how members vote on major issues both in committee and the House floor. They would open committee hearings and meetings to the press and public, and require publication of committee reports and hearings a reasonable length of time before final House action is taken.

House members now can avoid putting

themselves on record on a final vote on an issue by permitting passage by a voice vote (all in favor say "Aye") or by a standing vote in which members are counted but not recorded individually.

The public is entitled to know how its individual members vote on major issues and it is entitled to even more than that. It is entitled to know the reasons behind their votes and this means that the voters are entitled to hear the arguments made in committee meetings.

Unless there is such a free flow of information to the public, the democratic process is handicapped.

One of the most secret of the House committees is the one labeled Ways and Means, in which all government spending originates. (In the Senate, virtually all appropriations hearings are open.)

It has been argued that secrecy is needed in such House committees so that members may not be inhibited about speaking up and asking questions, thereby, perhaps, exposing ignorance of the subject.

Secrecy is argued for appropriations subcommittees on the grounds that it is necessary to prevent "raids on the treasury." We don't follow that argument. It seems to us that raids on the treasury might better be prevented by letting the public see what's going on.

In a special report, the Democratic Study Group, which has been working to modernize government and the political parties, noted that what the secrecy process does is concentrate the "power of the purse" in the hands of a few men. It denies the taxpaying public an opportunity effectively to influence national priorities and make a farce of the principle of representative government. Even congressmen who are not members of the particular subcommittees are barred from them.

The Democratic Study Group says: "The only real opportunity afforded other members of the House to influence an appropriations measure is during floor consideration. However, after months of closed-door committee consideration, this stage of the appropriations process is telescoped into a few days with the predictable result that members can do little more than rubber-stamp the committee decisions."

Surely the public expenditure of billions of dollars should not be the private business of a few influential congressmen. Nor should the public be held at arms length as the House debates life and death and dollar issues and then votes them up or down in virtual anonymity.

We salute the courageous bands of innovating congressmen who are trying to let some light into the capitol.

[From the St. Petersburg (Fla.) Times, July 10, 1970]

THE SECRET HOUSE

Floridians can take pride in three of their congressmen who have joined others in trying to lift the dark cloak of secrecy that hides much of the work of the U.S. House of Representatives.

Reps. Sam Gibbons of Tampa, Charles E. Bennett of Jacksonville and Claude Pepper of Miami are among 50 cosponsors of a rule change to end some House secrecy.

Much of the House's work is done with non-record committee votes, secret votes on floor amendments, secret House-Senate conferences and closed committee sessions.

Over the past decade, the House has initiated appropriations averaging \$130-billion a year. Every year the process was dominated by secrecy.

Secret votes this year have authorized funds for Cambodia, anti-ballistic missiles, and a new manned bomber, decided policy on school desegregation and made changes in laws about wiretapping.

This secrecy undermines representative

government by denying congressmen the information they need to make wise decisions and by denying voters the facts they need to elect good congressmen.

This secrecy destroys public confidence in the government.

Much of the secrecy comes from outdated rules concerning votes while the House is in a committee of the whole. This situation allows unrecorded voice votes, standup votes and teller votes (when members pass quickly between counters, who record numbers but not names).

These practices of secret voting originated in the English Parliament to permit members to hide their votes from the King.

Parliament passed reforms in 1832 to make public records of votes. Some 138 years later, it is past time for the members of the U.S. House to quit hiding from the voters in their districts.

"We believe this is one of the most important steps Congress can take to assure the future of our society," said Rep. Gibbons. "We don't think democracy can work in secrecy."

The rule change cosponsored by Gibbons, Bennett and Pepper is modest enough. It would allow measures defeated in the committee of the whole House by teller votes to be voted on for the record in the full House if one-fifth of a quorum demands.

Where are the other Florida members on this question—William C. Cramer of St. Petersburg, Robert Sikes of Crestview, Don Fuqua of Altha, William Chappell of Ocala, Lou Frey of Winter Park, James Haley of Sarasota, Paul Rogers of West Palm Beach, Herbert Burke of Hollywood and Dante Fascell of Miami?

Do they favor secrecy? Do they want to hide their votes from their constituents?

Floridians will know when the issue is voted later this month—unless that also is by secret vote.

[From the Cleveland (Ohio) Plain Dealer, July 12, 1970]

ABOLISH SECRECY IN U.S. HOUSE

A bipartisan move is under way in the U.S. House of Representatives to abolish secrecy in committee meetings and in voting. Both congressmen and the public will benefit if it succeeds.

The move is spearheaded by the liberal Democratic Study Committee. It has attracted support from Republicans.

They intend to submit amendments calling for more open committee meetings and record voting on major issues when the Legislative Reorganization Act of 1970 reaches the floor in mid-July.

Because much committee work is done behind closed doors, members of Congress do not have adequate information to make intelligent judgments on vital bills.

They routinely vote to appropriate billions of dollars of the taxpayer's money with only a sketchy notion of where the money is going.

They are not given time to peruse lengthy bills and the transcripts of closed-door hearings before the bills are called up on the House floor.

Appropriations Committee reports generally are not available until a few days before scheduled floor action. Transcripts of closed hearings—which average over 4,000 pages per bill—are published so late that even members of the Appropriations Committee who are not on the subcommittee involved do not see them until the day the full committee meets to report the legislation, says the Democratic Study Committee.

House members routinely decide important issues while giving the people back home no notion at all how they voted. Amendments on bills are considered by the House while meeting as a committee of the whole, and current rules forbid recording of individual votes at these sessions.

Questions about such major issues as the

supersonic transport, antiballistic missile, civil liberties and air and water pollution have been decided in the House without a record of the members' votes.

Secrecy in committee meetings and in voting is detrimental to the congressmen, by denying them information, and to their constituents, by denying them knowledge of the performance of their representative.

Cleveland area citizens should urge their congressmen to support the antisecrecy reforms. They may never know, unfortunately, how their congressmen vote when the reorganization bill comes up. The amendments offered will be decided by nonrecord votes.

[From the Daily Oklahoman, July 10, 1970]
PUTTING CONGRESS ON RECORD

Reform of the rule under which Congress votes on important measures is long overdue. In the House of Representatives, a group of 56 members from both parties, and varied leanings, is now working to allow more recorded votes on key issues. The success of their efforts will be known next week, when the House acts on congressional reforms.

A bill drawn up by the Rules Committee provides for minor changes in House procedures. Amendments almost certainly will be proposed by the reform group, specifically aimed at the system of non-record voting. Although chances of passage might seem remote in an election year, the plans to put members on record for or against more measures have won growing support.

Certainly, a reform that wins the backing of such diverse men as Rep. Philip Crane, R-Ill., an articulate young conservative, and Rep. Donald Fraser, D-Minn., one of the most liberal members of the House, will have some chance of passage.

Members have different reasons for wanting to put more votes on the record. Anti-defense forces feel that the present system favors acceptance of committee recommendations on defense appropriations bills, which they would like to cut drastically. Conversely, they feel that record votes would help them pass increases in the amounts allotted to welfare, urban projects, and similar favorite activities.

Conservatives would like to force some of the liberals to put on record their stands on questions that do not fit the liberal pattern. Few members are consistently conservative or liberal, by the standards of pressure groups which wear such labels. Again, appropriations are the key issues on which more record votes are sought.

The number of important questions on which no member's vote is known to the voting public is staggering to outsiders. Almost all amendments are accepted or rejected without a record vote. There are several systems used. Voice votes, as nationally televised political conventions showed the viewing public, are often decided by the chair. In a "division" vote, members stand to be counted, but the count is made so quickly that members of the press gallery cannot keep track of more than a few. In a "teller" vote, members file past counters for or against an amendment.

On such major issues as money for antiballistic missiles, the supersonic transport, and American forces in Indochina the House voted by one of these non-record methods. Critics note that besides keeping their constituents in the dark, the members feel less compulsion to be present for a non-record vote. The 50 members of the Appropriations Committee usually attend when money bills are considered. The Liberal Democratic Study Group points out that this gives them added weight in any voting, since only simple majorities of those present are required.

A further handicap for amendments is provided in a quirk of the present rules that creates a double standard. Votes on amendments are taken in the Committee of the

Whole, which is everyone present. If an amendment is defeated while the House is so sitting, it cannot then be brought up for a roll call vote in the full House. But if it is passed in the Committee of the Whole, it must then be voted on again in the full House, an arrangement which gives opponents a chance to muster all the votes they can from those who were not present for the non-record tally.

The average citizen would welcome a reform that let him hold his representative in Congress responsible for all votes cast. The reforms now proposed do not quite do that, but lead in that direction.

[From the Washington (D.C.) Post, July 15, 1970]

SPOTLIGHT ON THE HOUSE

The House began its first debate on congressional reform in 24 years with a very modest bill before it. The Rules Committee tried to create an impression of moving toward reform, but ignored the most vital changes recommended by critics of the status quo in Congress. It was content to advocate expansion of the Legislative Reference Service, the telecasting of some committee hearings, more democratic controls over committee procedures and so forth. Nothing in the committee bill would shake the House out of its traditional routine, which is often a shabby distortion of representative government.

If the House wishes to convince the people back home that it is alert to the problems of the 1970s, it will have to do something more than ratify this pittance of reform. The public is asking for a modern Congress capable of transacting the public business efficiently and in accord with the best democratic procedures. It is looking for the substance and not merely the shadow of reform. The outcome of this debate will be very disappointing unless the House adds to the cut-and-dried fare offered by the Rules Committee some genuine reform that will enhance the quality of government on Capitol Hill.

The first significant vote on a proposed amendment on Tuesday was not encouraging. The House voted down by a relatively small margin the proposal that all committee meetings be open unless the committee by majority vote at the beginning of each session should require otherwise. The defeat of that relatively mild requirement for the transaction of public business in public undoubtedly casts a shadow over the more important issues yet to be decided. That dismal response is offset, however, by the approval of an admirable amendment requiring that roll-calls in closed committee meetings be made public.

The most vital test will come on the proposal to record member votes on amendments on the floor. The present method of disposing of amendments to bills in the Committee of the Whole, where the votes of individual members are not recorded, is an undemocratic device that has no place in the United States Congress. The essence of representative government is that legislators chosen by the people will keep the people informed of what they do and stand or fall by the records they make. When they hide behind anonymity to vote their own personal prejudices or do the bidding of a lobbyist or for any other reason, they are not functioning in a truly representative capacity.

Approval of this major reform would thus give the bill new meaning for the people who are eager to see Congress tackle its own shortcomings. By this one improvement the House could give every member an item to display with pride and satisfaction to his constituents in the election campaigns this fall. By the same token, however, rejection of this vital reform would leave the country with an increasingly hopeless feeling about the body, which, more than any other, is supposed to represent the people.

[From the St. Louis (Mo.) Post-Dispatch, July 9, 1970]

TOWARD AN OPEN HOUSE

Centuries ago, members of the English parliament developed a system of anonymous voting to protect themselves from the revenge of a hostile king. Today, the House of Representatives uses much the same system to protect itself against the revenge of an informed electorate.

So far in this year's session, Representatives have voted anonymously on such issues of vital public importance as the Cambodian invasion, the antiballistics missile system, the supersonic transport, military spending, school desegregation and the no-knock, pretrial detention and wiretap provisions of the District of Columbia crime bill. But a reluctance to make voting records public is only one of the ways in which an unhealthy secrecy pervades the House's procedures. Nearly half the committee meetings are closed to press and public. Committee reports are deliberately delayed. House-Senate conference committees are closed to other members of Congress.

It hardly needs pointing out that secrecy not only is contrary to democratic ideals and contributes to the erosion of public confidence in representative government but that it also impairs the ability of the House to function efficiently. The debilitating effects of closed committee meetings, for example, are compounded by the practice of delaying reports. As a result, Representatives all too frequently are unable to evaluate proposed legislation adequately.

Within a few days, the House is scheduled to take up the Legislative Reorganization Act of 1970, a bill which provides the first significant opportunity since 1946 for a comprehensive attack on the problems of secrecy. The bill itself is a modest but worthwhile document which would provide Congress with a computerized information system and open more committee meetings to the public. Its larger importance, however, will be to serve as a vehicle on which to attach a number of amendments, which, if passed, would effectively open up the House to scrutiny by the people.

Chief among the expected amendments, in our opinion, are those which would provide for an increase in record votes on the House floor. Currently, through teller votes, voice votes and standing votes, all of which are non-record, Representatives are able to avoid public accountability in matters of the highest public concern. They also are able to shirk their duties of participation. Less than half the House was present to vote on such a controversial issue as funds for the SST.

Another important amendment would require a public record to be kept of committee votes. We consider this also an essential reform since under the present system each Representative's decisions on key provisions of legislation are withheld, unless he chooses to disclose them himself, from his constituents.

In a functioning democracy, secrecy can only benefit interests that are narrow and private and never those of the public. The Legislative Reorganization Act and its accompanying amendments would do much to increase the responsibility of individual legislators; but equally important, it would put an end to a system which denies the voters the information necessary for intelligent electoral decisions. The English parliament reformed its system of nonrecord voting 138 years ago. The House has no excuse to wait any longer.

[From the Detroit News, July 11, 1970]

CONGRESS SHOULD OPEN ITS DOORS: WHY THE SECRECY?

More often than the public realizes, the U.S. Congress conducts its business—your

business— anonymously and behind closed doors.

Members who demand a strict accounting from the executive and judicial branches regularly conceal their own deliberations and actions.

A chance for reform is at hand.

This month, the House of Representatives will act on a bill to reorganize Congress. The bill offers an opportunity, one which comes along infrequently, to write amendments stripping away some of the secrecy that cloaks the federal legislative process.

One proposed amendment strikes at the practice by the House of converting itself into a Committee of the Whole and casting unrecorded votes. This practice provides politicians a haven of anonymity and denies constituents the right to know how their representatives ballot on important and sensitive issues. In the legislative body of a democratic system, voting should be a matter of public record.

Another proposed amendment would require disclosure of voting on committee and subcommittee roll calls. Under present rules, House committees keep a record of how each member votes but that record is not released to constituents or the general public.

In fact, many committee sessions are closed entirely to press and public. About half the hearings and meetings of House committees are closed. The House Appropriations Committee, which has so much to say about the spending of those billions of taxpayer dollars, holds all its meetings and hearings in secret.

Secrecy may be dictated on occasion by national security but in general the committee meetings and the voting should be open and on the record, accountable to the public, which foots the bill and to which the Congress owes its very existence.

The purpose of the reforms, of course, is to make the House a more responsible body. Paradoxically, the fate of the reforms depends on whether the House is responsible enough to approve them. Confronted by an ethical dilemma of this sort, men often need outside guidance. So this is one of those occasions when a letter to your congressman would be particularly appropriate.

[From the Richmond (Va.) Times-Dispatch, July 10, 1970]

PUTTING THEM ON RECORD

They have a clever little system in the House of Representatives to permit members effectively to hide the way they vote on controversial amendments to pending bills.

First, the House constitutes itself a "Committee of the Whole" to consider the amendments. While sitting as a committee, no recorded votes are permitted. Voting is by voice, or by the members' walking up the center aisle in the line of those for an amendment or in the line of those opposed, to be counted by tellers.

After the House changes its hat and once again becomes the House of Representatives, no recorded vote is permitted on any amendment that was defeated while the same body was sitting as the Committee of the Whole.

In the case of teller votes, viewers in the galleries can see which line the members go through. But when the members go up the aisle, they are walking away from the press gallery, which makes it difficult for newsmen to determine how each votes. Members face the public galleries in the teller voting, but note-taking in those galleries is prohibited.

This system possibly has one advantage from the standpoint of the public welfare. Sometimes a member may be able to vote his honest conviction when his vote is not recorded, whereas if the knew his vote would be made public, he might feel compelled, for political reasons to go against his conviction.

But a far stronger case can be made for requiring members to put themselves on record

on crucial issues. The people, who are affected by what happens in the House chamber, have a right to know how their representatives vote. This is basic in a democracy.

Thus we applaud a bipartisan group of five House members who next week will seek approval of a package of anti-secrecy proposals, including one requiring a recorded vote whenever 20 per cent of the members present demand it and another specifying that votes taken in closed committee sessions must be publicized.

On rare occasions, governmental bodies are justified in discussing governmental matters—relating to personnel appointments, for example—behind closed doors. But there is never justification for making decisions affecting the public without the public knowing exactly who made those decisions. The House's present practice in this regard is indefensible.

[From the Youngstown Vindicator, July 10, 1970]

GETTING IT ON THE RECORD

Advocates of congressional reform are stepping up the pressure to bring an end to the practice of non-record voting in the House of Representatives.

The system of avoiding roll-call votes was borrowed from England centuries ago when members of Parliament utilized the cloak of anonymity to escape royal displeasure. When such fears were no longer justified, however, Parliament dropped the hidden vote method.

That was 138 years ago, but the U.S. House has yet to follow suit. Crucial votes continue to be masked from public accountability leaving the result known only to the solons, the tellers and presumably, their barbers and hair-dressers.

Members of both major parties, liberals and conservatives alike, are pressing a variety of amendments to a reform bill. While the proposed procedures vary they all have a common goal—force House members to vote on the record.

Similar action isn't expected in the Senate where current rules permit any senator to force a roll call vote on any issue.

Along with keeping constituents well informed on their representative's positions, the change will serve to minimize situations which find some congressmen "privately" voting actions which they publicly disavow. It also would discourage absenteeism on controversial amendments, a tactic encouraged by non-record voting.

Ironically, as things stand it will take a floor vote to decide on the adoption of the proposed reform. Initially, at least, such a decision will have to be reached on a non-record vote.

Mr. ICHORD. Mr. Chairman, I rise in strong support of H.R. 17654, the so-called Legislative Reform Act of 1970. H.R. 17654 is a measure which is long overdue and I commend the members of the Rules Committee for bringing this measure to the floor and particularly do I wish to thank the gentleman from California, (Mr. SISK) who has labored so long and so hard to perfect the legislation.

Change in this world, Mr. Chairman, is inevitable and the House of Representatives is no different than any other thing. Many of the existing rules and practices are archaic and should be revised and updated. In some cases, this measure may have gone too far, in other respects, I personally feel that it did not go far enough, but in balance it is an excellent legislative product.

I am confident that H.R. 17654 will be adopted with few dissenting votes but in view of the fact that I must return to

Missouri to keep a series of longstanding engagements this week which cannot be canceled, I want to take this opportunity to commend Mr. SISK and the Rules Committee and urge my colleagues to support the measure.

Mr. LUJAN. Mr. Chairman, I support the intent of the Legislative Reorganization Act of 1970, but I share the belief of scores of my colleagues that the proposed changes are insufficient to achieve the necessary goals.

It is commendable that the committee has proposed to open committee meetings to the public and to give free tours to Capitol visitors. These are desirable changes, but I suggest that they fall short of the reorganization that is implicit in the title of the act.

There will be a number of amendments introduced to this act, and I strongly urge my colleagues to give them firm support. In particular, I believe the following amendments are vital to the purpose of the act: first, provide for the election of committee chairman by the members of the committees, thus eliminating the present automatic selection on the basis of seniority alone; second, provide for at least 3 legislative days for study of any bill before it is brought to a vote. This would permit a higher degree of responsible and thoughtful voting on each measure; and third, eliminate secret or anonymous balloting on important issues. Public knowledge of voting records is a vital ingredient of our unique form of representative democracy.

As this supremely important legislation comes to the floor, Mr. Chairman, there will be many proposals and counter-proposals offered. I commend to my colleagues the thought that any reservations they may hold on individual amendments be weighed in favor of openness, disclosure, and majority rule.

The needs of our country and of our people in the seventies are too great, too pressing, too immediate to be subjected to the delays and inadequacies of the many cumbersome impediments which this body has imposed on itself over the past century.

Mr. REID of New York. Mr. Chairman, I rise in support of H.R. 17654, the Legislative Reorganization Act of 1970. To say that this bill is overdue is at best an understatement. Its provisions are absolutely essential to bring the operations of the Congress into the 20th Century.

The changes proposed in this bill are laudable, especially in areas that will afford the public greater knowledge of committee actions and provisions for more adequate research and fiscal-budgetary information for Members of Congress. The difficulty lies not with what the bill includes, but with what it fails to include. I am aware that the Members of the Rules Committee have worked long and diligently to report out a bill that contains few items controversial enough to jeopardize its passage.

I am compelled to point out at this time, however, that further changes in the committee bill are essential if the Congress is to be a viable, contemporary institution for the conduct of the American people's business.

Therefore, I strongly support a num-

ber of amendments to be offered to lift the shrouds of secrecy and to make more truly democratic the procedures of the House. If we are to revive the failing confidence of the American people in the Congress, we must insure that citizens can know how their representatives stand on each and every bill, all the way from consideration in committee to final passage of the conference report. Procedures which inhibit and even exclude the public from access to information on a Member's votes are inconsistent with participatory democracy and destructive of public trust in the processes of Government. The Congress must not operate in the dark.

Chief among the amendments to be proposed is the Gubser-O'Neill amendment, which would permit the recording of names on teller votes. Current procedures which permit a Member to vote one way on tellers, under the cloak of anonymity, and another way when his vote is publicly recorded, are devious and unfair to the people who elected him. The American people are entitled to know how their representatives vote on all major issues, not just those which are decided by a rollcall vote. Accountability is an essential part of the electoral process.

I have earlier introduced a resolution proposing that one-fifth of a quorum call could demand a record vote on any amendment rejected on tellers. I am pleased to support as well the current effort to record all names on teller votes. This reform, at the minimum, is vital for a responsive Congress.

I intend also to support other amendments which seek to require the printing of conference reports in the Record at least 3 days prior to floor consideration. I shall also support a series of amendments designed to publicize committee meetings, including the public recording of each Member's vote in committee.

In addition to an end to secrecy, the reform most often demanded of the Congress by the American people is the reform of the seniority system. At a time when young men and women are so often constructively ahead of their government, there is ample reason to question the awarding of committee chairmanships solely on the basis of length of service. The issue is not whether chairmanships should go to the young or to the old, but rather that chairmanships—like all positions of public responsibility—should be held by those most likely to discharge their responsibility with ability and with a sense of responsiveness to all points of view.

A number of studies of changes in the seniority system are now in progress. Nonetheless, I think it is important that the House go on record today to assure the American people that the seniority system will be changed. I intend to support the amendment to be offered by Mr. Reuss which will add an "advisory mandate" to rule X to indicate that the committee member elected as chairman "need not be the member with the longest consecutive service on the committee." This language does not require any change in any existing procedure but it

serves to make clear that the Congress is actively considering changes in the seniority system.

Mr. Chairman, our constitutional function is to represent the citizens of our district. That function is impeded by some of the archaic and undemocratic procedures under which this Congress labors. Thus, the reform bill pending before us must be enacted, along with essential amendments.

Mr. SISK. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I do so in order to make a brief statement.

There are apparently a number of Members here who are interested in speaking on this amendment, if I understand it correctly from those who have been contacting me. In view of the time and the fact that we have certain commitments this evening, at this time and because of that, Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. NATCHER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 17654) to improve the operation of the legislative branch of the Federal Government, and for other purposes, had come to no resolution thereon.

EXPRESSING THE SENSE OF CONGRESS WITH RESPECT TO CONQUEST OF CANCER AS A NATIONAL CRUSADE

Mr. ROGERS of Colorado. Mr. Speaker, I ask unanimous consent for the immediate consideration of House Concurrent Resolution 675.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

Mr. HALL. Mr. Speaker, reserving the right to object, is it the intention of the gentleman to amend House Concurrent Resolution 675?

Mr. ROGERS of Colorado. If the gentleman will yield, we intend to amend it by striking the last "whereas" clause.

Mr. HALL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

Mr. WIGGINS. Mr. Speaker, further reserving the right to object, and I make this reservation for the purpose of asking some questions of the distinguished gentleman from New York (Mr. ROONEY), the author of this resolution.

I would inquire of the distinguished gentleman from New York concerning the second page of the House concurrent resolution where there is a resolving clause in which it states that it is the sense of the Congress that appropriate funds be authorized for cancer research.

It is my understanding, I would say to the gentleman from New York (Mr. ROONEY), that this resolution does not in and of itself appropriate any funds. It is further my understanding that it is not the gentleman's intention as the author of the resolution to have more funds

appropriated for this effort than can legitimately, appropriately, and prudently be expended; is that correct, sir?

Mr. ROONEY of New York. Mr. Speaker, if the distinguished gentleman from California will yield, I say to him that the answer to both inquiries is "True." We have the same understanding.

Mr. WIGGINS. Mr. Speaker, with that understanding, I withdraw my reservation of objection and urge support of the resolution.

Mr. ROONEY of New York. I thank the gentleman.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

(Mr. ROONEY of New York asked and was given permission to revise and extend his remarks and include extraneous matter.)

Mr. ROONEY of New York. Mr. Speaker, on March 4, 1970, I introduced House Concurrent Resolution 526 which was referred to the Committee on the Judiciary. Subsequently, the distinguished chairman of Subcommittee No. 4 of the House Committee on the Judiciary, the gentleman from Colorado (Mr. ROGERS), sought to call up this resolution by unanimous consent when informal objection was made to the inclusion of one word of the resolution. On July 8, 1970, the gentleman now addressing the Chair introduced a new concurrent resolution known as House Concurrent Resolution 675 which was also referred to the Committee on the Judiciary. This resolution omitted the objected-to word.

Mr. Speaker, I firmly believe there is no more fitting way to commemorate the 200th anniversary of the independence of our country than to eliminate cancer as a disease.

I believe that the people of this country have a sound sense of national priorities. From time to time, the order of these priorities is confused by rhetoric or by the number and complexity of our national commitments. We therefore owe it to ourselves as individuals to make clear to the Nation and to the world our sense of dedication to the total conquest of cancer. This is the purpose of the resolution.

The Federal programs in cancer have been going on since 1938. They have had long periods of rapid development and shorter periods of temporary decline. Overall, the thrust has been forward, and today the programs are substantial.

The questions are: What progress has been made? What yet remains to be done? What prospects are there for closing the gap between the problem and the solution? And how are we to address ourselves to the effort?

The scientists whose views have stood the test of time insist that we are near the point of breakthrough. Our 30 years of painstaking research are ready to pay off in dramatic terms. The dedication and wisdom of the men who have made cancer research their life's work are about to be redeemed. But to effect this redemption and take the final strides to a breakthrough will require a sustained effort of substantial proportions over a relatively short period of time. I am told by the most eminent men in the field—and I yield to the judgment of these

men—that given the funds, the programs, the resources and the authority, they can come to us before the end of this decade with a solution to cancer, hopefully by 1976. Just as the 1960's will go down in history as the decade in which man contrived to reach the moon, so the 1970's could go down in history as the one in which man reached an even nobler goal.

For these reasons, I ask you to join with me in expressing, as a sense of this Congress, a national commitment to give to the cancer effort the resources it needs to solve the remaining mysteries of the disease.

This commitment will consist of the new laws which the legislative committees of the House and Senate deem necessary, and the appropriations provided they can legitimately, appropriately and prudently be expended to carry out the purposes of the new legislation in addition to the programs now in being.

What the Congress must provide are the means to meet the following requirements:

First. An increase in all forms of training in the field of cancer: predoctoral, postdoctoral, career development, basic training, and clinical training;

Second. The establishment of a score of task forces along the lines of the lung cancer and breast cancer task forces already in existence. These new task forces must address themselves comprehensively and intensively to the aspect of cancer to which they are directed;

Third. Vastly increased support of the cancer centers now being funded and an increase in the number of such centers throughout the entire country;

Fourth. A review and revision of the emphasis of the programs of the National Cancer Institute with more to be done on a research contract basis in the interest of more efficient research and more quickly attainable goals; and

Fifth. A program of construction of research facilities, basic and clinical, to begin on a broad basis in the four points of the compass within the limits of our national boundaries. This construction program—neglected for the past several years and now temporarily phased out—is one of the vital requirements of the overall program. It must go on concurrently at the places in which it is to be done and it must start next year if it is to serve the purposes for which it is needed.

I believe that if we provide these means, the men of science will respond to the challenge and reach the goal that we have set for ourselves as a people.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

The Clerk read the concurrent resolution as follows:

H. CON. RES. 675

Whereas cancer is a disease that has taken an enormous toll of lives and caused universal anguish and suffering; and

Whereas the Congress and the Nation have been committed to the elimination of cancer since 1938; and

Whereas despite this commitment more than three hundred and seventy-five thousand Americans will die from cancer in the year of 1970; and

Whereas cancer research shows imminent promise of significant breakthrough in several forms of the disease; and

Whereas the medical knowledge and the dedicated scientific personnel necessary to make the breakthrough are available and ready; Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the conquest of cancer is a national crusade to be accomplished by 1976 as an appropriate commemoration of the two hundredth anniversary of the independence of our country; and be it further

Resolved, That the Congress appropriate the funds necessary for a program of cancer research and for the buildings and equipment with which to conduct the research and for whatever other purposes are necessary to the crusade so that the citizens of this land and all other lands may be delivered from the greatest medical scourge in history.

AMENDMENT OFFERED BY MR. ROGERS OF COLORADO

Mr. ROGERS of Colorado. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ROGERS of Colorado: On page 1 strike out the last "whereas" clause.

The amendment was agreed to.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE TO EXTEND

Mr. ROGERS of Colorado. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the House concurrent resolution just passed.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

WATER POLLUTION—PART II

(Mr. KOCH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KOCH. Mr. Speaker, the Federal Refuse Act of 1899 prohibits anyone from discharging refuse into our navigable waters. Violators are liable to fine and/or imprisonment.

As I mentioned last week, on June 29 of this year, I invoked one of the provisions of the act which permits any citizen to present information about polluters to the appropriate U.S. attorney. On June 29, I filed affidavits with the U.S. attorneys for the southern and eastern districts of New York. The affidavits named 10 companies doing business in New York City who, as of January 1970, were listed by the New York State Department of Health as polluters of "major importance."

Although the Refuse Act of 1899 directs U.S. attorneys to "vigorously prosecute" all violators, I learned while filing my affidavit that the Justice Department apparently does not intend to use this law against major industrial polluters. I was told that the Justice Department has issued a memorandum to all U.S. attorneys instructing them not to prosecute

industrial polluters under the Refuse Act. I wrote to the Justice Department requesting a copy of this memorandum and received a copy from Mr. Shiro Kashiwa, Assistant Attorney General, Land and Natural Resources Division, on July 7.

The memorandum "guidelines for litigation under the Refuse Act" instructs U.S. attorneys that they may prosecute "to punish or prevent significant discharges which are either accidental or infrequent, but which are not of a continuing nature resulting from the ordinary operations of a manufacturing plant." In outlining the procedures to be followed by U.S. attorneys using the Refuse Act, cases of "continuing industrial discharge" are to be exempted from prosecution.

This language makes it quite clear that the Justice Department does not intend to use this potentially powerful and effective statute to safeguard our waters. Rather, it is their intention to rely primarily on the procedures of the Federal Water Pollution Control Act. However, this enforcement machinery has proved to be extremely cumbersome and very long and drawn out. Furthermore, it fails to provide specific penalties for violators. Its laborious three-stage process of conference, hearing, and eventual court action can literally take years and years. Even under the 1965 Federal Water Quality Act which mandated quality standards for interstate waters and which was designed to speed up enforcement, the process remains a terrible bureaucratic labyrinth. Although the Federal Government has had permanent water polluter legislation since 1956, there have been only a meager number of cases in which the Government has actually initiated court action against violators. Approximately 10 actions have been initiated.

Meanwhile, the pollution of our waterways continues. What is needed in our fight against water pollution is a strong law that can be expeditiously enforced. The Refuse Act of 1899 is such a law and I have urged the Justice Department to reconsider their position and to vigorously prosecute the polluters named in my affidavit who at this time have yet to take proper steps to abate their pollution.

The Refuse Act also states that any citizen providing information which leads to a conviction is entitled to one-half of any fine that may be levied. Such a citizen may also bring suit against the alleged polluters in the name of the Government in order to collect his share of penalties if the Government fails to act within a reasonable length of time.

I consider the date of filing of my affidavit in New York to be the start of the reasonable period in which the Government should act. I intend to pursue this matter and would urge my colleagues and other concerned citizens to explore the potential use of the Refuse Act as an effective weapon against water pollution. I would also hope that my colleagues would condemn the Justice Department's reluctance to enforce this law particularly in light of the dubious success of enforcement procedures under the Water Pollution Control Act of 1956 as amended.

Mr. Speaker, the Refuse Act is a good law, let us use it.

SURVEY OF HONORARIUMS PAID GUEST SPEAKERS AT COLLEGES AND UNIVERSITIES

(Mr. ICHORD asked and was given permission to address the House for 1 minute, to revise and extend his remarks, and to include extraneous matter.)

Mr. ICHORD. Mr. Speaker, criticism has been voiced by one of my colleagues concerning a voluntary survey now being conducted by the Committee on Internal Security in furtherance of what newsmen would champion as "the public's right to know."

The survey was recently authorized by the committee to determine the extent to which today's extremist and radical speakers have used the forum of college and university campuses to finance revolutionary violence among a militant minority of young people in this Nation.

Preliminary indications of fees paid to various radical speakers on campuses throughout the Nation suggest that such a survey is warranted since it involves no invasion of the field of academic freedom, concerns only what should be a matter of public record, and affects primarily institutions which should have no objection to making the record of expenditures of honorariums a matter of public information.

The survey letter approved and sent out by the committee seeks information regarding honorariums paid only to guest speakers "other than academicians and lecturers who appeared in connection with courses of instruction."

All available information indicates that these speakers certainly have contributed heavily to the revolutionary climate in our Nation by their inflammatory and vicious tirades as well as by their frequently disgraceful antics.

For example, at a recent speaking engagement at the University of California, Santa Barbara, William Kunstler urged students to take to the streets and they did just that. More than 800 protesters surged through the streets, throwing rocks and bottles, overturning a police car, and burning a bank. Academic freedom and freedom of speech unfortunately have become devices for the dissemination of concepts of violence. Using clichés and platitudes which have long been employed to foment hate and dissatisfaction, these militants are systematically spreading their venom—concentrating on students. Keep in mind that customarily their campus presentations are lectures rather than debates. Thus, opposite viewpoints are not presented in context. Is it any wonder then that their youthful audiences are often influenced in the wrong direction?

At the same time the academic community gains nothing in its knowledge of the revolutionary movement by inviting revolutionaries to speak on the campus, but the revolutionary movement has gained tremendously in respectability and propaganda.

A question repeatedly asked is where the money comes from to finance the

revolutionary movement. Information along that line is scarce indeed, but a fragment here and there provides some clues. For example, following a recent inflammatory speech on the campus of the University of Cincinnati, William Kunstler was asked during a press interview where the money comes from to defray expenses for the revolutionary movement. Specifically mentioned were trial expenses, bond money, and appeal efforts for the defendants found guilty of using interstate facilities to start a riot during the 1968 Democratic National Convention in Chicago. Kunstler told the newsmen quite candidly:

We raise most of the money for our movement through speaking engagements.

In substantiation of his statement, Kunstler pointed out he had been paid only \$100 a week for expenses during the 160-day trial in Chicago, suggesting that his legal talents and time are reimbursed through the speaking engagement fees.

Other examples I would cite:

Abbie Hoffman, a radical New Left spokesman and one of the "Chicago Seven" convicted of crossing State lines to incite a riot during the Democratic National Convention in Chicago during August 1968, was paid an honorarium of \$750 for a speech he delivered on April 22, 1969, at North Dakota State University, Fargo, N. Dak.

David Hilliard, chief of staff of the Black Panther Party, was paid a \$2,000 honorarium for being the keynote speaker at a "repression teach-in" held on February 26, 1970, in Dillon Gymnasium at Princeton University.

Thomas Hayden, cofounder of the Students for a Democratic Society, and who was also one of the "Chicago Seven" convicted of crossing State lines to incite a riot, was paid an honorarium of \$600 to speak at San Fernando Valley State College, Northridge, Calif., on April 17, 1970.

It is shocking to think that honorariums paid from funds from tax-supported universities or from fees assessed students in public institutions are seemingly being used to subsidize the revolutionary movement in this country. The results of a preliminary study made by the committee staff has shown that radical spokesmen have traveled the length and breadth of our land to fulfill speaking engagements.

Incredible as it may seem, it appears large fees are being paid to militants who are urging the disruption of our colleges and universities. Instead of utilizing the college and students' funds to strengthen understanding and a deeper appreciation of our free enterprise system and the relative merits of various systems of government compared with our own, these funds may be going into the coffers of groups seeking to destroy traditional American concepts and the structure of our society.

These dissidents rise in great indignation and protest at any attempt to prevent them from speaking on college campuses. They use every means at their disposal to fight such action. Last year the president of Auburn University refused to permit a speaker on the campus because the speaker had been

convicted of urging students to resist the draft. This ruling by the college president was challenged in court, whereupon a Federal judge ordered that the individual be permitted to speak. In addition, the Federal judge instructed Auburn University to provide the speaker facilities and the payment of an honorarium from school funds. This court decision caused Alabama Gov. Albert Brewer to remark that the court decree not only undermines the capable administration of Auburn University but even goes so far as to direct the university to pay a convicted felon who has sought to influence young people to undermine their country.

The people of America are deeply concerned about violence as rightfully they should be. They have been witness to assassinations of national figures. They have seen students disrupt classes, seize buildings and destroy property at institutions of learning. They have seen young people confronting the police at draft centers across the country; they have heard students shouting the strident rhetoric of revolution. Militant agitators have seized upon this insurrectionary climate to persuade even more of our youth to join the revolutionary movement. One of their spokesmen has recently boasted:

Perhaps twenty-five universities linked to the movement would be too much for the police—for the dominant class—and we would get what we demand.

These dissidents seek every opportunity to speak before student groups throughout the country. They avail themselves of the chance to take advantage of the natural inquisitiveness of students. They distort the facts and misrepresent conditions in our country. They seize every opportunity to criticize our institutions without making any constructive suggestions. Regardless of the title of the subject matter to be covered, these speakers invariably manage to work in bigotry, hate, and falsehoods. Obviously, their primary aim seems to be to turn young Americans against their country. But their secondary purpose very possibly is to raise funds for advancing revolutionary activity.

Notwithstanding the inevitable hue and cry from those who regard any inquiry into the activities of colleges and universities as an infringement upon academic freedom, I am confident, and so was the committee, that the majority of the American people share our concern and would like to know if large sums of money are being spent in the form of honorariums to revolutionary speakers who, in turn, might use such revenue to underwrite some of their plans for revolution, disorder, and violence.

Based on the initial returns received, it is gratifying to be able to assure this House that the cooperation of the surveyed institutions has been forthcoming.

We have received to date responses from 26 universities overwhelming in support of our survey. Typical of the reaction was the following from a president of one university who stated:

It is my firm belief that speakers and promoters of disruption as well financed and

that there is firm justification for concern. This university is seriously concerned about this matter and like all other urban institutions in particular, we feel the need of assistance to curb the threat which they pose to the educational community and to our institutions.

A university president in the Rocky Mountain States wrote:

The work of your committee is crucial and certainly you will receive our full support.

The president of a Northwest Pacific Coast university declared:

I suspect that there are organizations which wish to destroy the university and the social and political organizations which sustain it. To be a party to this by financially supporting these organizations is obviously folly and we would not wish to be involved in such action at this institution if we knew that it was being done and could avoid doing so.

The total offensive of these revolutionaries is indeed formidable and cannot be minimized. They are calling for riots and a war of so-called "national liberation." We must not and cannot ignore their efforts.

As part of my remarks, I submit for the RECORD the results of a preliminary study by our committee staff showing a list of confirmed appearances by radical and revolutionary speakers on various campuses since 1968. This list is far from complete, I am sure, but it is enough to indicate the reasons for our committee's concern.

In conclusion, I want the RECORD to show in mid-May, all members of the Committee on Internal Security were advised that a survey was under consideration, that there were no written objections raised to such a survey at that time, and that in June the full committee met and, by a majority vote, approved the letter which was ultimately sent to a random list of colleges and universities.

At this time, Mr. Speaker, I include a copy of the letter so approved and mailed, a copy of the reply form accompanying it, and a list of the institutions of higher learning contacted in the RECORD as part of my remarks:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES, COM-
MITTEE OF INTERNAL SECURITY,
Washington, D.C.

DEAR SIR: As Chairman of the House Committee on Internal Security, I am writing to solicit your cooperation in the furnishing of information with regard to honorariums paid to all guest speakers other than academicians and lecturers who appeared in connection with courses of instruction.

As directed by the House of Representatives, our Committee is charged with the responsibility of making inquiry into those organizations, who by their activities, would effect changes in our Government or the administration of our Government by force, violence or other unlawful means. Preliminary data available indicates that guest speakers representing such organizations have made numerous appearances on many college and university campuses, and have received honorariums which could be of significance in funding their activities. The means by which such organizations are financed is a matter which is under inquiry by this Committee.

We would be grateful if you could be of assistance by completing a separate sheet on each guest speaker on your campus during the period September, 1968, to May, 1970, (excluding academicians and lecturers in

connection with courses of instruction) using the form set forth in the enclosure. Your cooperation in helping us to fulfill our legislative mandate will be greatly appreciated.

Sincerely yours,
RICHARD H. ICHORD,
Chairman.

SURVEY BY HOUSE COMMITTEE ON INTERNAL SECURITY OF HONORARIUMS PAID TO GUEST SPEAKERS

School Name.
Address.
Date.
Name of Speaker.
Group Identification or Sponsorship of Speaker.
Amount of Honorarium Paid.
How Paid (Check or Cash).
To Whom Paid (Individual or Organization).
Sources of Funds: (1) Student Activities; (2) Foundation; (3) Appropriation; (4) Free Will Offering; (5) Other as Described.

SPEAKING ENGAGEMENTS

COLLEGE OR UNIVERSITY, DATE, AND SPEAKER
Alabama, University of: October 1968, Eldridge Cleaver (BPP); March 16, 1969, Abbe Hoffman (YIP).
American University: April 7, 1970, Jerry Rubin (YIP).
Briarcliffe College, Briarcliffe Manor, N.Y.: March 11, 1968, Mark Rudd (SDS).
California, University of, Berkeley, California: May 21-22, 1965, David Dellinger (NMC); October 29, 1966, Rennie Davis (SDS); and Stokely Carmichael (SNCC) (BPP); October 18, 1968, Tom Hayden (SDS); Fall 1968, Eldridge Cleaver (BPP); April 22, 1969, Tom Hayden (SDS); March 5, 1970, Tom Hayden (SDS).
California, University of, Santa Barbara, California: February 25, 1970, William Kunstler (Misc.).
California, University of, Los Angeles, California: October 1968, Eldridge Cleaver (BPP); February 14-15, 1970, Jerry Rubin (YIP).
California State College, Los Angeles, California: December 1967, Michael Klonsky (SDS); March 2, 1970, Carl Oglesby (SSD).
Case-Western Reserve University, Cleveland, Ohio: May 9, 1969, Jerry Rubin (YIP); and David Dellinger (NMC).
Chicago, University of: Summer 1967, Rennie Davis (SDS).
Cincinnati, University of: March 3, 1970, William M. Kunstler (Misc.).
City College of New York: December 3, 1968, Stokely Carmichael (SNCC) (BPP); September 25, 1969, Mark Rudd (SDS).
Colorado State College: May 18-25, 1969, Lauren Watson (BPP); Henry X (NOI).
Colorado, University of: October 12, 1968, Michael Klonsky (SDS).
Columbia University: June 25, 1968, Lerol Jones (Misc.); November 13, 1965, Tom Hayden (SDS); July 26, 1967, David Dellinger (NMC); April 1968, H. Rap Brown (SNCC); January 15, 1969, Mark Rudd (SDS); March 17, 1970, Rennie Davis (SDS).
Connecticut, University of: October 14-15, 1969, Rennie Davis (SDS).
Cornell University: August 5, 1969, Mark Rudd (SDS).
Denver, University of: April 1969, Tom Hayden (SDS).
Dillard University: April 1967, Stokely Carmichael (SNCC) (BPP).
Fairleigh Dickinson University: September 17, 1969, Carl Nichols (BPP).
Fisk University: November 5-8, 1966, Stokely Carmichael (SNCC) (BPP); April 8, 1967, Stokely Carmichael (SNCC) (BPP).
Florida, University of: April 11, 1969, Michael Klonsky (SDS).
Fresno State College: October 24, 1968, George Murray (BPP).

Georgetown University: October 3, 1968, Bernardine Dohrn (SDS); Tom Hayden (SDS).

George Washington University: October 17, 1968, Mark Rudd (SDS); March 12, 1969, Karl Wolf (Misc.); April 9, 1970, Stokely Carmichael (SNCC) (BPP).

Glendale College: October 9, 1969, Elaine Brown (BPP).

Houston, University of: March 20, 1969, Mark Rudd (SDS).

Howard University: November 1968, Lerol Jones (Misc.); November 14, 1968, Stokely Carmichael (SNCC) (BPP); December 1968, Eldridge Cleaver (BPP); April 9, 1970, Stokely Carmichael (SNCC) (BPP).

Hunter College: January 28, 1970, Don Cox (BPP); February 18, 1970, Rennie Davis (SDS).

Illinois, University of, Chicago Circle Campus: May 8, 1969, Rennie Davis (SDS).

Illinois, University of: March 2, 1970, William M. Kunstler.

Kansas, University of: January 7, 1969, Mark Rudd (SDS).

Kent State University: April 28, 1969, Bernardine Dohrn (SDS).

Kentucky, University of: February 9, 1968, Rennie Davis (SDS); April 4, 1970, William M. Kunstler (Misc.).

Maine, University of: September 16, 1969, Lerol Jones (Misc.).

Marquette University: January 29, 1970, David Dellinger (NMC).

Maryland, University of: September 30, 1968, Tom Hayden (SDS); Bernardine Dohrn (SDS); October 18, 1969, Mark Rudd (SDS).

Merritt College, Oakland, California: February 21, 1968, Stokely Carmichael (SNCC) (BPP); May 12, 19, 20, 1968, Huey P. Newton (BPP), Lerol Jones (Misc.).

Miami, University of, Miami, Florida: September 29, 1964, David Dellinger (NMC).

Michigan, University of: November 1968, Rennie Davis (SDS); December 1968, Bernardine Dohrn (SDS); March 1969, Karl Wolf (Misc.); September 1969, Rennie Davis (SDS); September 26, 1969, David Dellinger (NMC).

Michigan State University: September 25, 1969, Rennie Davis (SDS); David Dellinger (NMC); November 13-15, 1969, Rennie Davis (SDS).

Nassau Community College: November 18, 1967, David Dellinger (NMC).

Nassau College: January 23, 1969, T. D. Pauley (BPP).

New York University: July 2, 1968, Eldridge Cleaver (BPP); October 11, 1968, Eldridge Cleaver (BPP).

Northwestern University: January 1969, Jerry Rubin (YIP).

Oberlin College: April 18-20, 1969, Bernardine Dohrn (SDS).

Oregon University, Eugene, Oregon: February 19-21, 1968, David Dellinger (NMC), Lerol Jones (Misc.).

Pennsylvania, University of: March 1969, Rennie Davis (SDS).

Penn State University: February 13, 1969, Jerry Rubin (YIP).

Pittsburgh, University of: January 17, 1970, Rennie Davis (SDS).

Portland Community College, Portland, Oregon: May 22, 1969, Aaron Dixon (BPP).

Queens College: October 13, 1967, Jerry Rubin (YIP); February 29, 1968, Abbe Hoffman (YIP); November 14, 1967, Lerol Jones (Misc.).

Rhode Island, University of: September 23, 1969, Mark Rudd (SDS).

Rice University: March 21, 1969, Mark Rudd (SDS).

Roosevelt University, Chicago, Illinois: April 10, 1967, Rennie Davis (SDS).

San Fernando State College, Northridge, California, March 1, 1970, William M. Kunstler (Misc.).

San Francisco State College, August 1967, Lerol Jones (Misc.).

San Jose State College, March 1969, Tom Hayden (SDS).

Southern University, May 1969, H. Rap Brown (SNCC).

Southern California, University of: March 1970, Carl Oglesby (SDS).

Stanford University, October 1, 1968, Eldridge Cleaver (BPP).

Sterling College: February 15, 1970, Philip Clayton (BPP).

St. Peter's College, Jersey City, N.J.: February 12, 1970, Robert Scheer (Ramparts).

Syracuse University: March 4, 1970, Thomas Jolly (BPP).

Temple University: August 11, 1967, David Dellinger (NMC).

Temple Buhle College, Denver, Colorado: November 2, 1968, Michael Klonsky (SDS).

Texas, University of: March 1969, Michael Klonsky (SDS).

Tufts University, Medford, Massachusetts: March 6, 1970, David Dellinger (NMC).

Tulsa, University of: November 12, 1969, Earl Anthony (BPP).

Utica College, Utica, New York: March 3, 1970, Clifton DeBerry (SWP).

Vanderbilt University, Nashville, Tennessee: April 8, 1967, Stokely Carmichael (SNCC) (BPP).

Yale University, New Haven, Connecticut: February 1964, David Dellinger (NMC); May 19, 1969, Bobby Seale (BPP).

Western Michigan University, Kalamazoo, Michigan: October 21, 1968, Michael Klonsky (SDS); October 27, 1968, Mark Rudd (SDS).

Williams College, Williamstown, Massachusetts: March 5, 1970, Andrea Jones (BPP), Wayne Thomas (BPP).

Wisconsin, University of: January 18, 1966, Jerry Rubin (YIP); February 6, 1967, Stokely Carmichael (SNCC) (BPP); February 13, 1969, Tom Hayden (SDS); October 13, 1969, Nathaniel Bellamy (BPP); February 9, 1970, Willie Calbin (BPP).

COLLEGE OR UNIVERSITY AND LOCATION

ALABAMA

University of Alabama—University.
Auburn University—Auburn.
Huntingdon—Montgomery.

ALASKA

Alaska Methodist University—Anchorage.
University of Alaska—College.

ARIZONA

University of Arizona—Tucson.
Grand Canyon—Phoenix.
Northern Arizona University—Flagstaff.

ARKANSAS

Arkansas Polytechnic—Russellville.
State College of Arkansas—Conway.
University of Arkansas—Fayetteville.

CALIFORNIA

University of California—Berkeley.
University of California, Santa Barbara.
University of California—Los Angeles.
California State College—Los Angeles.
Fresno State College—Fresno.
Stanford University—Stanford.
San Fernando State College.
San Francisco State—San Francisco.
Merritt College—Oakland.
Glendale Jr. College—Glendale.
University of Southern California—Los Angeles.
San Jose State—San Jose.

COLORADO

University of Denver—Denver.
Colorado State—Greeley.
Univ. of Colorado—Boulder.
Temple Buell—Denver.

CONNECTICUT

University of Connecticut—Storrs.
Central Connecticut State—New Britain.
Yale University—New Haven.

DISTRICT OF COLUMBIA

American University.
Georgetown University.

George Washington University.
Howard University.

FLORIDA

University of Florida—Gainesville.
Florida A & M University—Tallahassee.
University of Miami—Coral Gables.

GEORGIA

University of Georgia—Athens.
Georgia State—Atlanta.
West Georgia—Carrollton.

HAWAII

University of Hawaii—Honolulu.
The Church College of Hawaii—Lale.
Chaminade College of Honolulu—Honolulu.

IDAHO

Idaho State University—Pocatello.
Boise State—Boise.
College of Southern Idaho—Twin Falls.

ILLINOIS

Northwestern University—Evanston.
Roosevelt University—Chicago.
University of Chicago—Chicago.
University of Illinois—Chicago Circle Campus.
University of Illinois—Urbana & Champaign.

INDIANA

Indiana University—Bloomington.
Indiana State University—Terre Haute.
University of Notre Dame—Notre Dame.

IOWA

Iowa Wesleyan—Mt. Pleasant.
University of Iowa—Iowa City.
Parsons—Fairfield.

KANSAS

University of Kansas—Lawrence.
Kansas State Teachers—Emporia.
Washburn University of Topeka—Topeka.

KENTUCKY

University of Kentucky—Lexington.
University of Louisville—Louisville.
Transylvania University—Lexington.

LOUISIANA

Southern University and A & M—Baton Rouge.
Dillard University—New Orleans.
Louisiana State University—Baton Rouge.

MAINE

University of Maine—Orono.
Nassou—Springvale.
Bates—Lewiston.

MARYLAND

University of Maryland—College Park.
University of Baltimore—Baltimore.
Johns Hopkins University—Baltimore.

MASSACHUSETTS

Tufts University—Medford.
University of Massachusetts—Amherst.
Harvard University—Cambridge.
Williams College—Williamstown, Mass.

MICHIGAN

Western Michigan University—Kalamazoo.
University of Michigan—Ann Arbor.
Lawrence Institute of Technology—Southfield.
Michigan State University—East Lansing.

MINNESOTA

University of Minnesota—Minneapolis.
Moorhead State—Moorhead.
St. Olaf—Northfield.

MISSISSIPPI

Mississippi State University—State College.
University of Southern Mississippi—Hattisburg.
Delta State—Cleveland.

MISSOURI

University of Missouri—Columbia.
Missouri Southern—Joplin.
St. Louis University—St. Louis.

MONTANA

University of Montana—Missoula.
Eastern Montana—Billings.
College of Great Falls—Great Falls.

NEBRASKA

University of Nebraska—Lincoln.
Wayne State—Wayne.
Creighton University—Omaha.

NEVADA

University of Nevada—Reno.
University of Nevada—Las Vegas.

NEW HAMPSHIRE

University of New Hampshire—Durham.
N.H. College of Act. and Comm.—Manchester.
Plymouth State—Plymouth.
Dartmouth—Hanover.

NEW JERSEY

Fairleigh Dickinson University—Rutherford.
Glassboro State—Glassboro.
Jersey City State—Jersey City.
St. Peter's College—Jersey City.

NEW MEXICO

University of New Mexico—Albuquerque.
New Mexico State University—Las Cruces.
College of Santa Fe—Santa Fe.

NEW YORK

City College of New York—New York.
Cornell University—Ithaca.
Columbia University—New York.
Hunter c/o Columbia Univ.—New York.
Nassau Community College—Garden City.
New York University—New York.
Syracuse University—Syracuse.
Utica College.
Briarcliffe College—Briarcliffe Manor.
Fordham University—Bronx.

NORTH CAROLINA

University of North Carolina—Chapel Hill.
Queens College—Charlotte.
North Carolina College at Durham—Durham.

NORTH DAKOTA

University of North Dakota—Grand Forks.
North Dakota State University—Fargo.
Dickinson State—Dickinson.

OHIO

Case-Western Reserve University—Cleveland.
University of Cincinnati—Cincinnati.
Kent State University—Kent.
Oberlin—Oberlin.
Ohio State University—Columbus.

OKLAHOMA

University of Tulsa—Tulsa.
Oklahoma State University—Stillwater.
University of Oklahoma—Norman.

OREGON

University of Oregon—Eugene.
Oregon State University—Corvallis.
Pacific University—Forest Grove.
Portland Community College.

PENNSYLVANIA

University of Pennsylvania—Philadelphia.
Penn State University—University Park.
University of Pittsburgh—Pittsburgh.
Temple University—Philadelphia.

RHODE ISLAND

University of Rhode Island—Kingston.
Brown University—Providence.
Rhode Island Jr. College—Providence.

SOUTH CAROLINA

University of South Carolina—Columbia.
Bob Jones University—Greenville.
Clemson University—Clemson.

SOUTH DAKOTA

South Dakota University—Brookings.
Black Hills State—Spearfish.
Dakota Wesleyan University—Mitchell.

TENNESSEE

Vanderbilt University—Nashville.
Fisk University—Nashville.

University of Tennessee—Knoxville.
Tennessee Tech. University—Cookeville.

TEXAS

University of Texas—Austin.
Rice University—Houston.
University of Houston—Houston.

UTAH

University of Utah—Salt Lake City.
Utah State University—Logan.
College of Southern Utah—Cedar City.

VERMONT

University of Vermont—Burlington.
Castleton State—Castleton.
Middlebury—Middlebury.

VIRGINIA

University of Virginia—Charlottesville.
Virginia State—Petersburg.
Washington & Lee—Lexington.

WASHINGTON

University of Washington—Seattle.
Western Washington State—Bellingham.
Witman—Walla Walla.

WEST VIRGINIA

West Virginia University—Morgantown.
W. Liberty State—W. Liberty.
Bethany—Bethany.

WISCONSIN

University of Wisconsin—Madison.
Carthage—Kenosha.
Wisconsin State University—Oshkosh.
Marquette University—Milwaukee.

WYOMING

University of Wyoming—Laramie.
Northwest Community—Powell.

SPEECH BY HON. WILLIAM D. FORD BEFORE ANNUAL UNIVERSITY OF DENVER LAW JOURNAL BANQUET

(Mr. EVANS of Colorado asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. EVANS of Colorado. Mr. Speaker, my good friend and colleague, the Honorable WILLIAM D. FORD, of Michigan, was the speaker May 16 before the annual University of Denver Law Journal banquet. Congressman FORD and I are both alumni of the University of Denver Law School, and it was a great pleasure to see my colleague receive the honor of addressing this distinguished gathering.

His speech before the Law Review students, judges, law school professors, and other distinguished members of the Denver bar who attended the banquet raises pertinent questions about the impact of the law journal on the legislative process.

Congressman FORD suggests some important and innovative areas of concern for student legal periodicals—as well as suggesting some valuable ways in which those of us who serve as legislators can better utilize the assistance provided by these legal journals.

My colleague has established his reputation as a man who fully understands and upholds the legal process and I highly commend his speech on the role of the law journal in that process. The text of this speech follows:

REMARKS OF CONGRESSMAN WILLIAM D. FORD BEFORE THE ANNUAL DENVER LAW JOURNAL BANQUET ON MAY 16, 1970

While I was thinking about what I would talk about with you today, I read a column by Fred Graham, the law reporter of the *New York Times*, in which he discussed how, almost overnight, the Senate took up and

passed an amendment to the Voting Rights Act extension, granting 18, 19, and 20 year olds the right to vote in all elections in this country. As he pointed out, all the conventional wisdom was to the effect that such a change had to be accomplished by a constitutional amendment, which as you know requires a sustained, vigorous drive in order to succeed. Yet the Senate, changing its concept of conventional wisdom almost overnight adopted the amendment, introduced by Senator Kennedy, by a vote of 64 to 17.

What really caught my eye was this paragraph by Mr. Graham:

"This remarkable political spasm was an impressive tribute to the occasional impact of scholarly work on public policy. Senator Kennedy got the idea originally from a 1966 article in the Harvard Law Review by former Solicitor General Archibald Cox. . . ."

Note that "occasional impact" so casually inserted. I am afraid, however, that he is more right than wrong. Indeed, except for Professor Cox's article, we would be hard pressed to think of comparable situations in which the law reviews have so directly affected legislative developments.

Of course, causation is a difficult process to trace. There are no doubt many legislative acts which owe their substance and form, perhaps their existence, to the long-range effect of scholarly writings and speakings. Such scholarship can turn around public opinion or place new perspectives on old problems. Certainly, in the civil rights field, one who reads the debates of 1957 and 1960 with regard to the power of Congress to protect voting rights, through the abolition of such devices as literacy tests, is struck by how dated the views seem, how insurmountable the problems of legislating in the field were, how viable the "state action" doctrine was. But all through the 1950's and 1960's, the law reviews featured scholarly assaults on the traditional "state action" doctrine. I think the effect was first felt in the courts. Congress was no doubt influenced more directly by the decisions, but in 1965 and in 1969-70, the Congressional debates over federal protection of voting rights seemed removed by centuries from the earlier debates.

The Cox article, written as the Foreword to the Harvard Law Review's annual survey of Supreme Court developments, had a number of traceable influences which may be illustrative of my thesis here. First, the theme of the article was an exposition of a very important Supreme Court decision, *Katzenbach v. Morgan* almost deserves the appellation of "a revolutionary decision." But contrary to other decisions of the Warren Court which critics cite as gross assumptions of power by the Court, the *Morgan* decision constituted a denial of power by the Court and a concomitant vesting in Congress of a power most observers had not expected to find there.

The basic premise of the *Morgan* decision is that the validity of Congressional action displacing a state law is not dependent upon an independent judicial resolution of the question of constitutionality.

Thus, the import of *Morgan* is so great that it would have been used for numerous purposes had Professor Cox never written his article. But the internal evidence suggests that it was the article and not the case itself which stimulated the congressional enterprises.

We have Mr. Graham's testimony about the influence of the Cox article on Senator Kennedy. Anyone who examines the hearings before the Senate Judiciary Subcommittee on Constitutional Rights will be struck by the obvious influence that shows up in the unlikely people. Attorney General Mitchell and Senator Goldwater, presenting arguments on the federal power to do away with literacy tests and to circumscribe residency requirements, follow Professor Cox's reasoning. Senator Kennedy repeatedly

cited the article and Professor Cox put in an appearance and quoted himself.

Before leaving this particular article, we should note that its influence has not been all progressive; it has not been used only to support measures extending freedom. The first example of the influence of the article turned up in support of a congressional effort, only partially turned back, to overrule the *Miranda* decision through Title II of the Omnibus Crime Control and Safe Streets Act of 1968.

The Senate Judiciary Committee included in its report on the bill a memorandum which did not cite Professor Cox but relied heavily on *Morgan*, as authority for Congress to override the Court's judgment in *Miranda*. The argument parallels that of Professor Cox, except that the two are going in different directions.

My point in this rather lengthy discussion of the Cox article is to illustrate the influence a scholarly article in a law review can have, both progressive and baneful, and to suggest that the law reviews could be doing much more to influence the course not only of legislative policy but public policy as well. We in Congress certainly need all the help we can get as issues and problems and answers and ramifications get more and more complicated.

It is not as if anyone is calling upon adolescent publications to influence legislation. I was surprised to learn that the first distinctively legal periodical was published first in 1761 in England—it was called the *Lawyers' Magazine* and it was published until 1762. The first American legal periodical was the *American Law Journal*, which was published from 1808 until 1817.

Today, a count of those publications listed in the Index to Legal Periodicals discloses they number 187, which is probably an incomplete listing. But it is not with numbers we are concerned; it is quality. The day is long past when no court would cite a law review article, let alone a law review student note, in support of a point or to illustrate the point. The change was well illustrated by Justice Cardozo, writing in 1931, when he said:

"Judges and advocates may not relish the admission, but the sobering truth is that leadership in the march of legal thought has been passing in our day from the benches of the courts to the chairs of the universities. . . ."

"This change of leadership has stimulated a willingness to cite the law review essays in briefs and in opinions in order to buttress a conclusion. More and more, the law reviews are becoming the organs of university life in the field of law and jurisprudence."

Justice Douglas once wrote an article, in a law review, advocating full disclosure of the affiliations of the authors of law review articles so that special pleading would not pass unnoticed. The Justice's concern was aroused by the work of a colleague of mine in the House, Congressman Wright Patman of Texas. Mr. Patman noticed that when the Attorney General's National Committee to Study the Antitrust Laws was appointed, its membership was somewhat weighed toward the defendants' side in antitrust practice. Mr. Patman's committee report¹ makes interesting reading for one who wants to see the law reviews more influential in legislation. Ranging away from the Attorney General's committee, Congressman Patman surveyed the field of antitrust writing and found numerous articles written by lawyers and law professors which advocated less antitrust law enforcement and which did not reveal their authors' affiliation with and receipt of funds from businesses. The Congressman listed in the *Congressional Record*²

¹ H. Rept. No. 2966, 84th Cong., 2nd Sess. (1956).

² 103 Cong. Rec. 16159-69 (1957).

many instances in which partisans for a point of view wrote purportedly objective articles which were designed to influence the courts and Congress in a certain way.

If we find hard-headed businessmen underwriting articles in the law reviews expecting Congress and the courts to be influenced, I think we can assume that there exist real possibilities of influence.

So I believe that law reviews have a great opportunity and indeed a duty to speak out on the issues of the day. They should do so on as objective a basis as possible, setting out the alternatives, discussing the problems; in short, they should deal dispassionately with the issues. This is not to say they should have no point of view. They will in any event and they should consider any issue within a frame of reference, a philosophy.

All I insist is that special pleading not be disguised as something else and that the point of view be plainly stated.

There are many areas in which fresh thinking and scholarly attention would be of assistance to Congress. The environmental crisis and what we can do by legislation to meet it is one. Whether we should attempt to alleviate it by appropriating large sums of money, by requiring under penalty of criminal sanction polluters to make correction at their own expense, by authorizing citizens to sue for legal and equitable remedies, all present complicated issues of efficacy and policy.

Another such issue is the now very "in" subject of consumer affairs. Here the complications, the variety, and the solutions are unlimited. We need scholarly legal inquiry about the problems associated with consumer class actions, a matter under much congressional scrutiny these days. (Parenthetically, I should note that one source of advice to Congress opposing consumer class actions is the Special Committee on Consumer Legislation of the ABA's Section of Antitrust Law. A colleague of mine, Congressman Eckhardt, has shown that, like the Attorney General's antitrust committee, this ABA committee has impressive credentials in terms of defense attorneys for large corporations.)³

Other issues in this area concern deceptive advertising on television and there a law class at George Washington University in Washington, under the leadership of Professor John Banzaff (of TV smoking commercials fame) has been proceeding very effectively, intervening in several cases before the FTC. The legal problems of credit, of repossession practices and policies, of shoddy merchandise in stores in low income areas, present real problems of analysis.

And this type of consumer problem leads into the problem of the poor. What can Congress do to alleviate some of the problems associated with not having much money in our society? Problems of access to the courts, adequate legal representation, welfare policies and procedures, dealings with multifaceted layers of government, the issues go on and on.

Lawyers, professors, law students can do much to show the possibilities of dealing with the great issue of discrimination. What are the real options, for instance, with regard to *de facto* segregation? Do we concentrate on improving ghetto schools alone? Or do we bus children about? Is the solution to break up racial residential patterns, by scattering public housing into the suburbs and beyond, overriding economically discriminatory zoning laws and ordinances, and taking other steps that will operate to eliminate *de facto* segregation?

There is no point in prolonging this with an itemization of our problems. Congress needs help, the President needs help, and

the courts need help—help which you can provide.

In closing, I would like to point out a trend which I discovered in the changing focus and emphasis of the Denver Law Journal over the years. I compared random copies of the Journal for the 1940's, and the 1950's and the 1960's to get a picture of what the growth and direction of the Journal has been.

In the 1949 issues, the emphasis is on such topics as traditional agency, partnership and corporation, civil procedure, contract, negligence, property and domestic relations law.

In the issues for the 1950's, the topics I just mentioned continue to be stressed but the Journal begins to broaden its coverage. Tucked in with the traditional subjects are articles on such topics as the rules of evidence before workmen's compensation commissions, the investigating powers of Congress, teachers' rights at dismissal hearings, court reform, labor law and legal advice for unwed mothers.

The 1960's bring the most drastic change. I will read just a few titles of articles. They speak for themselves. "Fair Housing," "Automobile Design-Evidence catching up with the law," "Controls over atoms-for-peace under Canadian bilateral agreements with other nations," "Winter rights-summer riots 1968," "Student response to the urban crisis," "Black-White confrontation: the law and the lawyer," "Proper handling of mass arrests: the experience of two cities—Chicago 1968 and Detroit 1967", and "Getting at the causes of riots through legal services".

Clearly, the Journal is putting its emphasis on the most pressing problems of today and this is as it should be.

In the past days in Washington, young people from all over the country have come to Washington to talk with their Congressmen and Senators about their concern over the war and our pressing domestic problems.

This is one of the most encouraging signs I've seen in a long time. Young people have a lot to tell us and a lot to teach us. You as lawyers have a very special responsibility and opportunity to help in the articulation of these lessons.

I for one hope you will keep working and keep talking to us. We're listening.

BURLISON ANSWERS UNDER SECRETARY CAMPBELL

(Mr. BURLISON of Missouri asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. BURLISON of Missouri. Mr. Speaker, many months ago when the Department of Agriculture presented its "draft" farm proposal, I came out firmly against it. My reason, stripped of all unnecessary verbiage, is that it will drastically reduce farm income.

There are two phases of the program of which I have been most concerned. One is loss of the parity concept. Application of parity has given a built-in escalator for Government farm programs. This has been the farmer's salvation over the years while his costs have been spiraling and his prices stabilizing or declining. The Department has admitted that present prospects for stopping inflation are not bright, but has at the same time claimed that the parity concept must be dropped, to save Government money. In no other segment of the economy is Government spending being reduced. The costs of Government programs continue to mount everywhere. Wages and salaries in all facets of the economy continue up-

ward to compensate and even overcompensate for inflation and increased productivity. But not for the farmer.

The second part of the administration proposal with which I disagree is the so-called set-aside. Under this plan the farmer must remove from production, without compensation, a given percentage of his allotment acreage in each crop. The Department argues that essentially the same amount of Government money as in the past will be infused into the program. But what the administration, many of my colleagues on the Agriculture Committee, and many farmers have not yet realized is that loss of revenue from the large set-aside acreage must result in a drastic reduction in net farm income. The Secretary and his top assistants admitted as much in response to my questioning on the last day of their appearance before the committee on May 12, 1970.

Some of my efficient farmers in recent years have gone bankrupt. Many more are now on the verge of it. If the administration proposal encompassing loss of parity and addition of set-aside passes in basically its present form, the number of farmers put out of business by it will shock the Nation. We in Congress should have the foresight to prevent it. Logic and rationale are on the side of the farmer. Government farm programs have subsidized the food and fiber consumer so that he pays a smaller percentage—16½ percent—of his income dollar for farm products than ever before. And the American consumer is ahead of all others. In England he pays 26 percent; France, 31 percent; Japan, 40 percent; and Russia, 50 percent. It is crystal clear that the American consumer is going to be irreparably harmed if the Government abandons the farmer.

Now let us consider where we are in our new farm proposal proceedings. On June 2, 1970, the full committee derailed the administration proposal as it applied to wheat and feed grains by substituting Committee Print No. 4 for Committee Print No. 7. The vote was 17 to 14 on the proposition. The most significant difference between the prints is that No. 4 restores the parity concept that had been eliminated in No. 7. My vote was cast with the majority.

However, it should be pointed out that I do not necessarily embrace everything in Committee Print No. 4. The latter is simply more preferable than No. 7. I wish the record to clearly reflect that my vote symbolizes my opposition to loss of parity and to set-aside and this is true whether we are speaking of wheat, cotton, or feed grains.

The committee and Department had worked for many months almost incessantly until the above mentioned June 2. It was my assumption at that time that the committee would be called back the next day and would determinedly continue its efforts and deliberations. For, after all, the hour is getting late for passage of a new farm bill by the 91st Congress. To my amazement, here it is over 6 weeks later and the committee has not met. The clue to this mystery has just been disclosed.

Just this week, without warning or explanation, Under Secretary of Agricul-

³ CONGRESSIONAL RECORD, April 28, 1970, pp. 13358-13360.

ture, J. Phil Campbell, issued a news release charging:

Certain influences have bottled this bill (administration proposal) up in the House Agriculture Committee with an apparent aim of having no new farm bill at all with the result that cotton would revert to the Agriculture Act of 1958.

He further stated that the Department, the committee chairman, and the ranking minority member have "reached an agreement" on a new farm bill. I now ask of the Under Secretary, is it part of the "agreement" to prevent the committee from meeting for further consideration of a farm bill? It is becoming more and more apparent that earlier fears may have been well founded. I refer to charges made long ago by some farm leaders that the administration does not really want a farm bill but seeks to blame the farm district representatives for the lack of one simply because we will not take the unacceptable program offered by the Department.

I have been patiently waiting since June 2 to resume consideration of farm legislation. I believe our farmers join me now in urging prompt resumption of our efforts to get a bill. But Mr. Campbell should understand that I, for one, will not be intimidated into accepting in the Agriculture Committee a proposal that is clearly unacceptable to the farmers of my Nation, State, and district.

HICKEL ACTS TOO SLOWLY— SHOULD BAN MERCURY FROM U.S. WATERS

(Mr. ROGERS of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROGERS of Florida. Mr. Speaker, I am encouraged that Secretary of the Interior Hickel has officially recognized the problem of mercury pollution in the Nation's waterways, but feel that he is moving too slowly in halting the menace.

I wired Hickel last week asking that he halt all dumping of mercury into the Nation's waterways. I asked at that time that he either immediately get the States to take action or the Federal Government should ban it.

It has taken him 5 days to begin action. There have been hundreds of pounds of mercury dumped into waterways since then and by the time action is taken there apparently may be much more.

The really frightening thing about the entire situation is that no one questions the fact that mercury ingestion by humans can cause death, paralysis or mental afflictions. No one disputes this. And at the same time, the authorities at Interior and HEW and on the State levels as well, have not moved to halt it. I wonder why it has taken more than 3 months to arouse our public protectors of the environment and health. If we found cyanide being put into waterways there would be swifter action, I am sure. Yet, mercury is equally dangerous. Governor Brewer of Alabama today said that Secretary Hickel was "passing the buck."

Most of the authorities who have taken action have gone about it in a backward fashion. They have banned the taking or

eating of fish from areas where traces of mercury have been found, but we should stop the mercury pollution. It is the poison which is the problem, not the fish.

Under present law, Secretary Hickel could, and should, ban the dumping of mercury. I am also disappointed that the Department of Health, Education, and Welfare has not taken any action.

Secretary Hickel has been quoted as saying he would recommend court action if certain States did not take corrective measures. He has wired 17 Governors, and although tardy, this is good. But what about the other 33 States? Should we wait until the problem is evident there also? I think not. I think we know mercury is harmful to health and should ban it completely. Why should we wait for one State after another to turn out mercury? If all mercury were banned, the problem would at least be curbed now.

One of the real threats is that mercury will not dissipate like many substances, so that the mercury being dumped into waterways now will remain there as a live biological time bomb for years and years.

CAPTIVE NATIONS WEEK—1970

The SPEAKER pro tempore (Mr. ROONEY of New York). Under a previous order of the House, the gentleman from Pennsylvania (Mr. FLOOD) is recognized for 60 minutes.

Mr. FLOOD. Mr. Speaker, this week is the 1970 Captive Nations Week. July 12 to 18 is the 12th observance of this highly important week. We in the U.S. Congress, join with millions of our fellow Americans in expressing to the world our firm determination never to forget the freedom aspirations of all the captive nations and to work in every possible manner for the achievement of their eventual liberation from the bondage of Red totalitarianism and Sino-Soviet Russian colonialism. Their fixed objective of national independence and freedom is our objective, and each Captive Nations Week observance stresses this fundamental truth.

The remarkable feature of the annual Captive Nations Week is its steady growth and expansion from year to year. As countless of our fellow citizens come to learn the long list of captive nations, dating back to 1920, the more they are impressed by the significance and importance of the week. Following the leadership of several of our Presidents, our State Governors and our Mayors also proclaim the week, urging our citizens to dedicate themselves anew to the study of all the captive nations.

Under the guidance of the National Captive Nations Committee of Washington, D.C., State and local committees have been formed in practically all large States and major cities to observe the annual week. Moreover, the week has attracted the attention of numerous foreign countries so that in the Republic of China, South Korea, the Philippines, West Germany, Turkey, and elsewhere Captive Nations Week is being appropriately observed.

Mr. Speaker, there are already several concrete lessons that can be drawn from

these annual observances. I summarize them in this fashion:

First. By their consistent opposition to and vehement castigation of Captive Nations Week, Moscow, Peking, and the lesser lights in the Red empire have shown since 1959 their fear of the total captive nations concept as reflected in Public Law 86-90;

Second. The growth and development of Captive Nations Week in this country and abroad have demonstrated the deepened understanding on the part of our people and others of the basic and fundamental importance of all the captive nations to our national security and that of the free world;

Third. Our concentrated support of all the captive nations, including necessarily the dozen in the Soviet Union itself, is one of our most powerful non-military deterrents against further overt Sino-Soviet Russian aggression and a prime, formidable force for peace with freedom and justice in the world;

Fourth. A broad area of detailed work still remains to be done in exposing the complete breadth and depth of Sino-Soviet Russian impericperialism so that once and for all the peoples of the world will know and never forget who the real imperialists and colonialists are, so that the full impact of world opinion will fall heavily on the two last remaining impericolonialist centers, namely and solely Moscow and Peking, and

Fifth. To open the full vista of this area and to prepare the ground for this vital work, a Special House Captive Nations Committee becomes more urgent, more necessary, more indispensable with the passing of every day. On this commemorative occasion, I again call upon the Rules Committee to at least vote on the measures which have been submitted to create this desperately needed committee. I again ask the members of that committee to begin with my own, House Resolution 102.

As part of my remarks today, Mr. Speaker, I would like to include the following:

The President's proclamation of Captive Nations Week, 1970.

The Captive Nations Week proclamation of Gov. Marvin Mandel of Maryland.

The Captive Nations Week proclamation of Mayor Clifford S. Bartholomew of the city of Allentown, Pa.

An article by Dr. Lev E. Dobriansky of Georgetown University, Washington, D.C., entitled "Captive Nations in the 1970's," which appeared in the spring 1970 edition of the Ukrainian Quarterly.

Another article by Dr. Dobriansky which appeared in the summer 1970 edition of the Ukrainian Quarterly, entitled "Asianization—Not Vietnamization—Is the Winning Concept."

Aforementioned material follows:

CAPTIVE NATIONS WEEK, 1970—A PROCLAMATION BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

The Eighty-Sixth Congress on July 17, 1959, by Joint Resolution authorized and requested the President to proclaim the third week of July in each year as Captive Nations Week. The aspirations of the peoples of oppressed nations for independence and basic human freedoms are vital and inextinguish-

able. It is in keeping with our own principles and traditions as a free and independent nation that we should look with sympathy and understanding upon their hopes and efforts to realize these just goals.

Now therefore I, Richard Nixon, President of the United States of America, do hereby designate the week beginning July 12, 1970 as Captive Nations Week.

I call upon the people of the United States to observe this week with appropriate ceremonies and activities, and I urge them to renew their dedication to the cause of freedom and independence for all nations and to sustain these high ideals, which are both the previous heritage of this Republic and a foundation stone of lasting world peace.

In witness whereof, I have hereunto set my hand this seventh day of July, in the year of our Lord nineteen hundred and seventy, and of the Independence of the United States of America the one hundred and ninety-fifth.

RICHARD NIXON.

GOVERNOR'S PROCLAMATION: CAPTIVE NATIONS WEEK—JULY 12-18, 1970

Whereas, The imperialistic policies of Russian Communists have led, through direct and indirect aggression, to the subjugation and enslavement of the peoples of Poland, Hungary, Lithuania, Ukraine, Czecho-Slovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, Mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Serbia, Croatia, Slovenia, Tibet, Cossackia, Turkestan, North Vietnam, Cuba, and others; and

Whereas, The desire for liberty and independence by the overwhelming majority of peoples in these conquered nations constitutes a powerful deterrent to any ambitions of Communist leaders to initiate a major war; and

Whereas, The freedom-loving peoples of the captive nations look to the United States as the citadel of human freedom and to the people of the United States as leaders in bringing about their freedom and independence; and

Whereas, The Congress of the United States by unanimous vote passed Public Law 86-90 establishing the third week in July each year as Captive Nations Week and inviting the people of the United States to observe such week with appropriate prayers, ceremonies and activities; expressing their sympathy with and support for the just aspirations of captive peoples for freedom and independence;

Now, therefore, I, Marvin Mandel, Governor of the State of Maryland, do hereby proclaim the week of July 12-18, 1970, as "Captive Nations Week" in the State of Maryland, and call upon the citizens of this State to join in observing this week by offering prayers for the peaceful liberation of oppressed peoples all over the world.

Given Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 8th Day of July, in the Year of Our Lord, One Thousand Nine Hundred Seventy.

By the Governor:

MARVIN MANDEL.

PROCLAMATION

Whereas: Communist Russia, which has engulfed the countries of Eastern and Central Europe, the territories of half of Asia and Cuba at the very doorstep of the United States, continues to demonstrate its aggressive policies in Viet Nam; and

Whereas: The avowed aim of Communist Russia is the enslavement of the entire free world, including the United States; and

Whereas: The people whose native lands have suffered the horrors of Russian captivity, will never allow the cause and spirit of freedom to be stifled; and

Whereas: The United States of America remains the true citadel of freedom and hope

of all the oppressed peoples in the world; and

Whereas: The observance of "Captive Nations Week" throughout the United States will dramatize the plight of the captive and enslaved peoples behind the Iron Curtain; and

Whereas: The Lehigh Valley Branch of the Ukrainian Congress Committee of America will mark this year's "Captive Nations Week" with appropriate ceremonies on Sunday, July 19, 1970, to be held at West Park. Nineteen hundred and seventy marks the Twelfth Observance of this important week.

Now, therefore, I Clifford S. Bartholomew, Mayor of the City of Allentown, Pennsylvania, do hereby proclaim that the Week of July 12th through 19th, 1970, be observed as "Captive Nations Week."

In witness whereof, I have hereunto set my hand and caused the Seal of the City of Allentown, Pennsylvania, to be affixed this thirtieth day of June, 1970.

CLIFFORD BARTHOLOMEW, Mayor.

CAPTIVE NATIONS IN THE 1970's

(By Lev E. Dobriansky)

The captive nations in the aggregate, and particularly those in the Soviet Union and Red China, will undoubtedly assume an increasingly determinative role in world affairs during the 70's—for global peace or war. Little is it recognized, let alone understood, that numerous captive nations are involved in the mounting struggle between Moscow and Peking or that many potential captive nations exist in Southeast Asia, the Middle East, and in Latin America—the present target of systematic Red psycho-political warfare engineered by our prime enemy, the guardians of Soviet Russian imperio-colonialism. Shifts either way, within the Red Empire or in extension of it, cannot but seriously affect the security of the United States and that of the Free World. The ultimate question is how well prepared are we to cope with and capitalize on these inevitable shifts?

ILLUSIONS OF THE 60's

Overlapping illusions of the 60's actually predetermine a marked incapacity to meet such unavoidable exigencies, as, once again, was so clearly demonstrated by the most recent case of the Russian rape of Czecho-Slovakia. The prominent illusions of the 60's, unfortunately carried over into this decade, are in logical order as follows: (1) cessation of the Cold War (2) detente with the imperio-colonialist Russians (3) make-believe confetti diplomacy, resulting in irrelevant treaties on nuclear test bans, fisheries, airway routes, consular establishments, hoped-for strategic arms control and other extraterritorial minutia (4) ineffectual polycentrism in the Red Empire and (5) an impulsive, myopic neo-isolationism with short-sighted premiums on domestic priorities. With evidence and rational analysis, each of the illusions can be easily exploded, but the crucial point here is that each and all in combination have muddled our thinking and have also thickly clouded the foremost reality that has caused and fundamentally explains, in a sequential cumulation of events, our most pressing problems both internationally and domestically. That towering reality is the captive nations in the aggregate and their exploitation by Moscow and its syndicate members in their ever-present, compulsive drive for world domination.

If it could stand adequate definition, a talked-about policy of uncertainty and so-called pragmatic adjustment is essentially a weak continuation of past U.S. policy toward the USSR, the center of our chief enemy. It rests on identical grounds of misconception and misunderstanding with regard to the nature of the Soviet Union, not to speak of the determining structure of the Red Empire itself, and offers practically nothing in the way of constructive Free World leader-

ship for the attraction of freedom forces both within and outside the USSR. Even in the light of the Brezhnev doctrine itself, to predicate a policy on a prayed-for evolution of divisive forces within the Red Empire, without providing a magnetic, psycho-political pull for these forces, suggests a measure of naiveté in relation to Russian strategy and operations. Without the prerequisites of perspective, vision and a firm comprehension of the highly vulnerable structure of the enemy, sheer play-it-by-ear pragmatism in our foreign policy will virtually insure the outbreak of a third world war. All the phraseology about non-confrontation and the need for negotiation will be so much past rhetoric. In point of fact, play-it-by-ear pragmatism has led us into two world wars, and regardless of our different military posture today, it will certainly lead us into a third one. It is both frightening and inconceivable that this would be our policy orientation for the 70's.

To prevent a well nigh inevitable catastrophe, it is indispensable for us in this decade to dissolve as quickly as possible the lingering illusions of the 60's and to face up to the essential truths of our situation. The first is that the Cold War has not begun to cease or even to lessen; on the contrary, it is more extensive, and in certain areas more intensive, now than ever before. Vietnam, where the Russians have had us by the tail for years, the deep Russian penetration in the Middle East, Moscow's conversion of Cuba as a base for hemispheric subversion, and the U.S. itself gradually transformed into an enterprising terrain for Red political warfare are just a few notable examples of the Cold War being waged by Moscow and its proxies. In this and the broader context of Russian cold war strategy, wishful thinking about a detente with the worst empire in the history of mankind simply smacks of a truly supreme illusion.

Make-believe, confetti diplomacy may serve short-run political ends, but essentially it contributes nothing to the solution of basic problems and to the solidification of grounds for the avoidance of a hot global war. On the one side, it is employed as a demonstration of time and effort being devoted to the pursuit of peace, thus satisfying the natural instincts of most citizens while obfuscating the realities surrounding them; on the other side, it buys time for the rectification of some outstanding political and economic problems, in Moscow's unremitting drive for strategic military superiority, and its steady progression of Cold War operations on all continents. As for the illusion of polycentrism in the Red Empire, let it be said that a real monolith never existed in the empire, even when it was exclusively synonymous with the USSR three decades ago. There is a chasmic difference between effectual polycentrism and an ineffectual one, wherein the latter superficial inter-Party squabbles and rifts have prevailed for more than forty years. Plainly, so long as the USSR is the predominant power center of the Red Empire and enjoys political sanctuary within, room for effectual polycentrism is nil, notwithstanding Red China.

A dismantling of the first four illusions obviously leaves no ground for entertaining the last one on neo-isolationist strength and concern. For it is evident that the last feeds on the preceding four. A neo-isolationist mentality either believes the others to be true or is a mere expression of cowardice in coping with the problems of the world environment in which, whether we like it or not, we constitute an integral and critical part. In any case, the insular bias is a most useful tool for the enemy's strategy.

THE DOMINO THEORY AT WORK

The captive nations also are an integral and critical sector of the world environment.

Footnotes at end of article.

No matter how desperately some wish to brush their reality under the rug, with softer references and distorting interpretations, periodic lessons abound as to their blunt existence. The captive nations are the peoples imprisoned within the Red states under the dictatorship of the Communist Parties, and their consummate experiences attest to the overall truth that both in theory and action communism is but a mythology shielding the worst form of totalitarianism and imperio-colonialism in the history of mankind. For different reasons, many in our Government have feared and resisted a popular concentration on these nations. Yet a more solid course for education in freedom by contrast cannot be found than this. The more one concentrates on the approximately 1 billion souls in the captive nations, the more one begins to appreciate his freedoms and the pressing need of unity and solidarity for general freedom, not only among the still free nations of the non-communist world but also with the one-third of humanity in the captive nations.

In a column devoted to "demonstrations," an eminent analyst asks, "Why is there an absence of humane feeling about the enslaved populations in Eastern Europe and particularly in the Soviet Union?" For those duped into these "demonstrations," the answer lies in the fact that they haven't been taught and know scarcely anything about these captive nations. Even their parents share in this deficiency which could be expeditiously righted through governmental action. But common sense also plays its role. An old Spanish proverb warns, "A handful of common sense is worth a bushel of warning." When in this postwar period Red totalitarian aggression has been so blunt and obvious as in the cases of China, Korea, and Vietnam, one cannot but wonder about the common sense of otherwise many learned people in the Free World. We can perhaps forgive them for being unable to perceive the subtle and indirect aggressions undertaken by both Peking and Moscow in Asia, the Middle East, Africa and Latin America, not to mention the U.S. itself, but it is plainly unforgivable in these crass cases.

Inadequate as it may be, a modicum of common sense should guide the laboring citizen to think all this through in terms of the steady aggregation of captive nations since the early 20's. Much has been said about the domino theory in relation to Southeast Asia, but there can be no question as to its empirical application to this growth in the family of captive nations since the 20's. Fifty years of proliferated Red totalitarian and imperial rule are but a minute in historical time. Without oversimplification but with the guiding thread of essentiality, all one need do on a global map is to first encircle in red the Russian area encompassing Moscow and Leningrad, then in concentric form the non-Russian area from Byelorussia and Ukraine to Azerbaijan to the old Far Eastern Republic, then the Baltic States, then Central-South Europe over to North Korea, mainland China and North Vietnam, finishing for the exceptional moment with a red spot covering the island of Cuba. In Eurasia, the dominoes fell, one by one, as events permitted.

Clearly, as shown below, the domino theory has been at work in the very expansion of the Red Empire, which began in Moscow and in terms of ultimate, determining power today rests on Moscow for its survival. This list of captive nations cannot be too often reproduced for our sustained memories: *

The captive nation—Who's next?

Country and people and year of Communist domination:	
Armenia	1920
Azerbaijan	1920
Byelorussia	1920

Footnotes at end of article.

Cossackia	1920
Georgia	1920
Ideal-Ural	1920
North Caucasias	1920
Ukraine	1920
Far Eastern Republic	1922
Turkestan	1922
Mongolian People's Republic	1924
Estonia	1940
Latvia	1940
Lithuania	1940
Albania	1946
Bulgaria	1946
Serbia, Croatia, Slovenia, etc. in Yugoslavia	1946
Poland	1947
Rumania	1947
Czecho-Slovakia	1948
North Korea	1948
Hungary	1949
East Germany	1949
Mainland China	1949
Tibet	1951
North Vietnam	1954
Cuba	1960

Who's next? South Vietnam? Algeria? Colombia? Congo? Laos? Tanzania? Cambodia? Thailand? Greece? Guatemala? Chile? Israel?

President Nixon truthfully declared in 1969 that the non-negotiable issue in South Vietnam is the right of national self-determination and the independence of the free Vietnamese. What unfortunately was not stressed, and which explains much more, is that the United States cannot honorably afford again the addition of another free nation to the long list of captive nations. Too many knowledgeable Americans still recall the sell-out at Yalta and elsewhere of several East European nations by the Harrimans and other diplomatic undertakers providing the hearse of coalition governments and the like. Examine again the list of captive nations; each was targeted just as South Vietnam, Laos, Thailand, and others are today. An organic concept of captive nations enables us to view current crises differently and more perceptively.

NEW INSIGHTS UNDER CONCEPT

The concept of captive nations is historically founded, organic in character, and a guiding one for bold and decisive action. It has been wisely said, where necessity pinches, boldness is prudence. To exercise prudent boldness demands also a guiding concept. Despite the worldwide publicity given to the U.S. Captive Nations Week Resolution ten years ago and the annual reports on it since, it still remains a mystery how relatively few in the Free World comprehend the concept. Moscow, Peking and the Red satraps perceived its significance quickly and vehemently.⁵ We have sustained a cultural lag toward it.

Public Law 86-90 defines the broad concept of the captive nations clearly and succinctly. The captive nations are those that in the past fifty years have been overtaken and subjugated by Soviet Russian imperio-colonialism and its several totalitarian offsprings. Quite plainly, how all of the Red present came to be what it is, regardless of rifts and squabbles, is the answer as to who are the captive nations. As the list above shows, to enumerate them accurately and historically, one must begin in 1920, not in the 1940's or later.

It must be borne in mind that the first international wars and aggression waged by Soviet Russian imperio-colonialism under the deceptive guise of communism were against newly independent states and nations like Byelorussia, Ukraine, Georgia, Armenia, Azerbaijan and several others that are now imprisoned in the Soviet Union. The second wave of this imperialist aggression reduced Latvia, Estonia and Lithuania to captivity in the early 40's; and the third wave in the later 40's enslaved a whole new group into the growing family of captive nations, such

as Poland, Hungary, Czecho-Slovakia, Albania and so forth. Inspired, assisted and trained offsprings of this Red tradition of conquest and domination of people dropped the totalitarian curtain about the peoples of Yugoslavia, mainland China, North Korea, North Vietnam and Cuba in this and the decade after.

If the domino process has ever been at work, it certainly and unquestionably has been in the methodical Red conquest and aggregation of captive nations. If one fails to understand this process, executed largely and basically through the whole panoply of psycho-political warfare techniques, he then does not know the history of Eurasia these past fifty years. Any appreciation of the fundamental distinction between the captive nations—the exploited peoples themselves—and the Red totalitarian states is completely lost on him. It is this working distinction, implicit in the very concept of the captive nations, that has cast profound fear in the professional propagandists of the Red states. More, an inability to see this organic process of politico-military conquest from 1917 to the present beclouds also the important truth as to the chief enemy of the Free World.

THE CHIEF ENEMY

Some Free Asian leaders may well honestly disagree with the logical and factual determination of the Soviet Union—more precisely Soviet Russian imperio-colonialism—as the chief enemy. In one sense they are not wrong when their immediate danger of a proximate and aggressive Red China is properly and justly weighed. No matter where, sheer survival for freedom is an incomparable, conditioning force. Moreover, the collapse of Red China would spell the beginning of the end of the Red Empire. Nevertheless, at the moment there is a more general truth affixed to the global framework which we must face with equal awareness and perspective. And that is the primacy of the Soviet Russian enemy. In the broader global framework and on the basis of historical evolution itself, let us not forget the fundamental Soviet Russian contributions that have been made to the training, economic and military equipment, and the apparatus of the North Korea army and the tragic Korean war that ensued, and to the totalitarian and mini-imperialist Hanoi regime, an aid which has protracted the Vietnam war more than any other Red totalitarian factor.

Concerning the war in Vietnam, which really involves three fundamental factors—they are, the seventeen million captives in North Vietnam, the aggression by totalitarian Hanoi backed essentially by Russian Moscow, and the valiant endeavor of the patriotic and nationalist South Vietnamese not to be forced behind the Red totalitarian curtain—this simple conflict could have been over three or four years ago if it hadn't been for the circumstantial combination of sophisticated Soviet Russian aid and America's complete misconduct of the war. This has produced more pseudo-rationalist nonsense than any war in this century.

In saying this, one is siding with the human boils and carbuncles of American society, for even the healthiest of organisms are capable of such poisonous excesses. The virtual and overt traitors of freedom in the U.S., meaning specifically the professional pacifists, the melodramatic and poor imitations of mid-19th century Bakuninists and Blanquists, who ignorantly spout Marxism, the ridiculously bearded Trotskyists, the basically ignorant and scant minority of students, and many naive clerics and so-called liberals—always pawns for the professional Red revolutionary who manipulated this species in the 30's and is repeating it now—are of course political warfare fodder for Hanoi, Peking, Havana and Moscow. Like the Russians they protesteth "peace" or "mit" too much, and we cannot but wonder what peace they seek.

Most significantly, their stony silence about the captive nations indicates their motive and objectives.

ASIANIZATION, NOT VIETNAMIZATION

Relative to the captive nation of North Vietnam and the potential one in South Vietnam, we in America have so far failed in coping with what some call revolutionary warfare and what is really Russian-developed psycho-political warfare as applied in Vietnam. The so-called and misnamed Vietnamization of the war in Vietnam could have been accomplished years ago, in fact during the Eisenhower period. What was required was a psycho-political warfare concept extending into North Vietnam and buttressed by American armed logistics. With American military withdrawal from Vietnam, its application should be seriously considered in a new context of Asianization of the war with the presence of not only more Korean divisions, but also Free Chinese and other Asian divisions.¹ Developments in Laos, Cambodia and Thailand alone show the broad front of Red aggression and political warfare from the Mekong Delta to Calcutta.

Regrettably, we Americans still don't understand this psycho-political warfare, which today extends even to the terrain of the United States itself. If anyone is to be charged with a specific irresponsibility in the United States for this institutional incapacity, it is Senator Fulbright of the Foreign Relations Committee. He and the ever-blundering Harrimans have for years opposed and sat on the Freedom Academy measures in the U.S. Congress which are proposed to equip Americans and their allies in the ways and means of this type of warfare. This is by no means an unfounded charge; it can be easily documented and justified. Its tragedy is that it involves other peoples, including the captive people of North Vietnam and all others in the extensive Red Empire. It involves us, completely and irrevocably.

INDOMITABLE NATIONALISM IN THE CAPTIVE WORLD

By the very nature of realities prevailing in the captive world, conditions of psycho-political warfare are always extensive and omnipresent. It has been truly said, "In a free country there is much clamor with little suffering; in a despotic state there is little complaint, but much grievance." In the Soviet Union, which Alexander Solzhenitsyn has accurately described as a "sick society," the dozen and more captive nations are being subjected to a new wave of political repressions, cultural genocide, religious oppression, imperialist-colonialist economic exploitation, revived MVD operations, and concentration camp consignments. All this and more in the sweep of Russian consolidating moves for Moscow's expanding Cold War operations in Asia, the Middle East, and the Western Hemisphere.

In mainland China, North Korea and North Vietnam the captive peoples are under the worst conditions of totalitarian tyranny, economic privation, and dehumanization left in the train of a grotesque "cultural revolution," guerrilla war activities on the Korean peninsula, and a war of aggression by Hanoi. In captive Cuba similar forms of Red exploitation of the people prevail as that unhappy island is being rapidly transformed into a Russian base for continental political warfare. And in Central Europe the Russian rape of Czechoslovakia last year confirmed again the oppressions and imperialist-colonialism imposed on the captive peoples in that area.

Among the numerous forces at work for freedom in the captive world, the most dominant is the indomitable force of nationalism. This natural force means national self-determination and independence, economic freedom and opportunity, cultural progress and a respectful place in a peaceful commu-

nity of independent nations. Expressed in many ways, this persistent force is rampant in the Soviet Union; it is manifested daily in Central Europe; it permeates all of Asia; it is the basis for Cuban resistance and hope. As the record well shows, nationalism is the greatest insurmountable obstacle to Red totalitarianism and Soviet Russian imperialism.

In Ukraine, the largest captive non-Russian nation both in the Soviet Union and in Eastern Europe, this spirit of nationalism abounds and expresses itself persistently in many, diverse forms. Without Ukraine, the Soviet Union could scarcely endure. This fundamental insight has even surfaced to the level of open, literary expression within the USSR itself, where increasing doubts surround the possible survival of the Soviet Union by 1984.² In any studied analysis, this captive nation is the focal point of the captive non-Russian resistance in the USSR.

THE BIND WE'RE IN

Whether viewed from the East or the West, efforts to wean less powerful Red states from the direct or indirect control and influence of the powerful Soviet Russian center will come to naught so long as this center is afforded psycho-political sanctuary within the substrate empire of the Soviet Union. This truth is the clear lesson of the Czechoslovakian tragedy. The free governments in the West clearly found themselves in a bind. And they will continue to be in this bind unless a radical shift is made in policy toward the captive nations within the USSR.

That such a policy shift can be executed with maximum contribution to peace has been justified time and time again on a number of issues. In areas of diplomatic relations, meaningful cultural relations, Voice of America and Radio Liberty broadcasts and many others, the shift would begin to place Moscow in a bind as concern its aggressive Cold War operations, aid in Vietnam and the Middle East, as well as in Cuba and our hemisphere. A progressively insecure Cold War aggressor begins to generate his own curbs and limitations.

The Brezhnev doctrine further substantiates the truth of our bind. In essence, a contemporary version of traditional Russian imperialism, this doctrine can be applied by Moscow to any Red state in the West or in the East, including mainland China; even to ostensibly socialist states in the Free World, all for the goal of insuring the security of the mythical commonwealth of socialist states. This doctrine is in itself a confession of intent and also weakness. The fundamental weakness is represented by the existence and struggles of the captive nations.

CAPTIVE NATIONS WEEK, A SPECIAL COMMITTEE AND THE MEDIA

An old French adage teaches us, "the weakness of the enemy forms a part of our own strength." The captive nations in the aggregate constitute the foremost weakness of the totalitarian Red Empire. As such, they are one of the most essential parts of our Free World strength. The more we concentrate on the captive nations, the more we intensify the weakness, the insecurity and the doom of all Red governments. But to advance along this sure road toward world freedom and the avoidance of a general hot war, citizens of the Free World must scotch certain misconceptions and wishful thoughts.

The first misconception is about the captive nations themselves. The captive nations concept must be clearly understood. The family of captive nations extends from Central Europe into the Soviet Union out to Asia and over to Cuba. Second, it is a species of wishful thinking to believe that any genuine detente is possible with the vast Red Empire. The dynamics of history, greased with the victories of Red totalitarianism and the worldwide network of Red psycho-political warfare, simply do not favor this. Wishful, too, is the misleading notion of spheres

of influence, a sideline of the containment policy. It not only compromises principle with its accommodationism but also is unrealistic and self-defeating. Our enemies don't pour billions of investment into Cold War operations for physical exercise and self-enervation.

Contrary to absurdities witnessed in some places of the Free World, including the United States, the youth, the workers and the intellectuals in the captive world know what it means to be deprived of freedom. With their grasp of the real and true values of human existence, these captives of Red totalitarianism are today freedom's most trusted allies; tomorrow they shall be its sternest guardians.

The eventual solution of the titanic struggle in this century rests not only with military arms, but rather with the effective linkage of the forces of freedom in the non-Red world with those of all the captive nations, particularly those in the huge concentration camp called the Soviet Union. The forging of this link with the truly genuine NLF's and their tremendous legions behind all three Red curtains can only be effected through the means of psycho-political penetrations that are indispensable to the deterrence of a hot general war. The captive nations are our formidable allies, and had we sensibly tapped their resource in North Vietnam, the war there would have been over long ago.

In this new decade, there are three ways for you, as an individual citizen, to advance the lines and goals expressed here. One is to urge your Congressman to support the establishment of a Special Committee on the Captive Nations in the House of Representatives.³ The benefits of such a committee would be immense, both domestically and internationally. Second, our media—the press, TV, and radio—have consistently minimized the captive nations issue and, as Vice President Agnew correctly maintains, have contributed to a heavy imbalance in popular thinking concerning the world situation and its impact here. By protest and demand for public service programs you can correct this unfair condition.

And third, by participating in the annual Captive Nations Week observance held every third week of July (1970—July 12-18) you can let our enemies know that we will never acquiesce to any permanent captivity of the nations in Eurasia and Cuba and also our captive allies that we are determined to work for their freedom, which in essence means our national freedom as well. In this, you will be in solidarity with our Free Asian allies who are fighting for their survival and who conduct some of the largest Captive Nations Week observances.⁴ The captive nations will play their role for world freedom in the the 70's, about this there can be no doubt. Will you play your role for our own freedom without more local wars, needless sacrifices, and wasteful internal confusion and division?

FOOTNOTES

¹ See "Castro and the Americas," CONGRESSIONAL RECORD, February 10, 1970, pp. 3185-3191.

² Herman F. Achminov, "Kremlin Plays A Waiting Game," *Institute for the Study of the USSR*, Munich, November 1969.

³ David Lawrence, "Why Not Protests on Soviet Policy?" December 18, 1969.

⁴ For further elaboration, see *Tenth Anniversary of the Captive Nations Week Resolution 1959-1969*, U.S. Congress, 1969, p. 105.

⁵ For documented evidence, see Lev E. Dobriarsky, *The Vulnerable Russians*, New York, 1967, p. 453.

⁶ See "Asianization—Not Vietnamization of the Vietnam War," *Insight On the News*, Miami, February 15, 1970, p. 9.

⁷ See Andrei Amalrik, *Will the Soviet Union Survive Until 1984?* New York, 1970, p. 93.

⁸ See *Captive Nations Week, Red Nightmare, Freedom's Hope*. USGPO, Washington 1966, p. 310.

*E.g. "Resolution on 1970 Captive Nations Week," *Asian Outlook*, Taipei, December 1969, p. 41.

ASIANIZATION—NOT VIETNAMIZATION—IS THE WINNING CONCEPT

(By Lev E. Dobriansky)

As in each preceding year for the past decade, in the fall of 1969 this writer was privileged to travel in several areas of Free Asia, from Korea to Thailand, and to discuss the foremost problems of Asia with high governmental and civic leaders. In November, from the time of my lectures on Soviet Russian and Castroist political warfare in the Americas at the Freedom Academy in Seoul to my address in December on the captive nations before the Third World Anti-Communist Conference in Bangkok, endless hours were spent in discussion on the Vietnam War, attitudes toward the American presence, the scope and depth of the Red threat to Free Asia, the efficacy of U.S. foreign policy and so forth.¹ What emerged from these productive discussions was a concept suggested by the free Asians themselves to tackle successfully the aggressive designs and operations of the communist imperialists. One clearly more realistic than the U.S.-sponsored Vietnamization concept circulated at the time.

Upon my return to the States I immediately sought to test this more realistic concept of Asianization among our groups and citizenry. Before an Army reservist group led by Mr. Bryce Harlow, an aide to the President, and meeting in the National Press Club in Washington, this concept was elaborated with encouraging, receptive report. Toward the end of December in Miami, a three-hour radio program was devoted to it over the Alan Courtney Show, and again with favorable results despite some severe criticism by phoned-in comments predicated almost entirely on the recurring fear of Red Chinese or Soviet Russian mass intervention. In February, a Miami periodical published a short but essentialist article on the concept.²

Subsequently, because this concept and the war in Southeast Asia bear an integral relationship to the more fundamental captive nations thesis, the concept was presented in the broader framework of the *domino fact* of the cumulative captive nations experience.³ From the angle of Free World interest in Southeast Asia, the Vietnamization concept has always been empirically deficient and misleading; from the angle of the historical cumulation of captive nations, from 1918 to the present, this same concept is insular and suggestive of a lack of perspective. The well-grounded concept of Asianization is neither empirically deficient nor without historical perspective.

THE ESSENCE OF VIETNAMIZATION

You will recall that since the fall of 1969 our policy toward Southeast Asia has been reshaped by the so-called Nixon doctrine which emphasizes progressive Asian self-reliance in coping with internal insurgencies and Red aggression. The doctrine can be theoretically implemented in many forms, but it soon became evident what the Administration had in mind. To achieve "victory" in Vietnam, the form adopted was an insular one, calling for the Vietnamization of the war in South Vietnam. Some of the ingredients of this implementing form of the Nixon doctrine are, of course, subject to serious question. For example, the so-called victory in Vietnam against combined Red aggression cannot be anything but a negative one in character. Simply to preserve your right possession against aggressive theft entails no net positive gain, and in the long haul may even result in positive defeat. Lest we delude ourselves with semantic twists, genuine victory in a

war, regardless of its type, means positively the destruction of the aggressor, in this case, proximately, Hanoi, and the liberation of some 17 million North Vietnamese captives.

An honest appraisal of our involvement in Vietnam would also demand that we recognize that the war there is, and has always been, an integral part of Red aggression in Southeast Asia generally, in Korea, in the Middle East, in Eastern Europe and in Latin America. Admittedly, it is difficult for many of our people to see this as an evolving integralist pattern, but this is the successive expression in time of Red global strategy, primarily and decisively executed by imperialist Moscow. From the genetic-analytical viewpoint of cumulating captive nations since 1918, namely the conclusive results of this successful and unfolding Soviet Russian strategy, the pattern is unmistakably clear; only the details of historical contingency and accident shift and must be logically placed accordingly. This crucial perspective will be applied to the Vietnam sector later. Quite significantly, it is almost totally ignored in American discussion of the Vietnam case; in the Far East, on the other hand, the struggle for national self-determination on the part of Korea, China, Tibet, Vietnam, Cambodia, Laos, and others is strongly conceived in terms of the cumulative captive nations' experience.

These two fundamental strictures overshadow all others in weighted importance and strategic effect. Criticisms bearing on democracy in South Vietnam, religious conflicts, the paper NLF and scores of other misleading superficialities have been unintelligently magnified to the inadvertent or deliberate benefit of the enemy. In pointing out these two fundamental strictures, we can now determine objectively, and aside from imputed political maneuverings, the essence of Vietnamization.

As gathered from the President's several statements, Vietnamization means a gradually staged withdrawal of American ground troops and their substitution by South Vietnamese personnel to undertake the burdens of the war. American logistical and air and naval support will be continued as the overall capability of the South Vietnamese is enhanced. It is envisioned that the same type of progress seen over the years in Korea will take place in South Vietnam, and without any needed presence of U.S. ground forces. With this augmented responsibility on the battlefield, it is expected that the Thieu government will also broaden the popular base in South Vietnam, which, as a matter of fact, has been considerably broadened in the hamlets and provinces for the past two years.

In ideal terms, then, this application of the principle of implemented self-reliance in South Vietnam entails several major phases of development. One, clearly, is growing South Vietnamese self-determination in all spheres, including the military. Second, with steady U.S. withdrawal, this in turn would hopefully eliminate grounds for Red and even some American charges of "U.S. imperialism." That this point has to be brought up indicates in itself the propaganda inefficiency of our Government. The third ingredient of this policy vision is an optimistic fading out of the war as the South Vietnamese extend their control to more than 90 per cent of the territory. And, fourth, the climax of the Vietnamist vision is that with security assured and maintained, a rapid economic development would ensue in South Vietnam, along the lines of the Republics of China and Korea.

THE UNREALITY OF VIETNAMIZATION

Long before the Cambodian decision, the unreality of this projected Vietnamization policy was clear to some close analysts of the war in Asia. It must be confessed that, emotionally, for the good of our own country and the future of Vietnam one could not but

hope for the successful fruition of this policy. Rationally, however, and in the spirit of constructive criticism, it was necessary to point out certain contradictions, ifs, and assumptions involved in this policy, as well as to outline an alternative policy that would enable us to come to grips with the total Asian situation. Certainly, this alternative path does not include such thoroughly irresponsible notions as (1) "The national security of the United States is not involved in Vietnam," "We cannot win a military victory in South Vietnam";⁴ (2) "we are involved in a war that no one wants, that no one really understands";⁵ (3) "Vietnam has been most overstated. . . . We have built it up." "There is no good way out of Vietnam";⁶ or (4) "I submit that our national interest would best be served by a unified Vietnam even if under Communist rule, as it would then serve as a relatively firm barrier to Chinese expansion."⁷ These erratic utterances on the part of supposed leaders in American opinion are a measure of the state of confusion that has engulfed this nation.

Concentrating on factual essentials again, it must first be stressed that the war in Southeast Asia has not been confined to the territory of South Vietnam. Actually, and in varying degrees of political and guerrilla warfare, the sector of this war has for over a decade extended in arc-like shape from the Mekong Delta to Laos, northeastern Thailand, north Burma, over to Calcutta in India. In this region, South Vietnam has not been the only target of Red aggression, though in the past five years it became the most prominent one. Red sanctuaries in Laos and Cambodia can insure a protracted and even a more intensified war against the South Vietnamese, thus impeding the Vietnamization process and endangering the American position both in Paris and at home. Added Red pressures in Thailand and Burma would aggravate the situation further. The President's initiative on eliminating the proximate sanctuaries in Cambodia was a wise and necessary one, but in view of its self-imposed restrictions as to time and depth, it is a doubtful gamble that this action will succeed for the long pull ahead.

Taking a broader view of the situation in Asia, it can be realistically said that this arc of Red aggression goes beyond the indicated terminal points. In fact, it curves southward toward Indochina and then turns northward toward the Philippines and all the way up to the Republic of Korea. Surely, with some perspective, one cannot ignore Red probings, infiltrations and pressures in these free areas of Asia, including even Japan. In short, Vietnam is only a hotly pinpointed sector of the broader area of Red operations in Southwest Asia, and this region in turn is only an integral part of the more comprehensive field for these operations in Asia generally. The Sino-Soviet Russian rivalry in no way affects the outlines of this pattern. If anything, it intensifies the imprints of its contours by the competition resulting from this conflict.

With the empirical base of the Communist war in Asia far broader than what Vietnamization implies, it should also be evident that by Vietnamizing the war we are inadvertently giving credence to the myth that the conflict in South Vietnam is a "civil war." Basically supported by the Russian totalitarians, the war there is international in character and essence. In the post-Cambodian period, this is clearer than ever. How many of our people are short on the history of Russian and Communist techniques of political warfare has been well illustrated these past few years by their naive acceptance of the civil war myth. Going all the way back to 1918 in Eastern Europe, they would discover the selfsame applications of this old technique in Byelorussia, Ukraine, Armenia and elsewhere. The more accurate concept of Asianization disallows any currency of this oft-repeated myth.

Footnotes at end of article.

In addition, the Vietnamization policy has also placed in doubt the actions to be taken by our allies in Vietnam. The same degree of hesitancy and doubt has spilled over into the Cambodian and Laotian situations. Regarding Vietnam alone, the Philippines has pulled out most of its 3000 man force, and the question still is as to what will be the fate of about 50,000 Koreans, 10,000 Thais, 7500 Australians and 500 New Zealanders now fighting in Vietnam? Their combined presence in Vietnam all these years in itself demonstrated the Asianistic basis of this war, rather than just a Vietnamistic one. Logically, to talk about Vietnamizing it means to call for their withdrawal, too. Now with Cambodia and Laos publicized in this Southeast Asian war sector—not just Indo-Chinese—these forces of genuine Asianization should be expanded more than ever before.

Prior to the President's decision on Cambodia, the Vietnamization policy was rapidly heading for a critical test, specifically in Hanoi's challenge to the armed capability of the South Vietnamese forces. Last year and this, over 10,000 North Vietnamese regulars infiltrated the Mekong Delta, and supply routes and sanctuaries were being expanded in Laos and Cambodia, down into April, 1970. From all evidence, Hanoi was determined to put the policy to a test. Fortunately, the Sihanouk ouster provided the U.S. and its allies with a golden opportunity to counter this challenge by entering Cambodia and destroying the major sanctuaries. However, though time was gained for the progressive build-up of the South Vietnamese forces and Hanoi suffered a major reversal, the long-run picture still remains one of typical Red protracted warfare as Hanoi consolidates its gains in Laos and parts of Cambodia, where undoubtedly new sanctuaries are being established. This change in the Indo-Chinese sphere markedly affects the total Southeast Asian sector of the war and demands more than ever a policy of Asianization rather than Vietnamization.

THE POLICY OF ASIANIZATION

In a significant release, Representative E. Ross Adair of Indiana at least raises the question "Asianization not Vietnamization?" And as he puts it, "Almost unnoticed in the debate over President Nixon's move to destroy the communist sanctuaries in Cambodia has been the change in the political situation in southeast Asia in particular and in Asia in general. For the first time in years Cambodia has good diplomatic relations with both Thailand and South Vietnam. Both nations are actively lending military assistance to Cambodia in her struggle to survive as a nation. Indonesia has indicated it may be willing to extend some limited aid to Cambodia. Japan has extended economic aid; Taiwan has also offered aid to Cambodia. Thus, across the bottom of the southeast Asian peninsula, North Vietnam faces a group of hostile nations."⁵

Whether one is given to think narrowly in terms of Vietnam or, since Cambodia, a bit more flexibly in terms of Indo-China or, with more knowledge, in terms of Southeast Asia or, with full rational perspective, in terms of Red strategy for Asia, the alternative policy cannot logically be one other than the Asianization of the war. Empirically, this has been shown by the embryonic presence of other Asian allies in Vietnam. Our fault in the past has been to Americanize that part of the war rather than to Asianize it. As part of the more extensive war in Southeast Asia, logically, Vietnam has been an Asian battle in the global conflict between the freedom of nations and basically Soviet Russian imperio-colonialism. The Red Chinese contribution to North Vietnamese aggression can hardly be compared to Moscow's aid.

The more realistic Asianization policy would augment the present Asian forces in Vietnam. Since the changes in situation which occurred in April 1970, this would now

apply also to Laos and Cambodia. The plan of augmentation would entail a number of essential steps. One, the U.S. would continue to withdraw its ground troops, but it would also guarantee its Asian allies proportioned logistical support in the Southeast Asian war against imperialist Communist aggression. Two, considering security needs elsewhere, it may be necessary for every additional Korean division placed in Southeast Asia to send a withdrawn American one for security duty in Korea.

Another step in implementing Asianization would be the engagement of Japanese economic power in revolutionary warfare. Of considerable and vital importance in this type of warfare is the construction of a vast network of roads and highways, which would deny the advantage of inaccessibility to the guerrillas and enhance the immobility of allied forces. This Japanese investment can multiply later in Hondas and other types of transportation. For the long-run security of Japan itself, a massive effort of this sort and at this time cannot but pay heavy dividends.

As the policy in application gains momentum, further steps would be the inclusion of nationalist Chinese forces, the attraction of Indonesian and Malaysian aid, and increases in Thai, Philippine, Australian and New Zealand armed contributions. The Republic of China has consistently offered to help with military man-power in Vietnam, but the offer has never been accepted. Groundless fears about Red Chinese intervention and Vietnam-Chinese relations apparently have obstructed this aid. With Red China in a thoroughly chaotic state, it is most unlikely that it would commit its forces in Southeast Asia, not to mention the constant threat posed by Taiwan. As for the nationalist Chinese presence in Vietnam, little difficulty would result from a concentration of its forces along the DMZ line in Vietnam and extended into Laos, cutting off the Ho Chi Minh supply routes.

ADVANTAGES OUTWEIGH RISKS

When one considers soberly these main outlines of the Asianization policy, he comes to realize that its calculated advantages far outweigh the risks. Indeed, the advantages would far exceed those of our present Vietnamization policy and, most important, the risk of protracted warfare would be considerably less. Nor would the risk of escalation into a general war be greater. One stubborn lesson of our Vietnam experience has been an excessive preoccupation with comparative risks that has led us into a mire of errors and serious omissions, as for example not bombing the dikes in North Vietnam or blockading Haiphong with sunken ships. Any war, if to be won, demands bold risk-taking.

By Asianizing the war not only in Vietnam but in Southeast Asia, where the entire front really exists, we would reap an accelerated cessation of the war in Vietnam, assuming of course U.S. logistical support throughout. Throughout Free Asia one is constantly told, "We don't want or need your manpower. We have more than enough. What we do need from you is the fire-power." A second clear advantage of Asianization is that it would place far greater emphasis on the all-Asian nature of the war there and its integral significance for the world struggle. The most egregious fallacy circulating in the United States is that the war in Vietnam or in Southeast Asia is somehow unrelated to the world conflict between national freedom and Communist imperialism, this despite the decisive contributions made by the Russians to Hanoi.

Moreover, the policy would provide an expanded framework for the sound development of Asia for the free Asians. It would instill tremendous hope for the future in the hearts and minds of the free Asians, and doubtless, through them, to the three-quar-

ter of a billion captives on the mainland. In addition, a skillful implementation of this policy would definitely undermine the broad Red front of aggression from Calcutta to the Mekong. But, perhaps, what is most important is that this course of action would provide a catalyst for the formation of a counterpart on this side of the world to the established NATO—a PATO, the Pacific Asian Treaty Organization, consisting of Pacific powers, such as the U.S. and Canada, and our Asian allies. The wars in Asia justify a PATO to thwart future Red aggressions.

Those who talk about "escalation" of the war in Vietnam fail to recognize the fact that the war front in Southeast Asia has always been broader than Vietnam. The Vietnam war has just been one sector of it. Intensified action through Asianization and in other sectors would bring the war in the Vietnam sector to a virtual stop. In part, the Cambodian episode has indicated this, but the determining question now is how much of a follow-up will be produced for the rest of Indo-China. Dynamic Asianization, with dynamic American political and diplomatic leadership, is the rational answer.

In brief, then, the policy of Asianization as described here really extends and magnifies what essentially has been present in Vietnam for years. And it applies the rationale to the real front of Southeast Asia. A growing solidarity of interest and action for survival would move even Burma and India into more overt, constructive action against Red aggression. Such developing solidarity would undoubtedly have an enormous impact upon all of Free Asia, from Korea to New Zealand to India. Its impact on the totalitarian regimes of Peking and Moscow would be a sobering one as concerns planned future aggression. As pointed out before, Red China is in such chaos today that it couldn't risk a repetition of Korea, which in itself was an unforgettably sour experience for her. As for the USSR, which follows the necessary policy of not committing massively its unreliable forces in overt warfare, it is so over-committed now in other Cold War ventures and is patently in an economic mess within its own empire-state that it would not entertain the risk of armed intervention which so many falsely fear.

A FINAL PERSPECTIVE

Though this final note justifies an article in itself, it must be recognized that on the world scale the relative military strength of the U.S. has eroded these past ten years, a fact resulting both from the enemies' persistent build-up and a foolish American absorption with nuclear parity vis-a-vis the USSR. With this development, the areas of flexibility and power determination have become restricted. Thus a greater need exists for diplomatic skills and vision, political foresight, and determination to do what must be done for the ultimate security of our Nation. The pursuit of Asianization affords the opportunity for all this.

What's more, the Asianization course also affords us the best chance to prevent any further additions to the long list of captive nations. The war in Southeast Asia, involving national self-determination against Red imperialism, is directly related to the previous experiences of all the present captive nations.⁶ To the question at the end of the score sheet on the captive nations—"Who's next? South Vietnam? . . . Laos? . . . Cambodia? . . . Thailand?"—the resounding answer can be No, with the forward looking policy of Asianization.

FOOTNOTES

¹ See "Castro and the Americas," CONGRESSIONAL RECORD, February 10, 1970, pp. 3185-3191; also, "Enslaved Peoples Under Communism," CONGRESSIONAL RECORD, February 5, 1970, pp. 2631-2632.

² Lev E. Dobriansky, "Asianization—Not

Vietnamization—of the Vietnam War," *In-sight On The News*, Miami, Florida, February 15, 1970, p. 9.

³ "Captive Nations In The 70's," *The Ukrainian Quarterly*, New York, Spring 1970, pp. 24-35.

⁴ Clark Clifford, "National Security of U.S. Is Not Involved In Vietnam," *The Washington Post*, May 17, 1970.

⁵ Gov. Nelson A. Rockefeller, Address in Ithaca, New York, *UPI*, May 16, 1970.

⁶ George W. Ball, *The Evening Star*, Washington, D.C., January 12, 1970.

⁷ Sen. Claiborne Pell, Senate address, *UPI*, June 30, 1970.

⁸ E. Ross Adair, *Report From Your Congress*, Washington, D.C., June 8, 1970.

⁹ *Captive Nations In The 70's*, CONGRESSIONAL RECORD reprint, USGPO, Washington, D.C., 1970, p. 5.

Mr. McCORMACK. Mr. Speaker, throughout the free world, as in previous years, government officials, educators, and other leaders are joining in the observance of 1970 Captive Nations Week.

Although it has been a quarter century since the end of World War II, millions of persons today still live in captive tyranny in the nations of Eastern Europe, on the Asian and African Continents, and other countries where totalitarianism and dictatorships thrive on the suppressed citizens of the nations which were once free and open, with liberty as a way of life.

The countries behind what we have for many years called the Iron Curtain still remain satellites of Soviet power. The Sino colonialism still reigns throughout most of the Asian land mass, and in the tiny nations of Africa, we still find tribal nations that live in horror and fear of those who govern.

While the futility of war and the misery that accompanies it have proven very little in the expansion of national freedom, the observance of 1970 Captive Nations Week presents to us in the Congress, and to the free nations of the world, an even greater challenge.

The challenge is to us concerned with the plight of the oppressed, one of confrontation, not in the form of military action, but in the form of the truth, how we face it, and what we must do to see that its spirit survives. For if the captive nations of the world are to live, and some day be free, the spirit of truth must likewise live on.

We must never cease for a moment to forget the nations, large and small, which live under dictatorship. We must never forget the ideals of the people who yearn for freedom, and most of all, we must never forget that it is freedom which is the truth they seek, and cannot be forgotten.

We likewise are faced with another challenge—one of commitment. On this Captive Nations Day, let us resolve to rededicate ourselves to the spirit of freedom that we in America enjoy, while we commit ourselves to doing all possible to see that the spirit of freedom of the oppressed nations lives on. Never let us wane from the conscious fact that our spirit of freedom, and the absence of captivity, is one of our most cherished national traditions.

A special tribute is in order, I feel, to the National Captive Nations Committee of Washington, D.C., who for 12

years have spearheaded this annual observance of Captive Nations Week.

To the scores of national organizations which have as their cause the liberations of oppression and the restoration of freedom in the captive nations, I likewise offer my congratulations for their massive effort in keeping alive the cause of these people.

May I suggest to my colleagues in the House that the 1970 observance be the occasion for our rededication to the principles of freedom, and an expression of our determination that the spirit of freedom and truth shall not die in these foreign lands where our spirit of liberty, and theirs, shall again, with God's help, reign throughout their nations.

Mr. DERWINSKI. Mr. Speaker, I am pleased to join the distinguished gentleman from Pennsylvania (Mr. FLOOD) as the House commemorates Captive Nation's Week.

With the growing threat to peace resulting from Soviet actions in the Middle East and their continued instigation of aggression in Southeast Asia, the plight of the people long captives of communism deserve our reemphasis.

The world cannot exist in peace with half the people free and half under the yoke of communism. The captive nations have been accurately described as the Achilles heel of the Soviet empire. It is important to note that the Soviet autocrats have not been able to suppress the nationalism of the captive peoples. The forces of nationalism are continuing to work for their right of self-determination, legitimate independence, economic freedom, and their proper places in a peaceful community of truly independent nations.

The issue of the captive nations and the issue of commemoration of Captive Nation's Week is as clear in its significance at this time as in any period since the close of World War II.

Mr. Speaker, to emphasize recognition of the importance of Captive Nation's Week and to demonstrate the nationwide support which this movement receives, I am pleased to include as a continuation of my remarks today the following material:

Proclamations issued by Gov. James A. Rhodes, of Ohio; Gov. Edgar D. Whitcomb, of Indiana; and Mayor Richard J. Daley, of Chicago, Ill.

"Declaration of the Rally," an article from the July 16, 1969, *Asian Outlook*.

Press releases issued by Captive Nations Week Committee of New York, Conference of Americans of Central and Eastern European Descent, and Ukrainian Congress Committee of America, Inc.

"Enslaved Peoples Under Communism," an article from the February 1, 1970, *WACL* bulletin by Dr. Lev E. Dobriansky.

"Captive Nations Show Threat of Communism," an editorial from the Friday, July 10 *New World*, the official publication of the Catholic archdiocese of Chicago.

The material follows:

PROCLAMATION OF THE STATE OF OHIO ON CAPTIVE NATIONS WEEK, JULY 12 TO 18, 1970

Whereas, the republican form of government—based upon "the consent of the gov-

erned"—which has existed in the United States of America for 194 years, has resulted in the development of a warm understanding and sympathy for the aspirations for freedom of peoples everywhere and in the recognition of the natural interdependency of the peoples and nations of the world; and

Whereas, since 1918 the imperialistic and aggressive policies of vast military despotisms of International Communism have resulted in the creation of a constant threat to the security of the United States and of all the free peoples of the world; and

Whereas, the imperialistic policies of the Communist regimes have led, through direct and indirect aggression, to the subjugation of the national independence of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, Mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Tibet, Cossackia, Turkestan, North Vietnam, Serbia, Croatia, Slovenia, Cuba and others; and

Whereas, it is vital to the national security of the United States and the other free nations of the world that the desire for liberty and independence on the part of the peoples of these conquered nations should be steadfastly kept alive:

Now, therefore, I, James A. Rhodes, Governor of the State of Ohio, do hereby designate the week of July 12-18, 1970, as Captive Nations Week and I invite the citizens of the State of Ohio to observe this week with appropriate public ceremonies and exercises.

JAMES A. RHODES,
Governor.

PROCLAMATION OF THE STATE OF INDIANA

Whereas, the imperialistic policies of Russian Communists have led, through direct and indirect aggression, to the subjugation and enslavement of the peoples of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, Mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Serbia, Croatia, Slovenia, Tibet, Cossackia, Turkestan, North Vietnam, Cuba, and others; and

Whereas, the desire for liberty and independence by the overwhelming majority of peoples in these conquered nations constitutes a powerful deterrent to any ambitions of Communist leaders to initiate a major war; and

Whereas, the freedom-loving peoples of the captive nations look to the United States as the citadel of human freedom and to the people of the United States as leaders in bringing about their freedom and independence; and

Whereas, the Congress of the United States by unanimous vote passed Public Law 86-90 establishing the third week in July each year as Captive Nations Week and inviting the people of the United States to observe such week with appropriate prayers, ceremonies and activities; expressing their sympathy with and support for the just aspirations of captive peoples for freedom and independence;

Now, therefore, I, Edgar D. Whitcomb, Governor of the State of Indiana, do hereby proclaim that the week of July 12-18, 1970, be designated Captive Nations Week in Indiana.

EDGAR D. WHITCOMB,
Governor.

PROCLAMATION OF THE CITY OF CHICAGO

Whereas, the imperialistic policies of Russian Communists have led, through direct and indirect aggression, to the subjugation and enslavement of the peoples of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, Mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Serbia, Croatia,

Slovenia, Tibet, Cossackia, Turkestan, Slovakia, North Viet Nam, Cuba and others; and

Whereas, the Congress of the United States by unanimous vote passed Public Law 36-90 establishing the third week in July each year as Captive Nations Week and inviting the people of the United States to observe such week with appropriate prayers, ceremonies and activities expressing their sympathy with and support for the just aspirations of captive peoples for freedom and Independence; and

Whereas, the City of Chicago is linked to these captive nations through the bonds of family, since numbered among the people of Chicago are hundreds of thousands of our citizens who through nativity or ancestry treasure the heritage which endowed them with the culture and industry which are theirs; and

Whereas, these nations have been made captive by the imperialistic, aggressive and heartless policies of communism; and

Whereas, the peoples of these communist-dominated nations have been deprived of their national independence and their individual liberties; and

Whereas, it is appropriate and proper to demonstrate to the peoples of the captive nations the support of the people of the City of Chicago for their just aspirations for freedom and national independence; and

Whereas, the people of Chicago, as do all of the United States, want for the peoples of the world the same freedom and justice which is theirs:

Now, therefore, I, Richard J. Daley, Mayor of the City of Chicago, do hereby designate the week beginning July 13, 1970 to be Captive Nations Week.

I urge the people of Chicago to join in the programs arranged for observance of the occasion and I urge all of our churches, our educational institutions and all media of communication to observe the plight of the communist-dominated nations and to join in support of the just aspirations of the people of the captive nations.

I especially encourage everyone to concretely demonstrate his interest in the people imprisoned in the captive nations by their attendance at or participation in the parade to be held on State Street on Saturday afternoon, July 18 at 12:00 Noon.

Dated this twelfth day of June, A.D., 1970.

RICHARD J. DALEY,

Mayor.

[From Asian Outlook, July 1969]

DECLARATION OF THE RALLY

In response to the "Captive Nations Week" Movement sponsored by the United States, various circles in the Republic of China hold a rally in Taipei in support of the peoples in the captive nations who seek freedom. With firmness we reiterate our faith against Communist aggression, slavery and tyranny and vow to support the enslaved peoples behind the Iron Curtain who seek freedom and liberation. Again, we reiterate our determination to back up our compatriots on the mainland in their anti-Mao and anti-Communist revolution and jointly overthrow the puppet Chinese Communist regime.

A decade has elapsed since the United States initiated the "Captive Nations Week" in 1959. During the past ten years, the struggles between the forces of democracy and freedom and the forces of Communist enslavement have clearly indicated the historical development that freedom will prevail and that tyranny will perish. This development is most pronounced in the disintegration of the international Communist bloc, the imminent collapse of the puppet Chinese Communist regime, the emergence of the liberalization movement in Eastern Europe, the intensification of the anti-Mao and anti-Communist struggles on the China Mainland, increasing opposition and hostility of the newly-

emerging nations against Communism, and the solidarity and cooperation of the freedom forces.

The Communist bloc which has depended on violence and terror for its survival in the past decade is fast disintegrating, while the widely scattered free nations are strengthening their solidarity. This is a turning point in history. The increase and decrease in the forces of democracy and freedom and the forces of Communist enslavement explain the bankruptcy of Communist ideology and the failure of the Communist dictatorial system.

The contradictions of the Communist tyranny have negated its own strength and have explained that the basic nature of people's love for freedom cannot be restrained and that the forces generated by democratic and free thinking continue to grow in strength. This then is the historical rule that freedom will prevail and that tyranny will perish.

However, we must understand that the present crisis of the Communist tyrannical rule is the result of the striking force of freedom within and without the Iron Curtain. Nevertheless, we must not wait idly for the Communist tyrannical rule to fall apart by itself. We must strengthen freedom forces for a coordinated attack from within and without in order to expedite its disintegration and collapse. We must alert ourselves that to save itself from the doom of total destruction, the Communist tyrannical regime is resorting to various means such as the launching of a peace offensive, moving appeasers to undertake front activities, attempting to disarm the moral armament of the democratic camp and frustrating the anti-tyranny struggle of the enslaved peoples behind the Iron Curtain. They may create, even more chaos throughout the world. Presently, the Chinese Communists support the Viet Cong in the invasion of Laos, incite the Thai Communists to stage armed rebellion, open up a political battlefield in the United States, create social disorder and help American isolationists to rise in order to scatter the strength of freedom forces and gain time for respite and combat readiness.

Hence, at this critical turning point in our history before the enslaved peoples achieve total victory in their fight to seek freedom, free nations must double their efforts to align the forces of freedom and democracy and to strike a heavy blow against the Communist bloc.

Free nations must carry out their policy of liberation completely, actively support the anti-tyranny revolution of the enslaved peoples behind the Iron Curtain, employ all possible means, take all possible courses of action and assist the development of revolutionary forces behind the Iron Curtain.

Free nations must take full advantage of the power-seizure struggle within the Chinese Communist camp, support the Chinese people in breaking the weakest link in the chain of the Communist bloc and eliminate the sources of Asia's turbulence which seriously threaten world peace.

Free nations must, on the basis of uniting the peoples throughout the world in the anti-Communist movement, further strengthen the mutual assistance and cooperation between governments and achieve the development of a regional security organization.

Free nations must support the Vietnamese people to seek an honorable victory in the anti-Communist war and must firmly oppose the Viet Cong plot for the formation of a coalition government and their absurd demand calling for the unilateral withdrawal of the allied forces.

Free nations must firmly oppose the admission of the Chinese Communists into the United Nations as well as the illusion and hallucination of establishing diplomatic ties and trading with the Chinese Communists.

We are convinced that the Communist tyranny is merely a phase of short duration

in the development of history and that this phase will soon terminate. Under the distinguished leadership of President Chiang, the people of the Republic of China stand on the frontlines against aggression, fight to the end for the delivery of our compatriots on the mainland and contribute to the liberation of all enslaved peoples in the world. We hereby call upon all free peoples in the world to unite and form an international front against Mao and Communists and march against the common enemy of mankind.

[From Captive Nations Week Committee of New York]

CAPTIVE NATIONS WEEK, 1970

Ukrainian Catholic Bishop, Most Rev. Joseph Schmondiuk, D.D., of Stamford, Conn. celebrating.

His Eminence Terrance Cardinal Cooke presiding.

This year, the observance of Captive Nations Week in New York City will open with the Solemn Mass in Eastern Catholic rite celebrated by Ukrainian Catholic Bishop, Most Rev. Joseph Schmondiuk, D.D., His Eminence Terrance Cardinal Cooke presiding at St. Patrick's Cathedral on Sunday, July 12, 1970 at 10:00 a.m.

Responses during the Liturgy will be sung by the choir of St. John the Baptist Ukrainian Catholic Church of Newark, N.J., under direction of Michael Dorosh.

The sermon at St. Patrick's will be delivered by Rev. Raymond J. de Jaeger, a Catholic priest who was held captive by Red Chinese.

Following the Liturgy, the participants will proceed in formation to Central Park's Bandshell for a rally. The rally will open with the Pledge of Allegiance by Robert G. Goff, Commander of CWV, Queens Chapter, with opening address by Chairman, Hon. Matthew J. Troy, and followed by remarks of Dr. Ivan Docheff, Chairman of American Friends of Anti-Bolshevik Bloc of Nations, Inc., Mario E. Aguilera, Chairman of Americans to Free Captive Nations, Inc., Michael Pizniak, Esq. of Ukrainian Congress Committee of America, and by the guest speaker.

A program of folk songs and dances performed by Romanian, Hungarian, Byelorussian, Ukrainian and other ethnic youth groups will follow.

After the Rally in Central Park Bandshell, the participants are going to march to the Soviet Union's Mission to the United Nations, 67th Street and Lexington Avenue, New York City to picket in order to call the attention of our fellow Americans to the real enemy of peace and to the main source of all today's international tension.

Next Sunday, July 19, 1970, 1:30 p.m.—3:00 p.m., there will be a closing Rally of the Captive Nations Week—1970 at the Statue of Liberty with an appropriate program.

The annual observance of Captive Nations Week dates from the signing of Public Law 86-90 by President Eisenhower in 1959. This law requires the President of the United States to issue an annual proclamation calling on the American people to give a moral support to nations held captive by Communism in their struggle to regain their freedom and independence.

CAPTIVE NATIONS DAY, JULY 12, 1970

9:00 a.m.: Assembly of Captive Nations marching units in front of Plaza Hotel, Fifth Avenue and 59th Street.

9:30 a.m.: Parade to St. Patrick's Cathedral.

10:00 a.m.: Solemn Mass on behalf of all Captive Nations celebrated by Most Rev. Joseph Schmondiuk, D.D., Ukrainian Catholic Bishop of Stamford, Connecticut, His Eminence Terrance Cardinal Cooke presiding.

11:15 a.m.: Parade from St. Patrick's Cathedral to Central Park Bandshell (Route:

Up Fifth Ave. to 72nd St.—Enter Park and proceed in formation to Bandshell).

11:45 a.m. to 1:30 p.m.: Rally in Central Park Bandshell as stated on the first page.

1:30 p.m.: Rally ends and participants march to the Soviet Union's Mission to the United Nations, 69th Street and Lexington Avenue, New York City.

2:00-3:00 p.m.: Picketing the Soviet Union's Mission to the United Nations.

All the Parades will be led by American War Veterans under the command of Robert G. Goff, Commander of CWV, Queens Chapter.

NEWS RELEASE OF CAPTIVE NATIONS WEEK COMMITTEE OF NEW YORK

Since the well-known Khrushchev speech, delivered during the 20th Congress of the Russian Communist Party, no one can deny the existence of Stalin's terror when millions of Soviet citizens—mostly members of the non-Russian subjugated peoples—were starved, executed or sent to concentration camps.

During the time of terror, however, with the exception of a few show trials, the Soviet Government was able to hide from the outside world this unprecedented magnitude of its crimes against humanity. Why?

In 1968, Robert Quouquest published his well-researched book about Stalin's purges. Reviewing this book in Washington Post, Mr. Colmley says: "... we (American liberals) were inclined not so much to excuse as to overlook the crimes of Stalin." G. Kennan, on the other hand, in his review published in New York Times, says: "There is (in Quouquest's book) a vast amount which we would like to forget."

"Overlook" and "Forget", these two tendencies of important segments of western intellectuals in their approach toward Communism, is the tragedy of our times. This tragedy was manifested by the student outbreaks triggered by the President's decision to destroy Communist sanctuaries in Cambodia. All the masses of young people, presumably idealistic but misinformed and misdirected, fought, and four of them died for the wrong cause and on the wrong side of the barricades.

Fellow Americans, from July 12 to July 19, Captive Nations Week is being observed. The purpose of the Week as stated in Congressional Resolution is to give moral support to Captive Nations in their struggle for liberation from Communist oppression. Another purpose of the week, especially now, is to call the public's attention to the real, not imagined or distorted world situation, to the hard facts of the past and present. It is time for cool meditation and unprejudiced analysis of world events. It is time to ask ourselves what kind of future we want for ourselves and our children—a future of hope for steady improvement, steady progress, future of freedom and peace, or future of stagnation and despair, future of repression and dogma.

The following small list of books is our suggested reading for the Captive Nations Week:

Barber, Noel: From the land of lost continent; the Dal Lama's Fight for Tibet. Houghton Mifflin, 1969.

Quouquest, Robert: The Great Terror. Macmillan, 1968.

Chornovil, Vyacheslav: Chornovil Papers. McGraw, 1968.

Dobriansky, Lev E.: Vulnerable Russians, Pageant, 1968.

Dzyuba, Ivan: Internationalism or Russification. Humanities, 1969.

Levine, Isaac Don: Intervention. McKay, 1969.

Lynd, Staughton and Thomas Hayden: The Other Side. New American Library, 1967.

Meray, Tibor: That Day in Budapest. Funk, 1969.

Pryce-Jones, David: The Hungarian Revolution. Benn, 1969.

Windsor, Philip: Czecho-Slovakia, 1968: Reform, Repression and Resistance. Columbia University Press, 1969.

The Rape of Czecho-Slovakia, by Russian Troops in the Summer of 1968 is convincing proof that nothing has been changed in the Russian colonial orbit.

[From Conference of Americans of Central and Eastern European Descent]

MANIFESTO FOR CAPTIVE NATIONS WEEK, 1970

Captive Nations Week, established by the U.S. Congress on July 17, 1959 (Public Law 86-90), will be observed this year during the week of July 12 to 18, for the eleventh consecutive year. Each year, observances marking this signal event are held throughout the country, serving as a powerful reminder to the American people not to forget the captive nations or to approve their permanent captivity under Communist enslavement.

The *Conference of Americans of Central and Eastern European Descent (CACEED)* is an organization of American citizens of Central and Eastern European background whose countries of origin—Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Ukraine—are presently under Communist domination and are denied fundamental human rights and national liberties.

CACEED supports all the captive nations, and calls on all Americans to manifest their public support for the captive nations in their unequal struggle for national self-determination and the restoration of their national independence. Public Law 86-90 defined the plight of the captive nations in the following words: "... The imperialistic policies of Communist Russia have led, through direct or indirect aggression, to the subjugation of the national independence of Poland, Hungary, Lithuania, Ukraine, Czecho-slovakia, Latvia, Estonia, White Ruthenia, Romania, East Germany, Bulgaria, mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Tibet, Cossackia, Turkestan, North Vietnam, and others . . ."

Every year, since observances of Captive Nations Week have been held throughout the length and breadth of the United States, the official Soviet press and mass communication media in the Communist-controlled countries have untringly attacked the WEEK as an instrument of the Cold War aimed at disturbing "peaceful coexistence" between the USSR and the United States.

This is a typical method of Communist propaganda by which Moscow and its satellites are trying to conceal their great concern over Western interest in the captive nations. Moreover, the captive nations movement has grown steadily, enlisting the staunch support of several countries of the free world, including the Republic of China, Korea, Turkey, West Germany, Argentina and Australia.

The worldwide captive nations movement received powerful and fresh impetus with the brutal and unprovoked invasion of Czecho-slovakia by Soviet and satellite troops in August, 1968, and the subsequent enunciation of the "Brezhnev Doctrine," which claims that the Soviet Union has a "legitimate" right to intervene in the internal affairs of any "socialist" country.

There is no doubt that the "Brezhnev Doctrine" indicates Soviet determination to continue the oppression of the captive nations and to trample underfoot their fundamental human rights, although these rights to self-determination and national sovereignty are expressly set forth in the *Universal Declaration of Human Rights*, adopted unanimously by the U.N. General Assembly on December 10, 1948. The "Brezhnev Doctrine" further ascribes to the USSR a "mandate" to intervene at will in the internal affairs of neighboring states, in direct contravention to the principles enunciated in the Atlantic Charter and the Charter of the United Nations.

The contention of this spurious "doctrine" that Central and Eastern Europe is the exclusive domain of Moscow should be categorically rejected by the free world as immoral, imperialistic and dangerous to world peace.

Despite the Sino-Soviet conflict and the Russian fear of Red China, Moscow is doing everything to help Hanoi in its present war against South Vietnam and the United States. Only a few days ago the Kremlin announced that far-reaching agreements had been reached between Moscow and Hanoi, resulting in a large increase of material aid to North Vietnam by the USSR.

In the Middle East, the Soviet Union is continuing to push forward. The strategic meaning of these actions is that expansion of Communist Russia's military presence and political influence would become an unchallengeable fact. The USSR is attempting to undermine U.S. power there and become a "champion" of the Arab and Moslem worlds with the ultimate objective of subverting the entire area and subjecting it to eventual Communist domination from Moscow.

There has hardly been any change in the status of the captive nations since the last observance of Captive Nations Week in 1969. This year's observances will be held a few months after the 25th anniversary of the termination of the war in Europe—at which time the Nazi totalitarian domination over vast areas of that continent was eliminated. But for millions in Central and Eastern Europe, as well the peoples of the USSR, Nazi domination has been replaced with brutal and ruthless Communist rule and Soviet Russian colonial hegemony.

Soviet leaders, in attacking U.S. foreign policy would have us believe that all is well and orderly in the USSR and its far-extending Communist empire. Yet developments occurring daily behind the Iron Curtain speak of something else. In Poland, the Communist regime stifles intellectual and economic life, and continues its violation of human rights on a large scale. In Czechoslovakia, the Soviet-backed new regime has re-imposed censorship, curtails travel, and has made the country a faceless puppet of Moscow. In Romania, which is often described as following an "independent" course, there exists police repression, total control over intellectual and artistic life, and economic strangulation. Attempts by the people of Hungary and Bulgaria to secure more freedom and the enjoyment of human rights have been stubbornly opposed by the Communist regimes. In Estonia, Latvia and Lithuania, Moscow continues to exercise its oppressive policies, and the official course of Russification becomes an ever-increasing threat to the ethnic structure of those nations. In the Ukraine, the largest non-Russian captive nation in the USSR, arrests and trials of hundreds of intellectuals continue, while the Communist regime openly persecutes members of the Catholic, Protestant and Jewish faiths. Even in Russia property, youth and writers demanding more freedom are being arrested and confined to mental institutions.

In observing Captive Nations Week this year, we:

1. Express our full support for U.S. policy in Southeast Asia and elsewhere in resisting the Communist aggression and attempts at world domination; at the same time we ask that the U.S. Government adopt a firm policy with respect to the USSR and its subservient Communist regimes of Central and Eastern Europe by challenging and denouncing their persecution and oppression of the captive nations.

2. We accuse the USSR of crass violation of its solemn promises of freedom and independence for the nations made captive during and after World War II, such as Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland and Romania.

3. We denounce the Soviet government for the destruction of the independence of the

Ukraine and other non-Russian nations inside the USSR, and for depriving them of the right to national self-determination.

4. We condemn the Communist celebration of the 100th anniversary of Lenin's birth and its sponsorship by UNESCO and the U.N. Commission on Human Rights, which bestowed international honor upon the originator of Communist terror and genocide.

5. We denounce the Communist enslavement of Albania, China, North Korea, North Vietnam, Tibet and Cuba.

6. We appeal to the U.S. Government and all other governments of the free world to undertake measures in the United Nations to insure that the "Declaration on the Right of Peoples and Nations to Self-Determination," adopted in 1952, the "Declaration on Granting of Independence to Colonial Countries," adopted by the U.N. on October 14, 1960, and the *Universal Declaration of Human Rights*, adopted on December 10, 1948, are applied to all the captive nations as enumerated in the U.S. Captive Nations Week Resolution of July 17, 1959.

7. Finally, we appeal to the American people to take an active part in the Captive Nations Week observances of July 12-18, 1970, and to manifest their unstinting support and sympathy for the just aspirations of all the captive nations of Europe and Asia, to express their full understanding and to pledge them moral support in their unequal struggle for freedom and national statehood.

The Right Reverend Monsignor
JOHN BALKUNAS,
President.

[News release of Ukrainian Congress Committee of America, Inc.]

OBSERVANCES OF CAPTIVE NATIONS WEEK
IN NEW YORK CITY

NEW YORK, N.Y.—Captive Nations Week, initiated in 1959 on the basis of a Joint Resolution of the U.S. Congress (Public Law 86-90), will be observed this year between July 12 and 18. A series of programs and manifestations throughout the country will be held under the auspices of the National Captive Nations Committee (NCNC), under the chairmanship of Prof. Lev E. Dobriansky of Georgetown University, Washington, D.C.

Congressmen Daniel J. Flood (D., Pa.) and Edward J. Derwinski (R., Ill.), members of the NCNC, issued a special letter on June 26, 1970 calling on the American press to publicize the event "so that your constituents may be afforded the opportunity of advancing for world freedom the natural alliance between ourselves and the one billion captives under totalitarian Red rule."

President Richard M. Nixon, Governor Nelson A. Rockefeller and Mayor John V. Lindsay will issue special proclamations of Captive Nations Week, calling for nationwide support of this important event.

CAPTIVE NATIONS WEEK IN NEW YORK CITY

In New York City a series of events is being planned by a Coordinating Captive Nations Committee under the chairmanship of the Hon. Matthew J. Troy, Sr., chairman of the N.Y. Chapter of the NCNC, in cooperation with the American Friends of the Anti-Bolshevik Block of Nations (AF-ABN), Americans to Free the Captive Nations, and the Conference of Americans of Central and Eastern European Descent (CACEED).

The following observances will be held:

Thursday, July 9, 1970, at 11:00 A.M. at City Hall (Blue Room): Presentation of Captive Nations Week Resolution by Mayor John V. Lindsay to representatives of the captive nations organizations;

Saturday, July 11, 1970 at 10:30: Special Services at Temple Emanu-El;

Sunday, July 12, 1970, at 10:00 A.M.: At St. Patrick's Cathedral—Solemn Mass presided over by His Eminence Terence Cardinal Cooke. The celebrant will be the Most

Rev. Joseph M. Schmondiuk, Bishop of the Ukrainian Catholic Diocese of Stamford. A special sermon will be delivered by Rev. Raymond J. de Jaegher. The Mass will be accomplished by the St. John the Baptist Ukrainian Catholic Choir of Newark, N.J., under the direction of Prof. M. Dobosh.

At 1:00 A.M. there will be Special Services at the Cathedral of St. John the Divine, where a sermon will be delivered by Canon Edward West.

Sunday, July 12, 1970, at 11:30 A.M. a Protest March on Fifth Avenue to 72nd Street, and at 12:00 o'clock a Captive Nations Week Program at the Bandshell in Central Park under the chairmanship of Michael Piznak, New York attorney;

Sunday, July 19, 1970, at 1:00 P.M.: Assembly at the Statue of Liberty, and at 1:30 P.M. a Captive Nations Week Manifestation with a program, including addresses by representatives of various groups, dedicated to the freedom and independence of all the captive nations.

Both programs, at the Central Park Bandshell and at the Statue of Liberty, are being coordinated by Dr. Roman Huhlewych, chairman of the United Committee of Ukrainian Organizations of Greater New York, a branch of the Ukrainian Congress Committee of America.

ENSLAVED PEOPLES UNDER COMMUNISM

(By Dr. Lev E. Dobriansky)

(NOTE.—This is an address delivered by Dr. Lev E. Dobriansky, Professor of Georgetown University, Chairman of the National Captive Nations Committee, USA and President of the Ukrainian Congress Committee of America, before the World Anti-Communist League Conference, Bangkok, Thailand on December 4, 1969.)

Mr. Chairman, Distinguished Delegates, Observers and Guests, I am deeply honored by the privilege you've extended me in affording this opportunity to speak about the enslaved peoples under communism. In the greatest measure the enslaved peoples are captive nations, and in theory and action communism is but a mythology shielding the worst form of totalitarianism and imperio-colonialism in the history of mankind. The more we concentrate on the approximately one billion souls in the captive nations, the more we can appreciate the pressing need of unity and solidarity, freedom, not only among the still free nations of the so-called non-communist world but also, and equally important, with the one-third of humanity in the captive nations.

Make no mistake about it, this World Anti-Communist League, with fertile and vigorous Asian origin, has developed into an essential instrument focused upon the huge family of captive nations as the natural and formidable ally for world freedom and peaceful global community of independent and sovereign nations. To be sure, much remains to be done, but those whose freedom is in immediate danger and under the shadow of constant totalitarian threat are in the best experiential position to positively advance the supreme cause of world freedom in order to preserve their freedom and indirectly that of the numerous other members of the Free World geographically removed from the battlelines of freedom and thus myopically indulgent in their domestic complacencies. Leadership in truth and moral fortitude is an enduring power in itself, capable of attracting and magnetizing every other form of power in the Free World.

There is an old Spanish proverb that warns: "A handful of common sense is worth a bushel of learning." When, in this post-World War II period, Red totalitarian aggression has been so blunt and obvious as in the cases of China, Korea and Vietnam, one cannot but begin to wonder about the common sense of otherwise many learned citizens of the Free World. We are almost forced to ac-

knowledge that there is nothing worse than a learned and educated fool; and we have our dose of this species in the United States as no doubt you have in your respective countries. We can perhaps forgive them for being unable to perceive the subtle and indirect aggressions undertaken by both Peking and Moscow in Asia, the Middle East, Africa and Latin America, not to mention the United States itself, but it is plainly unforgivable in these clearly crass and overt cases.

Yet, with a modicum of common sense and not too much required learning, the average citizen of the Free World can think all this through in terms of the steady aggregation of captive nations since the early 20's; and fifty years of proliferated Red totalitarian and imperial rule are but a minute in historical time. Without oversimplification but with the guiding thread of essentiality, all he need do on a global map is to first encircle in red the Russian area encompassing Moscow and Leningrad, and then in concentric from the non-Russian area from Byelorussia and Ukraine to Azerbaijan to the old Far Eastern Republic, then the Baltic States, then Central-South Europe over to north Korea, mainland China and North Vietnam, finishing for the moment with a red spot covering the island of Cuba. This is the expansive Red Empire, which began in Moscow and in terms of ultimate, determining power today rests on Moscow for its survival.

As President Nixon recently stated, the non-negotiable issue in South Vietnam is the right of national self-determination and independence of the free Vietnamese. What he unfortunately did not say, and which explains much more, is that the United States cannot honorably afford again the addition of another free nation to the long list of captive nations. Too many patriotic and knowledgeable Americans still recall the sell-out at Yalta and elsewhere of several East European nations by the Harrimans and other diplomatic undertakers. And you can rest assured that if the present Moscow-Havana-Peking-Hanoi propaganda assault upon the U.S. leads to any serious internal disturbances, the reaction following World War II will look like a stroll in the park. The domino theory, which has been accurately but narrowly applied to this quarter of the world, will reach its full bloom of historical application to all the captive nations since 1917.

That this occasion will necessarily arise, sooner or later, I have absolutely no doubt. The sprawling pattern of Red psycho-political warfare, as seen here in Asia, in the Middle East, in Latin America and in the United States makes it as certain as the sun rising and setting tomorrow. In preparation for this occasion as well as in coping with our immediate problems, it behooves us to workably grasp the organic concept of the captive nations, understand the dominant trends in the Red Empire, appreciate "the bind" in which the Free World finds itself, and develop a solution to this bind, short of a general shooting war or object surrender.

THE CONCEPT

Remember always, where necessity pinches, boldness is prudence. But to exercise prudent boldness demands also a guiding concept. Despite the worldwide publicity that was given to the U.S. Captive Nations Week Resolution ten years ago and the annual reports on it since, it is amazing how relatively few in the Free World comprehend the concept. On Moscow, Peking and the Red satraps perceived its significance quickly and vehemently. The continuing responses to my current work, *The Vulnerable Russians*, show a grave deficiency on this score in the Free World. To offset this somewhat, two months ago I managed to have another resolution sponsored and passed in the U.S. Congress, providing for the publication of a House of Representatives' Document on the Captive

Nations Movement. This forthcoming publication, made possible through the efforts of Representatives Daniel E. Flood and Edward J. Derwinski, should aid immeasurably in the advancement of the basic captive nations concept.

The U.S. Congressional Captive Nations Week Resolution defines the broad concept of the captive nations clearly and succinctly. The captive nations are those that in the past fifty years have been overtaken and subjugated by Soviet Russian imperio-colonialism and its several totalitarian off springs. Quite plainly, how all of the Red presently came to be what it is, regardless of rifts and squabbles, is the answer as to who are the captive nations. To enumerate them accurately and historically, one must begin in 1917, not in the 1940's or later. The first international wars and aggression waged by Soviet Russian imperio-colonialism under the deceptive guise of communism were against newly independent states and nations like Byelorussia, Ukraine, Georgia, Armenia, Azerbaijan and several others that are now imprisoned in the Soviet Union. The second wave of this Imperialist aggression reduced Latvia, Estonia and Lithuania to captivity in the early 40's and the third wave in the later 40's enslaved a whole new group into the growing family of captive nations, such as Poland, Hungary, Czechoslovakia, Albania and so forth. Inspired, assisted and trained offsprings of this Red tradition of conquest and domination of peoples dropped the totalitarian curtain about the peoples of Yugoslavia, mainland China, north Korea, North Vietnam and Cuba in this and the decade after.

If the domino process has ever been at work, it certainly and unquestionably has been in the methodical Red conquest and aggregation of captive nations. If one fails to understand this process, executed largely and basically through the whole panoply of psycho-political warfare techniques, he then does not know the history of Eurasia these past fifty years. Any appreciation of the fundamental distinction between the captive nations—the exploited peoples themselves—and the Red totalitarian states is completely lost on him. It is this working distinction, implicit in the very concept of the captive nations, that has cast profound fear in the professional propagandists of the Red states. More, an inability to see this organic process of politico-military conquest from 1917 to the present beclouds also the important truth as to the chief enemy of the Free World.

Yes, I'm well aware that many of my dear Asian friends honestly disagree with the logical and factual determination of the Soviet Union—more precisely Soviet Russian imperio-colonialism—as his chief enemy. In one sense they are not wrong when their immediate danger of a proximate and aggressive Red China is properly and justly weighed. No matter where, sheer survival for freedom is an incomparable, conditioning force. But there is a more general truth affixed to the global framework which we must fact with equal awareness and perspective. And that is the primacy of the Soviet Russian enemy. In the broader global framework and on the basis of historical evolution itself, let us not forget the fundamental Soviet Russian contributions that have been made to the training, economic and military equipment, and the apparatus of the so-called communists on mainland China, to the formation and equipment of the north Korean army and the tragic Korean War that ensued, and to the totalitarian and mini-imperialist Hanoi regime, an aid which has protracted the Vietnam war more than any other Red totalitarian factor.

Concerning the war in Vietnam, which really involves three fundamental factors—they are, the seventeen million captives in North Vietnam, the aggression by totalitarian

Hanoi backed essentially by Russian Moscow, and the valiant endeavor of the patriotic and nationalist South Vietnamese not to be forced behind the Red totalitarian curtain—this simple conflict could have been over three or four years ago if it hadn't been for the circumstantial combination of sophisticated Soviet Russian aid and America's complete misconduct of the war. This war has produced more pseudo-rationalist nonsense than any war in this century.

In making this charge, believe me, I am not siding with the human boils and carbuncles of American society, for even the healthiest of organisms are capable of such poisonous excesses. The virtual and overt traitors of freedom in the U.S. meaning specifically the professional pacifists, the melodramatic and poor imitations of mid-19th century Bakuninists and Elanquists, who ignorantly spout Marxism, the ridiculously bearded Trotskyists, the basically ignorant and scant minority of students, and many naive clerics and so-called liberals, always pawns for the professional Red revolutionary who manipulated this species in the 30's and is repeating it now, are of course political warfare fodder for Hanoi, Peking, Havana and Moscow. Like the Russians, they protested "peace" or mir too much, and we cannot but wonder what peace they seek.

Nevertheless, we in America have so far failed in coping with what some call revolutionary warfare and what is really Russian-developed psycho-political warfare as applied in Vietnam. The so-called Vietnamization of the war in Vietnam could have been accomplished years ago, in fact during the Eisenhower period. What was required was a psycho-political warfare concept extending into North Vietnam and buttressed by American armed logistics. Regrettably we still don't understand this type of warfare, which today extends even to the terrain of the United States itself. If any one is to be charged with a specific irresponsibility in the United States for this institutional incapacity, it is Senator Fulbright of the Foreign Relations Committee. He and the ever-blundering Harrimans have for years opposed and sat on the Freedom Academy measures in the U.S. Congress which are purposed to equip Americans and their allies in the ways and means of this type of warfare. This is by no means an unfounded charge: it can be easily documented and justified. Its tragedy is that it involves other peoples, including the captive people of North Vietnam and all others in the extensive Red Empire.

NATIONALISM IN THE CAPTIVE WORLD

By the very nature of realities prevailing in the captive world, conditions of psycho-political warfare are always extensive and omnipresent. It has been truly said. "In a free country there is much clamor with little suffering; in a despotic state there is little complaint, but much grievance." "In the Soviet Union, which Alexander Solzhenitsyn has accurately described as a "sick society" the dozen and more captive nations are being subjected to a new wave of political repression, cultural genocide, religious oppression, imperio-colonialist economic exploitation, revived MVD operations, and concentration camp consignments. All this and more in the sweep of Russian consolidating moves for Moscow's expanding Cold War operations in Asia, the Middle East, and the Western Hemisphere.

In mainland China, North Korea and North Vietnam the captive peoples are under the worst conditions of totalitarian tyranny, economic privation and dehumanization left in the train of a grotesque "cultural revolution" guerrilla war activities on the Korean peninsula, and a war of aggression by Hanoi. In captive Cuba similar forms of Red exploitation of the people prevail as that unhappy island is being rapidly transformed into a Russian base for continental political war-

fare. And in Central Europe the Russian rape of Czechoslovakia last year confirmed again the oppressions and imperio-colonialism imposed on the captive peoples in that area.

Among the numerous forces at work for freedom in the captive world, the most dominant is the indomitable force of nationalism. This natural force means national self-determination and independence, economic freedom and opportunity, cultural progress and a respectful place in a peaceful community of independent nations. Expressed in many ways, this persistent force is rampant in the Soviet Union; it is manifested daily in Central Europe; it permeates all of Asia; it is the basis for Cuban resistance and hope. As the record will show, nationalism is the greatest insurmountable obstacle to Red totalitarianism and Soviet Russian imperio-colonialism.

THE BIND

Whether viewed from the East or the West, efforts to wean less powerful Red states from the direct or indirect control and influence of the powerful Soviet Russian center will come to naught so long as this center is afforded psycho-political sanctuary within the substate empire of the Soviet Union. This truth is the clear lesson of the Czechoslovakian tragedy. The free governments in the West clearly found themselves in a bind. And they will continue to be in this bind unless a radical shift is made in policy toward the captive nations within the USSR.

The Brezhnev doctrine further substantiates this truth. In essence, a contemporary version of traditional Russian imperialism, this doctrine can be applied by Moscow to any Red state in the West or in the East: even to ostensibly socialist states in the Free World, all for the goal of insuring the security of the mythical commonwealth of socialist states. This doctrine is in itself a confession of intent and also weakness. This fundamental weakness is represented by the existence and struggles of the captive nations.

PROBLEMS AND THE SOLUTION

An old French adage teaches us, "the weakness of the enemy forms a part of our own strength." The captive nations in the aggregate constitute the foremost weakness of the totalitarian Red Empire. As such, they are one of the most essential parts of our Free World Strength. The more we concentrate on the captive nations, the more we intensify the weakness, the insecurity and the doom of all Red governments. But to advance along this sure road toward world freedom and the avoidance of a general hot war, citizens of the Free World must scotch certain misconceptions and wishful thoughts.

The first misconception is about the captive nations themselves. The captive nations concept must be clearly understood. The family of captive nations extends from Central Europe into the Soviet Union out to Asia and over to Cuba. Second, it is a species of wishful thinking to believe that any genuine détente is possible with the vast Red Empire. The dynamics of history, greased with the victories of Red totalitarianism and the worldwide network of Red psycho-political warfare, simply do not favor this. Wishful, too, is the misleading notion of spheres of influence, a sideline of the containment policy. It not only compromises principle with its accommodationism but also is unrealistic and self-defeating. Our enemies don't pour billions of investment into Cold War operations for physical exercise and self-enjoyment.

Contrary to absurdities witnessed in some places of the Free World, including the United States, the youth, the workers and the intellectuals in the captive world know what it means to be deprived of freedom. With their grasp of the real and true values of human existence, these captives of Red

totalitarianism are today freedom's most trusted allies; tomorrow they shall be its sternest guardians.

The eventual solution of the titanic struggle in this century rests not with military arms, but rather with the effective linkage of the forces of freedom in the non-Red world with those of all the captive nations, particularly those in the huge concentration camp called the Soviet Union. The forging of this link with the genuine NLF's and their tremendous legions behind all three Red curtains can only be effected through the means of psycho-political penetrations that are indispensable to the deterrence of a hot general war. The captive nations are our formidable allies, and had we sensibly tapped this resource in North Vietnam, the war there would have been over long ago.

Fortitude is the mean between fear and rashness. To fight adequately for freedom means to constantly display fortitude in will, determination and honor. The captive nations ceaselessly show this fortitude. Free men can't afford to do less.

[From the New World, July 10, 1970]

CAPTIVE NATIONS SHOW THREAT OF COMMUNISM

Captive Nations Week this year will be observed from July 13 to 18. In Chicago, a parade on State Street July 18 at noon will remind us of the many nations which have fallen under Communist control since 1918.

The list is a long one of proud and brave peoples, now subject to the rule of other countries.

Public Law 86-90, passed July 19, 1959, said:

"The imperialistic policies of Communist Russia have led, through direct and indirect aggression, to the subjugation of the national independence of Albania, Bulgaria, Czechoslovakia, Estonia, Hungary, East Germany, Latvia, Lithuania, Poland, Ukraine, etc. These policies make a mockery of the idea of peaceful coexistence between the nations and a dire threat to the security of the United States and all free peoples in the world."

It added: "It is fitting that we clearly manifest to the subjugated peoples through an official means the historic fact that the people of the United States share with them their aspirations for the recovery of their freedom and independence."

A Captive Nations Week is most necessary to remind us of those repressed and persecuted. A visitor to the Lithuanian exhibit a few weeks ago could not but be impressed—and shocked—by the brutal repression of the peoples in that country. And the same story, varying only in minor details, could be told in all the other Captive Nations.

We must remember; we must pray for them; we must help them all we possibly can. Their fate, for the time being at least, is to serve as a warning to all of us of the dangers that prevail as long as these nations are in servitude, held in the bonds of tyranny.

They are our brothers in humanity; they are our brothers in Christianity; and we cannot rest—nor be completely free ourselves—until they too are free.

Mr. MORSE. Mr. Speaker, it is with great honor that I join my colleagues today to participate in this year's official observance of Captive Nations Week, for 1970 is particularly significant in the quest for freedom and justice for all peoples of the world. Twenty-five years ago we successfully concluded the Second World War—a long struggle for the preservation of liberty and the principle of national self-determination. Twenty-five years ago, 47 nations came together to sign the Charter of the United Na-

tions—an organization whose founding reflects the hopes for peace, liberty, and justice for all mankind.

In the quarter of a century that has passed we have witnessed increasing progress toward these goals. Certainly we have continued to support the ideals and hopes which are shared by all freedom-loving peoples. There still exists, however, great numbers of people who are not free, who do not enjoy the freedom and liberty which is their right. It is particularly fitting, therefore, that in this year when we commemorate so much, we also recognize the plight of those still living under oppressive rule, denied, by the use of force, universal human rights, and national self-determination. Let us hope that in the years to come we will be able to stand here in celebration of the universal application of the ideals of liberty, freedom, and justice.

Mr. MOORHEAD. Mr. Speaker, this week has been designated by the Congress as Captive Nations Week. It is with much sadness that we recall the loss of freedom which Latvians, Lithuanians, and Estonians suffered 30 years ago.

Words of ire now are futile. Words of sympathy are probably of minor solace to men and women who live daily without the personal liberties many Americans have come to take for granted.

In the final analysis, words of confidence are perhaps most appropriate. The desire for liberty can never be stamped out, even if its expression is temporarily stifled.

On this occasion, then, it is fitting that we look with hope to a future when the Baltic peoples and all men will be rid of the chains which may bind them today but cannot ever succeed in shackling their spirits.

Mr. VANIK. Mr. Speaker, each year, for the past 11 years, we have set aside a week in remembrance of the hundreds of millions of people in the world who live under totalitarian governments—governments which hold their peoples captive and deny the basic freedoms and liberties which are the natural and inalienable rights of all men everywhere.

This year the observance is scheduled for July 12-18. It is ironic, in a sense, that this commemoration takes place in the month of July—the month which has seen two of the greatest bursts of freedom and creative energy in human history. Perhaps the reminder of these great events—Fourth of July and Bastille Day—can serve as an inspiration to those who live today under tyranny. These great events, bringing freedom from despotism to the peoples of America and France, can serve as a beacon to these down-trodden peoples.

These great revolutions for freedom give a proof to an eloquent statement by the late Senator Robert Kennedy:

The ideal of freedom has traveled a long and hard road through human history. Yet the record shows that the ideal persists and has an explosive power greater than that locked up within the atom. It shows that this ideal is the strongest motive of human action—that it fortifies the human will in the face of adversity and force and terror.

Further, Mr. Speaker, I would like to say that we cannot just pledge our support for the peoples of captive nations 1

week out of 52 weeks a year. As Jefferson said:

Eternal vigilance is the price of liberty.

Let us remember today that we must always remember that there are men on this earth who are not free; we must remember that our task in life is not done while one fellow man is left a slave.

Mr. BUCHANAN. Mr. Speaker, while those of us here in America enjoy the benefits of individual freedom and self-determination, tyranny, oppression, and subjugation are the way of life for many of the world's people. Captive Nations Week is presently being observed for the 11th consecutive year and serves as a powerful reminder to the American people not to forget the enslaved nations or to approve their permanent captivity under Communist enslavement.

The evening daily in my district, the Birmingham News, has spoken eloquently in this regard in its lead editorial of Sunday, July 12; and I commend it to my colleagues and to every freedom-loving individual. It is as follows:

THE CAPTIVES

In 1959 Congress passed and President Eisenhower signed a law establishing the third week in July each year as Captive Nations Week, intended to call attention to the plight of the people of Eastern Europe whose countries were gobbled up by the Soviet Union during and just after World War II.

The Cold War was many degrees colder then, and the brutal suppression of the 1956 Hungarian revolt against Communist rule was still fairly fresh in people's minds.

As years have passed, Captive Nations Week has lost some of its impact. But the nations involved are no less "captive."

We're certain it wasn't intended that way, but the ruthless, systematic downgrading and humiliation of Alexander Dubcek by the Soviet puppet government in Czechoslovakia is the most timely and pertinent possible reminder of that.

As prime minister, Dubcek led a reformist Czech regime which briefly—how tragically briefly gave his countrymen a glimmer of hope for a greater measure of freedom.

Dubcek and his colleagues were not advocating abandonment of communism; only its liberalization.

But totalitarian communism cannot tolerate even the slightest crack in the wall of its authority. The erosive force of freedom would soon turn the leak into a torrent, and the power of the few over the many would be washed away.

And so the Soviet Union sent tanks into Prague to "save" the Czechs from themselves.

Dubcek was too popular with the people for the Russians to risk clapping him in prison or standing him against a wall at that time. But we are certain he never had any more doubt than anyone else that his time would come, as soon as the "trustworthy" leaders appointed by the Kremlin to succeed him reestablished undisputed control.

And so it has happened.

First Dubcek was ousted as premier. Later he was named ambassador to Turkey. He was recalled—the mouthpiece propaganda press said he hadn't fulfilled his responsibilities properly. Last month he was expelled from the Czechoslovak Communist Party. Last week he was stripped of membership in the Czech parliament, his last remaining public function.

Inexorably the wheel has turned—on Dubcek and on the Czech people. The former premier is supposed to be an object lesson to any who might be tempted by such subversive ideas as freedom and individual worth and dignity.

Dubcek's ordeal may not be over yet. The

Communist rulers may not have exacted the last measure of revenge.

Let it be said for Alexander Dubcek that he is not making it easy for them. He has refused to recant. He won't apologize for his role in Czech history.

Dubcek's story is the story of the captive nations.

It may be, as some say, that things are not as bad as they were at the height of the Cold War, as oppressive as they were during the days of Stalin.

But is Alexander Dubcek a free man, at liberty to think his own thoughts and determine his own actions?

Is Czechoslovakia a free nation?

The "no" was spelled out in the streets of Prague in the imprint of tank treads.

Today begins Captive Nations Week, 1970. It is 25 years since the end of World War II.

It is a fitting time for us all to give the occasion more than the passing thought we generally give it.

It is a fitting time, too, in this country where the freest imaginable debate washes the land and where dissent and dissenters come in every hue and stripe, for those who cry "repression" to think again about what repression really is.

Only an America based on liberty and freedom, as the champion of the free world, will serve as the obstruction to the spread of despotism and intolerance of the Communist world. Let all captive people take heart in viewing our democratic way of life. Let America rediscover the preciousness of freedom by observing the hunger for it in the hearts and minds of captive people who treasure so deeply what we sometimes take so lightly.

Mr. WYDLER. Mr. Speaker, there are eight captive nations in Europe, plus some 18,000,000 captive Germans in East Germany. Together their total population numbers about 100,000,000. These nations occupy the eastern borderlands of Europe, extending from the Baltics in the north to the Balkans in the south. In the past these peoples enjoyed varying degrees of freedom; they all fought hard to win or maintain independence. Some of them were unsuccessful in their fight, but they kept it up, until the end of the First World War, and then they regained their freedom.

Thenceforth for about two decades they maintained a precarious independence, until the outbreak of World War II. During the war they lost much of their worldly possessions, but they lived on the hope that in the end their cause would win out and they would be free. Unhappily, no sooner was the end of the war in sight, than "Lady Luck" seem to have deserted these peoples. The Soviet Union and its Communist leaders were determined to capture them and make them Soviet satellites. Unfortunately the Communists were allowed to carry out their evil designs against these nations. Before the statesmen of the West were aware of the full import of what was happening, very early in the postwar years, most of these nations were completely sealed off from the free world by the Iron Curtain imposed between East and West by the Soviet Union.

Since the end of the war Western statesmen, under the leadership of the United States, have done everything within their limited power to better the lot of these nations, hoping to bring

about their eventual liberation. However, all efforts made to this end have failed to produce significant results. On the occasion of Captive Nations Week we all hope and pray that some way may yet be found whereby these peoples can regain their independence and live in peace with freedom.

Mr. NEDZI. Mr. Speaker, this 11th annual observance of Captive Nations Week provides us with the opportunity to remind ourselves and the people of America that we have a continuing obligation not to forget those lands and people who are not free.

By this action we emphasize the right of self-determination for all peoples and we speak for the concept of individual expression and fulfillment.

In my judgment, thoughtful legislators should turn from time to time to former President Harry Truman's message to a joint session of Congress on March 12, 1947. His words signaled the beginning of the Truman doctrine:

At the present moment in world history, nearly every nation must choose between alternate ways of life. . . .

One way of life is based upon the will of the majority, and is distinguished by free institutions, representative government, free elections, guarantees of individual liberty, freedom of speech and religion, and freedom from political oppression.

The second way of life is based upon the will of a minority, forcibly imposed upon the majority, it relies upon terror and oppression, a controlled press and radio, fixed elections, and a suppression of personal freedoms.

When we speak of the free world, we realize that it includes nations which are not really free. Certainly the dictatorships of Greece, Portugal, and Spain should be a stain on the conscience of the West.

On the whole, nevertheless, the leading nations of the free world are parliamentary democracies, with respect for individual liberties and with constitutional restraints.

During the past decade and a half, more than 60 new nations have been born, nations which previously have not existed except in some subordinate form as colonies, as tribes, as protectorates. Certainly, the captive nations of Eastern and Central Europe are just as entitled, if not more so, to genuine sovereignty, yet over 100 million Europeans live under an alien rule imposed from the Soviet Union. It is a rule which they would not have chosen through a free vote.

Their present condition should not be regarded and cannot be accepted as permanent and unalterable. In the long run the great moving force in the world must be humanity's craving for freedom, for opportunity, and for a just share of the blessings of life.

Police states are incompatible with this spirit and in the long run will not endure.

With this observance, Congress re-states its own belief in the superiority of national independence and the personal freedoms which were at the heart of our own American Revolution.

Mr. NELSEN. Mr. Speaker, the people of the world look to the United States for direction and leadership in the struggle against world communism. Now,

during Captive Nations Week, it is particularly appropriate for Americans to reaffirm the positive blessing of liberty and to reexamine the sad plight of those who must live where this blessing is absent.

Behind the Iron Curtain people live, but not in freedom. Their basic needs are cared for, but they have no rights as individuals. Their freedom to choose their own government, to say what they want and to print what they choose is nonexistent. The rights of the people have been abrogated by the Communist leadership of their respective countries.

But their struggle for freedom has never stopped. Over a long period, various captive peoples have attempted to gain freedom from their Communist overlords. During particularly stressful times, their pent-up anger at tyrannical Communist rule has erupted in rebellion, sometimes openly, sometimes through silent resistance. Some would suggest that their efforts have led only to greater suppression—as with the Czechs and Hungarians. But this is a superficial view, for inside each individual who took part, there remains a burning desire for freedom. It is profound truth that the love of freedom and democracy can never be wholly suppressed.

Aside from our shared ideals, the people of the United States as well as all who live in the Free World have special reason to encourage the continued aspirations of captive peoples for freedom and national self-determination.

The Communist bloc is continually attempting to expand into regions where it has never been before. Wherever there are those who are dissatisfied with their present situation, the Communists attempt to gain a foothold. Through subversion, coercion and sabotage, the Communists infiltrate, fomenting hatred for free institutions and nations. The peoples of Eastern and Central Europe, those on the Asian mainland as well as those in Cuba have discovered with horror the pitiless meaning of a Communist takeover. They have been enslaved. So a strong deterrent to the Communist threat is necessary and vital. The United States is proud to be part of this deterrence. The people of the captive nations must know that the rest of the world has not forgotten them or abandoned them.

Mr. GIAIMO. Mr. Speaker, Captive Nations Week is a time of sober reflection, a time when freedom and liberty take on added meaning, a time when the imperfections of this Nation pale in comparison to the indignities suffered by millions in other lands.

The plight of our fellow men in captive nations is forgotten all too often in these chaotic times. How loudly we complain about our own problems; how seldom we compare what we have with what others would give anything to have.

As we tell these millions that they have not been forgotten, at the same time we should urge—

Those in this country who take independence for granted to think of others who have never known it;

Those who use the concept of freedom for narrow political purposes to realize that freedom is the humanitarian goal of every man and woman on this planet;

Those who criticize peaceful dissent to realize that it is one of our most sacred rights as free men;

Those who abuse the right of dissent to ponder the fate of peaceful dissenters in Communist countries;

Those who attack the mass media to compare our concept of a free press with the use of the press in Communist nations as a propaganda tool of the state;

Those who condemn the size and power of our Government to remember that in America the state serves the people while in Communist nations the people serve the state;

Those who call our society "racist" to consider the treatment of Jews and other minority groups in the Soviet Union;

Those who criticize our electoral process to remember that no Communist regime has ever come to power in a free and open election; and

Those who would scrap our Bill of Rights to remind themselves that this document is a beacon of hope to millions of captive people.

Yes, Mr. Speaker, Captive Nations Week is a time for reaffirmation by all Americans of the principles upon which this Nation was founded. The light of freedom is watched by millions of people in captive nations, Mr. Speaker. Let us not, through anarchy or repression, extinguish that flame.

Mr. BIAGGI. Mr. Speaker, this Nation has enjoyed freedom from foreign domination for nearly 200 years. During that course of time, each succeeding generation tends to forget a little bit more what it would mean if this country were dominated by a government or power over which the people had no control.

During Captive Nations Week it would do well for each of us to reflect on the terrible plight of the many millions of people caught in the iron vise of communism. Those people in Eastern Europe, the U.S.S.R., parts of Asia, and Cuba, are unable to go out into the streets and demonstrate for a cause unpopular with their government. Yet how often do those who condemn our Government from the streets realize the precious freedom they hold?

Those people imprisoned in the captive nations cannot just step across the border or flee to another country when an unpopular service is demanded of them. Yet how often do those who cross easily into Canada or run to Sweden think about the freedom their country has given them in permitting such an evasion?

Those people in the Ukraine, in Lithuania, in Czechoslovakia, in North Vietnam, in North Korea, in Red China, in all the other nations of the world covered by the black cloak of Communist domination, know the freedoms we here in America enjoy. They know what it means to be able to choose freely those who govern. They know, because when freedom is gone, its memory burns ever in the minds of the oppressed.

Mr. Speaker, can we wonder how many times those people in the captive nations must think of the freedoms we enjoy here in this country?

This annual reminder that some nations still are denied the freedoms we enjoy should help us fortify ourselves to

continue the fight against oppression and domination everywhere. In the New Testament, the Lord rewarded only those whose light shone forth, and punished those who slept in the darkness. Should the United States of America fail to keep the lamp of freedom lit, the world will be cured with the darkness of Communist domination. Let us never forget that.

Mr. McCLORY. Mr. Speaker, it is entirely appropriate that we should set aside this time in the U.S. House of Representatives to commemorate Captive Nations Week. It is a privilege to participate with my colleagues from Illinois (Mr. DERWINSKI) and from Pennsylvania (Mr. FLOOD) in observing the 11th anniversary of Captive Nations Week. Normally an anniversary is a time of joy and happiness, but such is not the case this week. Indeed, we cannot help but feel deeply troubled as we take special note of the more than two dozen nations which have been overwhelmed by the repressive forces of communism during the last 50 years. It is sad, but true, that massive areas of the globe are today denied the joys of freedom and liberty by a political and ideological system which they did not want and adamantly refuse to accept.

It has been truly said, Mr. Speaker, that in a free country there is much clamor with little suffering, while in a despotic state, there is little complaining, but much grievance. Certainly our situation today provides a perfect illustration of this poignant irony. In the free countries of the world there is constant discussion and frequent dissent, a right which most of us have come to take for granted. Sadly, though the captive peoples of the world long for this same privilege and would value it as the greatest of treasures, they are refused even the tiniest shred of freedom by their Communist masters. These forces, with a ruthlessness and cruelty which is all but beyond comprehension, have thus far made the citizens of 27 nations virtual prisoners in their own lands.

No compassionate human being can help but feel both outrage and shame at this shocking exhibition of inhumanity.

These lands of great pride and proud heritage have had imposed on them regimes so grotesque and vicious as to deny them their history and efface their culture. Religious traditions which span the course of centuries have been forcibly abolished, and those who dare challenge the edicts of the Kremlin bosses become the object of unceasing persecution. Individual liberty is stifled, for the Communists know they could not survive the unfettered political activity of free men.

Despite the overwhelming power of the Communist juggernaut, people of the captive nations of the world have never ceased in their struggle to regain their freedom. This resistance to tyranny, widespread but most spectacular in such states as Poland and Hungary, has been as heroic as its brutal and bloody suppression has been odious. Less than 2 years ago the free world watched with hope and anxiety as the Government of Czechoslovakia attempted to pursue an enlightened policy of greater freedom and respect for its citizens. Regretfully,

we were soon gasping in horror at the sight of Russian troops invading this proud country and crushing its quest for liberty for the second time in the past 20 years. Here the true colors of the present Soviet leaders were revealed for all to see. Like their predecessors, they too have shown that they will not tolerate any form of individual freedom, and if a captive nation seeks to deviate from this edict, no force will be spared in bringing it quickly back into line. Let us not be deluded into thinking that 27 nations are enough to satiate the greed and fulfill the desire of the Communists. No limited sphere of influence will satisfy them. World domination continues to be their goal. It is not consolidation they seek, but expansion—into Southeast Asia, the Middle East, South America, and the rest of the free world.

Mr. Speaker, I know of no more appropriate time for renewing our total commitment to the principle that the people of every nation, big or small, rich or poor, weak or powerful, are entitled to establish a government of their own choosing. Let us remind the Kremlin leaders that we are fully aware of their intentions and equally determined that they will not succeed. To the people of the captive nations, we express both our sympathy, and our admiration for the tremendous courage they have shown. Their gallant fight for freedom, regardless of the physical might and total ruthlessness of their captors, is a lesson for us all. We confidently look forward to the day when these lands will once again know the joys of independence. Though the Communists have said that they will bury us, every day that they continue the enslavement of millions of people with their oppressive doctrine, they are also digging their own graves.

Mr. CRANE. Mr. Speaker, this is the week that we Americans have designated to give public recognition to the plight of the millions who suffer under the domination of communism in Europe, Asia, and now in other parts of the world. While it is fitting that we should do this, it is a sad commentary on the attitude of our Nation today that we must reserve 1 week out of the year to do so.

Surely the fact that the peoples of Eastern Europe, of mainland China and much of Southeast Asia, parts of the Middle East and Africa, and of Cuba—so near our own borders—labor under the yoke imposed by foreign oppression is not something we can ignore for 51 weeks of the year.

Surely the postwar takeover of Eastern Europe by the Soviets, and the bloody destruction of freedom in those nations, is something we cannot forget for all but 1 week of the year.

Surely our memory of the Soviet "butchers of Budapest" is too strong to disregard for 51 weeks out of 52.

Surely the Russian subjugation of Czechoslovakia only 2 short years ago is not something to be criticized only 1 week of the year.

Surely the fact that the Russians are even now making further inroads into the Middle East—arming Egypt as a preliminary step to making of that nation another satellite—is worthy of our year-round attention.

Surely that island satellite, 90 short miles from the State of Florida, must be considered more regularly than once a year.

Surely it can be seen—and can be seen at any time, not merely during the third week of July—that the Communist powers, Russia and Red China, are even now seeking to expand their empires.

Yet official U.S. policy dictates that one week of the year is set aside for recognition of the fact that 85 percent of the Communist war effort in Southeast Asia is the responsibility of the Soviet Union; that the Soviets have been spending a million dollars a day since 1966 to subsidize terrorist activities in South America; that the Arab war effort in the Middle East is supported and supplemented extensively by the Soviet Union. For the rest of the year these facts are ignored by our policy as by our rhetoric.

Mr. Speaker, this is a tragic state of affairs. Our callous disregard of the expansionist aims of the Communist nations over the past 25 years has been as critical an error as our earlier disregard of Hitler's dreams of a "1,000-year Reich" including all of Europe.

It is sadly without reason that we dedicate a week to "freedom and independence for all nations" when we pursue a foreign policy whose only effect can be to perpetuate the absence of freedom for many nations. It is sadly without reason that so many Americans would call a halt to our efforts on the one front where we have confronted the Communists—in Southeast Asia. And it is sadly without reason that we refuse to assist another Nation that stands alone against the Communists on another front of the global revolution—in the Middle East.

Mr. Speaker, either we as a nation are dedicated to "freedom and independence for all nations" or we are not. We cannot show that dedication 1 week of the year and make it believable.

A century ago Abraham Lincoln said that this Nation could not survive "half slave and half free." Today the world's size has been reduced by rapid transportation and communications: Can we not now make the same statement for the world of the 20th century that Lincoln made for the Nation of the 19th?

If we are to support the oppressed nations in their struggle against the chains of Communist tyranny, we must demonstrate our support the year around. We must commit ourselves and our national policy to the constant defense of freedom wherever it may be under attack, to unremitting opposition to the expansion of Communist domination, and to the eternal vigilance that has preserved, to date, our own freedom against the usurpers of the liberty of other lands. Only if we find the courage to do so will Captive Nations Week be truly meaningful.

Mr. ANDREWS of North Dakota. Mr. Speaker, this week marks the 12th annual observance of Captive Nations Week. It is only fitting that, in the light of our recent celebration of our 194th year of independence and the Honor America Day events that ensued, we should take this time to reflect on the struggles of over one-third of the earth's population who are living in the "captive nations."

In this time of domestic turmoil and trouble it is easy to forget and take for granted the freedoms we enjoy in America. These people do not know the freedom of speech or the right to stand up for their beliefs that we exercise so freely. They yearn for the time when they, too, will be able to live in a country where human dignity is a reality and not a dream far removed. There is no dignity in totalitarianism.

Mr. Speaker, this is not a week of celebration. It is, rather, a week in which we as Americans must remember a grave responsibility. Our national heritage and history make us an example in the free world. We are looked to for leadership and guidance in the principles of democracy. We must let these people know that we have not forgotten them and that we are bound to those who are struggling for their freedom—it was not so long ago that we were fighting for these same basic rights and goals.

This is a time for renewing our commitment to the rights of self-determination, national freedom and individual dignity. These people have sustained their faith in their heritage and hope for the future in the face of tremendous odds; although they have lost their freedom, they have not lost the hope or desire for it. I wish to join my colleagues and all the people of the free world in assuring those in the captive nations that they have not been forgotten. We will continue to dedicate ourselves to working for world freedom and world peace.

Mr. ZABLOCKI. Mr. Speaker, each year as we observe Captive Nations Week, it is appropriate to turn our attention to the plight of the enslaved peoples throughout the world.

This year, the observance takes on a special significance because it is the 25th anniversary of the conclusion of World War II. With the passing of time, no just lasting solution for the people living under Communist domination was accomplished. Nevertheless, the United States and the free world have and are attempting to alleviate their burden either by repelling aggression, aiding economically or "building bridges" with programs encouraging mutual cooperation. It is our sincere hope to therefore hasten the process of loosening the bonds of Communist domination.

The eyes of the enslaved particularly look to the United States as their hope. Our position as champion of democracy reaffirms our responsibility to help these captive people achieve their freedom, self-determination, and inherent human dignity.

As we look back, however, acknowledging our accomplishments and grateful for the gains we have made in these areas, our energy must be directed toward the future—to bring a fulfillment of hope with renewed effort toward independence for the captive peoples. This can only be accomplished with a strong reaffirmation of American support to the universal application of human rights and self-determination. Surely, as long as these natural rights are denied or limited and justice is trampled upon anywhere in the world, our own independence is in jeopardy.

Mr. Speaker, our concern must be for

the future. It is this vein of rededication to a just cause that will give meaning to the observance of Captive Nations Week. With this sincere effort pursued by all the freedom-loving people of the world, the establishment of a new era for peace and freedom will be assured.

Mr. MONAGAN. Mr. Speaker, I am proud to join with our colleagues and other lovers of freedom through the world in observing Captive Nations Week, authorized by the U.S. Congress in 1959.

In 1970, Captive Nations Week gains special significance as this is the 25th anniversary of the conclusion of World War II in Europe. Despite the years, no permanent and just solution has yet been found for the problems of East-Central Europe resulting from the war.

The tragic events in Czechoslovakia from the night of August 20, 1968, to the present reveal just how far from a just solution we are. For a long period ending in 200 dramatic days, the liberals had attempted to follow a course of increasing freedom of action for the Czechoslovak people. The Soviet pattern of conformity and strict centralized control in Eastern Europe appeared to have been altered. The Russian response to this introduction of a breath of freedom was troops and tanks. The leaders of this liberation were swiftly removed. Alexander Dubcek's recent expulsion from the Communist Party marks the final tragedy of Soviet oppression.

Captive Nations Week is an appropriate time to remember that tanks cannot crush ideals. During this week, Americans express their common bonds with the people of the captive nations, bonds which have existed throughout the years. It has often been said that the right of self-determination is the foundation on which all other rights rest. If self-determination is denied, no other right is secure. All Americans support the right of the captive nations to decide their own destinies. Today millions of people live in nations under Communist domination where they are denied the basic individual rights of free speech, free press, and free assembly. We who enjoy those rights must reaffirm our determination to pursue freedom and justice for all peoples.

It is particularly important during this week so close to our own celebration of independence that we publicly proclaim our continued support for the just aspirations of these courageous peoples. I have introduced a resolution in the House expressing the sense of Congress that the occupation of Czechoslovakia is illegal and unjustified. Through this resolution, House Concurrent Resolution 457, and other actions, we must firmly express our support for the independence and sovereignty of all nations, large or small, weak or strong.

The plight of the captive nations must be kept in world consciousness. Free people must not surrender their commitment to the freedom-loving people behind the Iron Curtain. The fundamental rights of man, so admirably articulated in the Declaration of Human Rights of the United Nations and in the U.S. Constitution must be restored and protected.

Mr. HICKS. Mr. Speaker, 25 years ago

this May the war in Europe came to an end. But the hopes and expectations that rose in the wake of victory have yet to be realized for the over 100 million people living in Albania, Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, and Rumania. For them, the yoke of Nazi oppression simply has been replaced by Soviet domination.

For a quarter of a century the U.S.S.R. has ruled the destinies of these nine nations. At the close of World War II the Russians pledged to restore freedom and independence to East and Central Europe. Instead, they brutally seized control of their governments and installed harsh totalitarian regimes that have long denied the people their basic right to self-determination.

Of course, this enslavement has not gone unchallenged. The true sentiments of the people toward their Communist overlords were vividly brought forth during the 1956 Polish October, the Hungarian Revolution of the same year, and 2 years ago in Czechoslovakia. In each instance only strong Soviet intervention—arbitrary invasion and occupation by Soviet troops in the cases of Hungary and Czechoslovakia—prevented the collapse of the Communist regimes.

To help dramatize the cruel plight of captive people in East and Central Europe, Congress in June of 1959 unanimously adopted a resolution dedicating the third week of each July as Captive Nations Week. Over the past 11 years Presidents Eisenhower, Kennedy, Johnson, and Nixon have called upon all Americans to initiate or join in appropriate observations. This day, we in Congress wish to express our solidarity with the freedom-loving people of these proud and once independent nations, and to let them know that they have not been forgotten.

Mr. FEIGHAN. Mr. Speaker, it was in October 1956 that the gallant people of Hungary spent 5 heroic days driving their tyrannical oppressors from their homeland. During those 5 days, young men, women, aged grandmothers, entire families, fought together to break the bounds of brutality imposed on them by the puppet government installed by the Soviet Union.

Within hours after these courageous people succeeded in throwing off the Red blanket that covered them, the Soviet Union sent her armies to crush those who so dearly fought for liberty and the dream of a coming freedom. In only a short time, all that had been accomplished in those 5 days was utterly annihilated by the invading armies. The dream of freedom was shattered, torn down and wiped away, as was the dreamer.

Mr. Speaker, the tragedy of occupation that was imposed on Hungary is nothing new. Occupation was also imposed on Estonia, Latvia, Lithuania, Albania, Bulgaria, Poland, Rumania, Czechoslovakia, North Korea, East Germany, Mainland China, Tibet, North Vietnam, Armenia, Azerbaijan, Byelorussia, Cossackia, Georgia, Idel-Ural, North Caucasus, Ukraine, Mongolia, Yugoslavia, and Cuba.

These are the captive nations of the

world. These are the nations under the iron-fist rule of communism.

One would think that these enslaved peoples would give up all hopes of freedom after the experiences of the past. Not so, because today we find Kuznetsov, the writer, and the daughter of Stalin, from Mother Russia itself, denouncing the Red tyranny. In fact, there seems to be a greater and greater recurrence of unrest among all the peoples of the captive nations.

Communism seeks to dominate the entire world. Unrest at home inhibits their expansion plans abroad.

Today as we observe the 11th anniversary of Captive Nations Week, created by Public Law 86-90, of which I was a cosponsor, let us keep in mind two points of the first Captive Nations Week resolution passed by both houses of this Congress in 1959, which declared:

It is vital to the national security of the U.S. that the desire for liberty and independence on the part of the peoples of these conquered nations should be steadfastly kept alive; and . . . the desire for liberty and independence by the overwhelming majority of these submerged nations constitutes a powerful deterrent to war and one of the best hopes for a just and lasting peace. . . .

Mr. Speaker, I feel, that now is the time for the United States to take the political and ideological offensive in this area concerning these captive nations. We have seen in this decade how we have struggled to end further expansion of the Communist empire. Now we need to expand our efforts to bring freedom to captive nations.

In a period of our history when the reasons for the Russian reinvasion of Czechoslovakia is fresh in the minds of many—a helping U.S. hand can make the difference between success or failure of these nations struggling for freedom.

As we face up to the challenge of freedom in celebrating this Captive Nations Week, I ask you all to remember the words of Rev. Richard Wurmbrand, head of the Hungarian underground church when he declared:

America is the repository of hope for the millions of people held captive behind the Iron Curtain today.

Mr. Speaker, let us never turn our backs on these faithful people.

Mrs. REID of Illinois. Mr. Speaker, I wish to join with my colleagues in the House in once again observing Captive Nations Week.

Eleven years ago the Congress passed Public Law 86-90, establishing the third week in July each year as Captive Nations Week. The late President Dwight D. Eisenhower was the first Chief Executive to issue a Presidential proclamation to that effect.

Each year Captive Nations Week has provided a fitting opportunity for the American people to show their solidarity with their captive brethren in East and Central Europe. Nationwide observances preceded by Captive Nations Week proclamations by the President and by Governors and mayors of many States and cities, offer Americans a traditional vehicle for manifesting their continued concern with the plight of the 100 mil-

lion East and Central Europeans under Communist rule.

This year's observance takes on a special significance because it comes a few months after one of the most poignant anniversaries of our time. Twenty-five years ago this May the war in Europe came to an end, but the hopes and expectations that came in the wake of the hard-won victory have yet to be fully realized. For the people in East and Central Europe in those countries Nazi domination was replaced by a harsh and repressive Communist rule.

It has often been said that the right of self-determination is the foundation on which all other rights rest. If self-determination is denied, no other right is secure. Yet there are millions of people today who are forced to live in nations under Communist domination where the basic rights of free speech, free press, and free assembly are held in utter contempt.

I know I speak for many in my own State of Illinois whose ancestral homeland is in one of the captive nations and who continue to pray that liberty will soon be restored to these gallant and long-suffering people. I know, too, that I speak for many Americans of all nationalities who share this same dream.

I am proud to join with the voices of the free world in rededicating ourselves in the great cause of liberty for all peoples. Our words and deeds must continue so that we can soon realize a day of true world freedom. I have faith that one day the people of the captive nations will once again be masters of their own destiny.

Mr. DINGELL. Mr. Speaker, one of the saddest, most shocking, and tragic legacies of the last war is the fate of captive nations in Europe. This tragedy was brought about by the coldly calculating and treacherous policy of the Soviet Union. As the result of that policy—the policy of Soviet colonialism and exploitation of peoples in other lands—about one-third of Europe's land area and close to one-third of its population have become imprisoned in northern, central, and southeastern Europe, behind the Soviet-imposed Iron Curtain. These peoples constitute today's captive nations of Europe.

There are nine captive nations in Europe. Poland with its 30 million population is the largest and, of course, the most important among them. The sturdy and stouthearted Poles are not reconciled with their present lot, and are unalterably opposed to the Communist regime which rules in Poland. Short of open rebellion against their Moscow-directed oppressors, they have been struggling for their freedom from Communist tyranny.

That is true in the case of other captive nations. They all are struggling to shatter the chains which hold them bound to the Soviet Union, but their efforts have not been successful. The fate of Hungary in the uprising in 1956 is still fresh in their memory, and they do not want to share the sad fate of unhappy Hungarian victims of that uprising. The Baltic peoples and the Czechoslovaks, Bulgarians, and Rumanians know that they are being exploited by the Soviet Union, but they also know that they themselves alone cannot

change their political lot. Instead they look forward to the working of peaceful means, to diplomatic negotiations between the West and the Soviet Government, by which they hope for the lessening of tensions, the improvement of international relations, and the eventual betterment of their lot under free and democratic governments. Let us all hope on this observance of Captive Nations Week these efforts through peaceful means will succeed and that these captive nations will soon regain their freedom.

Mr. ANDERSON of California. Mr. Speaker, I join my colleagues in the 12th annual observance of Captive Nations Week held throughout the country, and in 17 other free nations during July 12-18, 1970. This is indeed a fitting opportunity for freedom-loving people and defenders of fundamental human rights to show their solidarity with their captive brethren in East and Central Europe, and to manifest their continued concern with the plight of the 100 million people under Communist rule.

The observance is especially significant in 1970, since this year marks the 25th anniversary of the conclusion of World War II in Europe. The problems which appeared in East-Central Europe as a result of the war are still present and no permanent, just solution has yet been found. By the use of force, millions of people are limited or denied basic human rights and the opportunity for national self-determination.

Public Law 86-90 defined the plight of the captive nations in the following words:

The imperialistic policies of Communist Russia have led, through direct or indirect aggression, to the subjugation of the national independence of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Tibet, Cossackia, Turkistan, North Vietnam, and others.

We deplore such repression and are shocked that the God-given right of freedom is withheld from so many people by the will of a few.

We refuse to accept a sense of inevitability that regimes will continue to be imposed upon these unfortunate victims of tyranny.

We must continue to make known our deep concern for our fellow human beings of the captive nations and make this message known to the captive world. This message should not be limited to the observance of Captive Nations Week, but should continue until the yearning for freedom and love of liberty within the hearts of the enslaved peoples ultimately prevails.

One way of doing this is to promote the basic human rights and fundamental freedoms of all people—neighbors, co-workers and countrymen—and not simply to mouth these rights on special occasions.

While also being mindful of the suppression of millions in other countries and proving to them that they have not been forgotten, we must be mindful of our own freedom and independence and

realize that it must not be taken for granted.

I call on my colleagues and all Americans to aid in informing the captured people of our support for their desires of national and individual freedom, not only during this week of observance, but in a continuing effort to recognize the gift of freedom which we have and to promote it for all people.

Mr. PATTEN. Mr. Speaker, in these days of internal strife, we tend to become too caught up in our own affairs and therefore lose sight of one of the most serious problems that confronts the free world today—the plight of 100 million subjugated persons in more than two dozen captive nations under Communist domination.

I represent a district whose population is largely based on people who have very close cultural and spiritual ties with those in captive nations today. I, therefore, have had a chance to talk extensively with these people and know how strongly they feel, and how we all should feel about people who have been denied their inalienable right of freedom. This is the freedom to choose and determine their own form of government, their own means of employment, and the freedom to live their life in undisturbed peace.

The principle behind Captive Nations Week is to show the world that we support the aspirations of those people in the Captive Nations, and that we express solidarity with their hopes for a restoration of freedom. The people in these nations look to us for leadership in bringing about peace in the world, and it is therefore up to us not to fail them. We must show captive people that we have not forgotten them, but instead, that we are aware of their tragedy.

Public Law 86-90, signed by President Eisenhower in July 1959, proclaimed that the purpose of Captive Nations Week is to gain "a warm understanding and sympathy for the aspirations of persons everywhere." I hope that this understanding and sympathy do not fade at the end of this week, but rather use this time to rededicate ourselves to the difficult, but not impossible task of helping to restore freedom to those who have lost it to tyranny. Only by doing so, can we reassert our intention to work for the day when all people will be able to enjoy freedom, dignity, and equal justice.

Mr. SMITH of New York. Mr. Speaker, as we enter a new decade and observe the 12th anniversary of Captive Nations Week, we, as Americans, should continue to strive to promote freedom and peace throughout the world. When President Eisenhower proclaimed Captive Nations Week 12 years ago he stated that it would be observed "until all captive nations were free and independent." Yet today the people of Eastern Europe remain under the domination of Communist aggression and are continually struggling for their freedom and independence. It is, therefore, incumbent upon us as a free people to rededicate ourselves to the task of achieving freedom, independence, and peace in this decade for all the peoples of the world.

Mr. BYRNE of Pennsylvania. Mr. Speaker, this week we are observing the 12th annual Captive Nations Week.

The year 1970 marks the 25th anniversary of the conclusion of World War II in Europe and, unfortunately, over a billion people are still living as captives of Communist imperialism. Today, as I have in the past, I am joining my colleagues in Congress in sending a word of encouragement to all citizens of the captive nations who still cherish the dream of national independence and the right of self-determination. We Americans enjoy to the fullest the right of self-determination, and it is our desire that all people shall have the opportunity to enjoy this freedom.

We want to remind the people of Albania, Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Rumania, and other captive nations that we have not forgotten them. We know that their life is not easy, and we pray that the future will bring them liberation from their shackles. We salute their courage, their bravery, their endurance, and their high ideals.

The people of the captive nations have our sympathy and firm support in their struggle for freedom and happiness.

Mr. GERALD R. FORD. Mr. Speaker, this year marks the 25th anniversary of the conclusion of World War II in Europe. I wish to join those who today pause in commemoration of Captive Nations Week. This observance was designated 11 years ago by a resolution of Congress and the subsequent signing of the bill into law by President Eisenhower.

Captive Nations Week serves a solemn reminder of the more than 100 million people in over 25 countries behind the Iron Curtain who no longer exercise the right of self-determination in the political affairs of their nations.

Today we should reflect on the true meaning of this loss of political freedom. A loss which has been established and perpetuated by force of Soviet arms. A loss which has carried with it a loss of religious and economic freedom as well. Above all we should reflect on the tragic personal loss for millions of people within the captive countries who were ripped from their homes by Soviet terrorists and murdered or deported to slave labor camps to establish Soviet political domination. Is it possible to describe with words the personal losses and suffering perpetrated on these captive nations?

It is one of the bitterest ironies of history that World War II should be fought over the right of the Polish people to exercise their basic right of self-determination only to find 25 years later that Poland and all of the rest of the eastern European and Baltic countries have become captive nations to Soviet imperialism as a result of that war.

Today we reiterate our opposition to the cruel Soviet stranglehold on East and Central Europe. The brutal force used by Russia to crush the Hungarian revolution in 1956 and the invasion of Czechoslovakia in 1968 demonstrate the fragile support of the Communist order in the captive nations. The observance of Captive Nations Week recognizes that the desire for freedom that burns in the

hearts of free men everywhere cannot long be repressed. Someday these captive nations will once again raise their own flags over free countries.

I stand today with those who wish for the freedom of these captive nations and work for the dignity that is the right of free men everywhere.

Mr. FISH. Mr. Speaker, 11 years ago this month the 89th Congress during the administration of the late Dwight D. Eisenhower, designated the third week in July as Captive Nations Week. This year, from July 12 through July 18, the people of the United States and 17 other free nations will again mark that anniversary.

As is pointed out in the Captive Nations Week Manifesto of 1970, this week's observance falls just 2 months after the 25th anniversary of one of the most poignant anniversaries ever marked in our time. For it was 25 years ago in May, as World War II drew to a victorious close, that the 100 million people from East and Central Europe began to be drawn into the Communist domination of Russia. Even as these once free and independent people were celebrating their liberation from the Nazi tyranny, they were being absorbed by the Communists.

Living in freedom we often forget what a priceless possession freedom is, and that even as we enjoy our freedom much of the world still knows only Communist oppression. Yet the revolts of Hungary and Poland in 1956, and more recently the tragic crushing of liberalizing movements in Czechoslovakia remind us how much those people held under Communist domination for nearly a generation desire freedom. They show us the sacrifices those brave people held captive will make to possess something we take for granted.

Therefore, this week-long observance of Captive Nations Week should give us all an opportunity to reaffirm, not only our efforts on behalf of all repressed people, but give us also the chance to ponder the danger and suffering that can occur through freedom's loss. Let us this week rededicate ourselves to the principle that all men should be free, and strengthen our spirits with that love for freedom that has marked us as a nation from our birth.

Mr. DELANEY. Mr. Speaker, in July of 1959 the Congress passed Public Law 86-90 providing for the observation of Captive Nations Week during the third week of July. This week of July 12-18 marks the twelfth observance of Captive Nations Week. During this time the United States and 17 other free nations will again demonstrate their commitment to the more than 100 million people held captive by the Soviet Union. At this time we should recall the words of President Kennedy:

This country must never recognize the situation behind the Iron Curtain as a permanent one, but must, by all peaceful means, keep alive the hopes of freedom for the peoples of the Captive Nations.

World War II ended 25 years ago and for countries such as France, Belgium, and West Germany, the end of the war meant an end to tyranny and a return to freedom. But to Albania, Bulgaria, Czechoslovakia, East Germany,

Estonia, Hungary, Latvia, Lithuania, Poland, Rumania, and Yugoslavia, the end of the war meant trading the yoke of one tyranny for the yoke of another tyranny even worse.

For the last 25 years the peoples of these captive nations have lived without the basic human freedoms we believe in and cherish. The young men and women who fought in that war and who hoped for a day of freedom have seen their children grow up and have children of their own—without freedom! There are no free elections in these countries. The news is censored, and travel is curtailed. Intellectual, economic, and private life is controlled by the state. And there is police repression to enforce the dictates of the Russian puppet governments.

The suppression in these countries has not gone unchallenged. First Hungary and then Czechoslovakia openly rebelled against the Russians. And in the quieter drama of day to day life individuals continue to oppose repression. These peoples refuse to give up their minds and souls to the Communists. Radios are tuned to the Western World. Writers secretly publish criticisms of the state. The faithful continue to practice their religious beliefs. There are defectors who give up home and family and risk their lives to escape.

The invasion of Czechoslovakia and the "Brezhnev doctrine" make it quite clear that Russia has no intention of relaxing its grip on the captive nations. The Brezhnev doctrine claims that the Soviet Union has a right to interfere in the internal affairs of any Socialist country, and it is obvious that Russian imperialism will be continued.

The United States fought for freedom in World War II, and since the war the United States has urged that the colonies around the world be given their freedom. It is only fitting, therefore, that we support the hope for freedom in the captive nations.

In his Captive Nations Week proclamation statement of 1965, President Johnson said:

The United States of America has an abiding commitment to the principles of independence, personal liberty, and human dignity.

And each year at this time we pause in our activities to consider the terrible plight of these peoples and to reaffirm that we have not forgotten them nor have we accepted their captivity. It is my deep personal hope that we shall one day see these 100 million people regain their freedom.

Mr. FRIEDEL. Mr. Speaker, among the many miseries and tragedies of the last war there is the sad fate of the captive nations. These are the approximately 100,000,000 helpless peoples in eastern, central, and southern Europe—peoples living in the European borderland extending from the Baltic to the Balkans—who have been separated from their spiritual and cultural kinsmen in the free West for 25 years.

All of these peoples had previously enjoyed a great measure of freedom in their homelands, even during some precarious years of the interwar period. But

when the forces of destruction and death were unleashed by the outbreak of the last war, they became its first victims; they lost nearly all their worldly possessions, and many millions lost their lives. Yet they bore such sufferings with much fortitude, hoping that some day, at the end of the war, they would regain their freedom and live once more in peace in their homelands. That hope, and perhaps that alone, kept up their spirits as self-respecting human beings. Then came the end of the war, and with it the reinforcement of their miseries and misfortunes.

It has been clear for some years now that one of our wartime allies, the Government of the Soviet Union, had its own secret and selfish designs on these nations. However, before the statesmen of the West became fully aware of the evil aims the Soviets were up to, most of these lands were being occupied by the Red Army, and Communist totalitarianism was being imposed upon their inhabitants forcibly. These developments took place behind what came to be called the Iron Curtain, while the leaders of the West ruefully admitted their inability to be of much help to these people without bringing about a further disastrous confrontation of major powers. Nevertheless, the sympathies of people in the West remain with the captive peoples, and on the observance of Captive Nations Week we once more voice our protest against the Soviet Government's enslavement of them and the fervent hope that they will soon attain their freedom from Russian tyranny.

Mr. GREEN of Pennsylvania. Mr. Speaker, only 2 weeks ago Americans observed the 194th anniversary of continuous freedom. As a Nation preoccupied with deep problems it is difficult to see that our growth has really been the constant refinement of freedom and justice for all our citizens—and the development of rights for all, regardless of race, color, creed, or sex. It is often forgotten that when this country was born full rights were enjoyed by a minority.

It is important for Americans, in these critical times, to reflect on their past and to remember that the freedom we Americans enjoy and work to keep are not enjoyed by millions of people behind the Iron Curtain. In our struggles for recognition of minority views we should recognize that no such expression is allowed in the captive nations. We should also draw inspiration from the human spirit in these countries which continued, in the face of adversity, to fight for dignity and freedom and national identity.

On this 12th anniversary of Captive Nations Week we Americans should pledge ourselves to include in the fight for freedom around the world the people of the trampled nations in Eastern Europe.

Mr. SMITH of California. Mr. Speaker, this week Americans throughout our country mark the 12th annual observance of Captive Nations Week.

Thirty years ago a tragic event took place in Eastern Europe which should remind freedom-loving people everywhere of the precious commodity of human rights.

When the Russian Communists enslaved the peoples of the Baltic nations of Latvia, Estonia, and Lithuania, these three once great and independent nations lost their freedom and independence. Those who remain are waging an intensive fight to regain their liberty. They are undeniably deserving of our support—if only because of our adherence to the U.N. Charter affirmation of "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of nations large and small."

The present involvement of the United States in the major conflict in Vietnam is because of our belief in the principles of human rights for all. Let us continue to heed the pleas of all whose rights have been denied by Communist domination. Let us maintain our greatness as a nation by standing for freedom in the affairs of all nations.

Mr. ADDABBO. Mr. Speaker, once again the House of Representatives participates in Captive Nations Week through the statements of sympathy and support of our colleagues for captive peoples throughout the world. Since 1959 when Public Law 86-90 was enacted, we have taken this time to call public attention to the oppression of millions of our brothers and sisters behind the iron curtain and in areas of Communist domination.

The danger that these observances may become routine and thereby lose their impact has been temporarily lessened by the recent experience in Czechoslovakia and the present danger in the Middle East. If anyone questioned the need for Captive Nations Week observances, those questions have been answered by the state of world affairs today and the fact that one third of the world's population lives under restrictions on basic human freedoms.

Last week America celebrated its Independence Day with a renewed awareness of what makes America great and the added participation of hundreds of thousands of Americans in "Honor America Day." It is appropriate that this week the Nation which cherishes freedom turn its attention to those less fortunate who live in fear, terror, oppression and domination by those who do not believe in freedom.

The two occasions are really inseparable for we cannot understand the greatness of America or honor its independence without knowing and appreciating the plight of those who are captive. This is a time then to rededicate ourselves to the goals of the United Nations Charter and the United Nations Universal Declaration of Human Rights and to deplore the policies of those who would restrict the right of the individual to choose his own course in life and to block a nation's basic right to determine its own future.

We hold out our sympathy, our support and our hopes to the peoples of East and Central Europe on this occasion and rededicate ourselves to the liberation of oppressed people everywhere. This is the message of freedom which we send out across the globe today—the very same message which we recognized last week on our Nation's Day of Independence.

Mr. DENT. Mr. Speaker, I rise in support of the captive nations of Europe and Asia; nations such as Albania, Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, and Rumania.

We all know of the threat which the worldwide menace of communism poses. During this week of remembrance and encouragement for those nations, I would like to remind the Members of this Chamber of two examples, as evidenced in the captive nations, of what communism holds in store for the free world: enslavement of men's minds and usurpation of men's political liberty.

It is common knowledge that in Communist countries the state controls the press, radio, and TV. These people do not get "the news"; rather, they receive the party line. Control of information is the first step on the road to the control of men's minds.

Communist leaders have abolished the freedom to seek the truth. When men cannot actively seek the truth, as is the case in the Captive Nations, they latch on to dogma. Their minds become lazy, unquestioning and thus are more easily controlled.

A second means of controlling men's minds in the captive nations is by restricting their movement. People under Communist domination cannot travel from city to city let alone visit foreign countries. This restriction prohibits people from exploring their country and the rest of the globe and seeing for themselves what the outside world is really like. Often those who find out defect.

In free countries people can travel almost anywhere; thus the truth is not hidden by false fronts and lies. Rather it is there for all to see. The press can expose inequities or bad conditions in our society. They are free to bring the country's problems to the public's attention. But since movement is restricted and the press is state-controlled few people in the captive nations really know all the evils of their society nor do they know about that which is good in our society.

Finally these two restrictions culminate in the suppression of dissent. Even though our country is a hotbed of dissent and resulting turmoil I think that everyone here realizes that dissent is a prerequisite for freedom. It is a prerequisite because it compels us to always question that which we consider the truth. In free countries dissent provides us with living truths rather than dead dogmas. In Communist countries suppression of dissent leads to blind acceptance and that leads to control of men's minds. Management of the news restriction of movement and suppression of dissent are the never-ending circle in the movement to control of the mind.

In turn control of the mind leads to the loss of political freedom. There is no such thing as national sovereignty under communism. Our Declaration of Independence proclaims the right of revolution if the people of a country are intolerably oppressed. Communists proclaim this right for all nations in the world except those which are under the heel of communism. If a revolution does break out with the support of a majority of the people Communist countries then

forget the cry of national sovereignty. Other countries proclaim the right to intervene in order to preserve unpopular communism. This is the heart of the Brezhnev doctrine and the Brezhnev doctrine is the beginning of the end of national sovereignty for any country which turns Communist.

Russia came under the rule of the Communists in 1917. Since then it has imposed its influence and the influence of communism upon those nations which we know of today as the captive nations. Not one of these nations has ever been able to popularly change its leaders nor has any one even had a choice through election. Rather the leaders of these countries are chosen by an elite group of less than 20 men. Communism is that form of government furthest from being of, for, or by "the people." A "democratic" Communist government is a contradiction in terms.

Mind control and political suppression have a striking relation to the captive nations. The people of these countries are striving to preserve their mental freedom despite the fact that their leaders are trying with all means available to control their minds. We in the United States admire the courage of these people in the face of almost insurmountable odds. Despite these odds, they have struggled to keep their minds free and informed by listening to Radio Free Europe and by reading publications from the free world even though they may be illegal in their own countries.

Despite political repression, they revolt. The people in Hungary in 1956 and the people of Czechoslovakia in 1968 showed that people with a heritage of national sovereignty find international communism impalatable. We admire these people for standing up to Soviet aggression and suppression. These two revolts are prime examples of the Communist disconcert for national sovereignty. But, even though they are able to suppress large-scale revolutions, they cannot control small ones. Even though the regime suppresses political dissent, these courageous people still practice it and make it quite evident. Whether it be through poetry, literature, or music or through clandestine garden plots or a deliberate slowing of production, these people revolt in small ways which, when all totaled, constitute a large protest against the regime.

We in the United States have an obligation as freedom-loving people to aid the people of the captive nations politically and morally in their struggle against mind control and political oppression. We also have an obligation to aid sovereign nations in their battle to be free. Communists espouse a line of national sovereignty, and then they make a mockery of it by invading other countries in order to impose their form of government. We must see that the list of captive nations does not grow not only in Asia but in the Mideast and in America.

In conclusion, Mr. Speaker, let me say that I have confidence that the people of the captive nations will persevere as long as they are oppressed and suppressed because they have a heritage of national sovereignty which they will never re-

nounce. The question now is whether our heritage of national sovereignty will cause us to persevere with them. As long as we do persevere, we can insure not only our sovereignty but the national sovereignty of other countries of the world.

Mr. MINISH. Mr. Speaker, I should like to add my voice to the many others concerned about the plight of captive nations. As we all know, July 12-18 marks the 12th observance of Captive Nations Week, which was established by Public Law 96-90 in 1959. Unfortunately, however, remedies still do not exist for such countries as Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Rumania, Estonia, Latvia and Lithuania. Nonetheless, these are nations with nationalistic peoples, who retain their singularly individualistic character in the face of overwhelming odds.

It is necessary that we in the United States pay tribute to these other countries which, in spite of their tribulations, manage to retain an optimistic outlook. Furthermore, it is fitting to reflect upon some of the freedoms guaranteed by our Founding Fathers which are frequently taken for granted. What must be kept uppermost in our thoughts is that these same freedoms are not permitted most persons of the world, and should therefore be more utilized, appreciated and cherished by us.

At this time, I should like to include for the edification of those who have not seen it, Public Law 86-90:

[Public Law 86-90, 86th Congress]

S.J. RES. 111

Joint resolution providing for the designation of the third week of July as "Captive Nations Week"

Whereas the greatness of the United States is in large part attributable to its having been able, through the democratic process, to achieve a harmonious national unity of its people, even though they stem from the most diverse of racial, religious, and ethnic backgrounds; and

Whereas this harmonious unification of the diverse elements of our free society has led the people of the United States to possess a warm understanding and sympathy for the aspirations of peoples everywhere and to recognize the natural interdependency of the peoples and nations of the world; and

Whereas the enslavement of a substantial part of the world's population by Communist imperialism makes a mockery of the idea of peaceful coexistence between nations and constitutes a detriment to the natural bonds of understanding between the people of the United States and other peoples; and

Whereas since 1918 the imperialistic and aggressive policies of Russian communism have resulted in the creation of a vast empire which poses a desire threat to the security of the United States and of all the free peoples of the world; and

Whereas the imperialistic policies of Communist Russia have led, through direct and indirect aggression, to the subjugation of the national independence of Poland, Hungary, Lithuania, Ukraine, Czechoslovakia, Latvia, Estonia, White Ruthenia, Rumania, East Germany, Bulgaria, mainland China, Armenia, Azerbaijan, Georgia, North Korea, Albania, Idel-Ural, Tibet, Cossackia, Turkestan, North Viet-Nam, and others; and

Whereas these submerged nations look to the United States, as the citadel of human freedom, for leadership in bringing about their liberation and independence and in restoring to them the enjoyment of their Chris-

tian, Jewish, Moslem, Buddhist, or other religious freedoms, and of their individual liberties; and

Whereas it is vital to the national security of the United States that the desire for liberty and independence on the part of the peoples of these conquered nations should be steadfastly kept alive; and

Whereas the desire for liberty and independence by the overwhelming majority of the people of these submerged nations constitutes a powerful deterrent to war and one of the best hopes for a just and lasting peace; and

Whereas it is fitting that we clearly manifest to such peoples through an appropriate and official means the historic fact that the people of the United States share with them their aspirations for the recovery of their freedom and independence: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is authorized and requested to issue a proclamation designating the third week in July 1959 as "Captive Nations Week" and inviting the people of the United States to observe such week with appropriate ceremonies and activities. The President is further authorized and requested to issue a similar proclamation each year until such time as freedom and independence shall have been achieved for all the captive nations of the world.

GENERAL LEAVE TO EXTEND

Mr. FLOOD. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order today on Captive Nations Week—1970.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

THE LATE HONORABLE CLIFFORD DAVIS

The SPEAKER pro tempore (Mr. ROONEY of New York). Under previous order of the House, the gentleman from Tennessee (Mr. EVINS) is recognized for 60 minutes.

Mr. EVINS of Tennessee. Mr. Speaker, this time in history has been set aside in the House to honor the memory of our beloved friend and colleague, Clifford Davis of Memphis, Tenn.

Cliff passed away quietly at his home here in Washington on June 8 last—watching news reports on television. He was always alert and energetic and kept abreast of the currents of history.

Cliff Davis served in the House for 24 years and at the time of his retirement was dean of the Tennessee delegation. His warmth and geniality impressed all who knew him. He was a great friend to all of us—and he increased his multitude of friends as new Members joined the House. He always went out of his way to assist his colleagues, giving them the benefit of his experience and knowledge—which was certainly extensive.

Cliff loved his friends—someone has said that friendship is love with understanding. Certainly Cliff possessed both of these qualities and where Cliff was there was good humor and warmth of spirit.

Apart from his greatness as a wonder-

ful human being, Cliff Davis was able, capable, courageous and possessed of vision and foresight. He was an outstanding legislator—skilled in the processes of the legislative procedure—and he served with great distinction on the Committee on Public Works and the Armed Services Committee.

As a member of the Committee on Public Works, he was chairman of the Subcommittee on Flood Control and chairman of the Subcommittee on Property Acquisition. He was also chairman of the House Select Committee on Campaign Expenditures.

He was a champion of water resource development—the building of dams for electric power—navigation—flood control—economic development and other benefits that have contributed to the building of a greater and stronger America.

As chairman of the Subcommittee on Flood Control of the House Public Works Committee, he had the responsibility for authorizing and approving all major water resource development projects in the Nation. Many outstanding water resource projects throughout the Nation exist today as monuments to the foresight and dedication of Cliff Davis.

Cliff Davis believed in a strong defense for this Nation. He was a great champion of national defense—he believed in a strong America as a force for peace. And as a member of the Armed Services Committee he worked to build a strong and modern military posture for our Nation.

Among his other legislative achievements were sponsorship of the Appalachian Regional Development Act, the Federal Interstate Highway Act and bills to strengthen and assist the Tennessee Valley Authority in its mission.

Cliff Davis was a builder—a doer—a practical man with the vision to perceive the needs and opportunities in the America of the future—and to act to make his dreams become a reality.

He diligently and ably represented his district, State and Nation. He will be greatly missed. He will long be remembered.

Cliff Davis was a great Tennessean—a great American—and a grand gentleman. We all loved him. He was a genial, warm and personable friend.

We are all saddened by the loss of this wonderful man and I want to take this means of conveying to his lovely and devoted wife, Carrie, and other members of the family this expression of my deepest and most sincere sympathy. Mrs. Evins joins me in these sentiments of sorrow and sympathy as we pay tribute to the late beloved Clifford Davis of Tennessee.

Mr. FLOOD. Mr. Speaker, will the gentleman yield?

Mr. EVINS of Tennessee. I yield to my friend, the gentleman from Pennsylvania.

Mr. FLOOD. Mr. Speaker, first of all, I am very happy and pleased that my distinguished friend, the gentleman in the well, is presenting this memorial to our late beloved friend, Cliff. As the gentleman knows, I served with Cliff on the very first day I came here, and he took me, as he did the gentleman, by the hand and showed us around these halls.

I might add—and I am sure the gen-

tleman will mention it—his very gracious lady was a close friend of Mrs. Flood, and in the Congressional Women's Club she was a worker year after year.

So Mrs. Flood joins me in holding hands with the gentleman in this tribute.

I can only say, thinking of Cliff in the Chamber, I can see him sitting back in the chair as we talked and joked so much:

They shall grow not old, as we that are left
grow old;

Age shall not weary them, nor the years con-
demn.

At the going down of the sun and in the
morning

We will remember them.

Mr. EVINS of Tennessee. I thank my colleague, the gentleman from Pennsylvania, for his beautiful tribute.

Mr. KUYKENDALL. Mr. Speaker, will the gentleman yield?

Mr. EVINS of Tennessee. I yield to the very able and beloved gentleman from Tennessee, the Representative from Shelby County in Tennessee.

Mr. KUYKENDALL. Mr. Speaker, I thank the distinguished gentleman for the privilege of adding my voice to those of the many friends of Cliff Davis in this body. All of us who knew him, and particularly you who served with him, know how difficult it is to find the best thing to say, the place where your memory dwells most when his name is spoken.

His greatest pleasure after he left the House, it seemed to me, was in doing the thing he had done for 24 years as a Member of it—helping people. When I came to this city in December of 1966, his hand was one of the first that was held out to me, offering help. Surely no one needed it more than a not-yet-sworn-in freshman Congressman, and just as surely, no one could have offered it more happily than Cliff Davis. The fact that we did not belong to the same party never was mentioned. It was not a subject we avoided deliberately, it simply made no difference in our relationship.

I listened to his counsel and profited from his vast experience and his knowledge of people, and I still obey some of his suggestions of what to do and his admonitions of what not to do.

And while I was being counseled, his lovely wife, Carrie Davis, was seeing to it that Mrs. Kuykendall had answers for the many questions that a new citizen of Washington, D.C., would want to ask. Between the two of them, they must have made hundreds of new Washingtonians more comfortable during their long tenure.

As I pointed out in my remarks last month, he was a man who had faced death in the official performance of his duty. Some of the furniture in this room still bears the bullet scars from the 1954 incident when he was one of five Members who were shot from the gallery: and he was returning to his district in 1962 when a plane crash in Knoxville almost took our Representative from us. He escaped the first incident with a bullet wound in his leg, and the second one without a scratch.

There are many monuments to Cliff

Davis' legislative career in Memphis. But I am sure the one he is proudest of is our magnificent Port of Memphis with its industrial complex on President's Island. As the chairman of the Public Works Subcommittee on Flood Control, he had a vital interest in the Nation's waterways, and this interest reached its zenith in the harbor and the industrial complex that was truly "the house that Cliff built."

None of us will ever have enough friends that we can afford the loss of such a one as Cliff Davis. The gracious lady who shared his home and his life for so many years can, I hope, take some small comfort in the esteem he was held in by his colleagues, by Tennesseans and by the Nation he served.

Mr. BLANTON. Mr. Speaker, will the gentleman yield?

Mr. EVINS of Tennessee. I yield to my distinguished colleague from Tennessee.

Mr. BLANTON. Mr. Speaker, when death takes a friend from our midst, words somehow seem inadequate to express the profound sense of loss.

Last month, Cliff Davis—a former Member of this body—passed away.

Judge Davis—as he was known to his close friends—was an unusual man. He spent most of his life in the service of the people, and for 24 years represented the largest city and county in Tennessee.

Judge Davis was one of the most popular Members of the House. I still hear some of the Members refer to some of his stories he used to delight both his congressional audiences and his constituents.

As one of the newer Members, I was not fortunate enough to serve with Cliff Davis, for I took office 2 years after his 12 terms were completed. But I can remember very well that immediately upon winning my election in 1966, Cliff Davis sent me a message offering to help me get adjusted to this awesome job. We began a deep friendship from that day on, and I enjoyed his visits to the floor, and to the Hill—although many of us told him that we wished he would visit us more often.

Cliff Davis loved Memphis, and embodied the finest traditions of the southern city that it was and is. He was truly the typical southern gentleman, always tipping his straw boater at the ladies, and taking his hat off in elevators. He was a friend and confidant of some of the most important political figures of the 1930's and 1940's, and it was always a delight to hear him reminisce about E. H. Crump, Franklin D. Roosevelt, and the many other regional and national politicians he knew. His wit and his knack for mimicking always cheered those around him.

As a young lad of 14, Cliff moved to Memphis with his parents from his hometown of Hazlehurst, Miss. Only 9 years later he embarked on his lifetime career in public service. He started as secretary to Mayor Rowlett Paine of Memphis in 1920. Three years later he was elected city judge, an office which would establish his reputation as a stern but fairminded individual who strongly believed that laws were to be upheld but justice was to be open for everyone.

It was while Judge Davis was presiding over the city court that the late W. C. Handy, one of the most famous blues singers and composers of that era, composed the "Cliff Davis Blues," a song which told of the strict—but fair—judge.

Cliff was elected commissioner of public safety and vice mayor of the city of Memphis in 1928 by such an overwhelming majority that the late E. H. Crump, one of the most powerful political bosses in the South, took notice of the young judge.

Mr. Crump wanted Cliff to be a part of his organization and admitted that because of Cliff's popularity, he was afraid of his potential threat to the tight control Mr. Crump maintained over politics in Memphis. Cliff consented, only with the stipulation that he was his own man, and that he could not go against the good of the people on any matter.

Mr. Crump respected the young Davis, and never infringed on the independence of his idealistic and hard-working recruit. They became like father and son, more than political comrades.

It was in 1940, when Cliff Davis' longtime friend, Walter Chandler, resigned from Congress to be mayor of Memphis, that Cliff got his chance to go to Congress.

He was consistently reelected, and as always, was constantly the top vote-getter in Shelby County—always pulling in more votes than even the winning presidential candidates did in Shelby County.

In Congress, Cliff Davis proved as popular to his colleagues as he did to his constituents. I think the late Robert "Fats" Everett said it best when he told Cliff at a testimonial dinner:

Cliff, you can get more done in a day ... than most can do in a month.

The Midsouth region was always top priority for Cliff Davis. He was a guiding force in the Tennessee-Tombigbee project, and had the honor of being the organization's only lifetime member, a distinction he retained even after he left Congress in 1964.

He was instrumental in very important flood control legislation, and his work on the Tennessee Valley Authority self-financing program saved hundreds of jobs for Memphians and allows Memphis to get cheaper TVA rates to this day.

Cliff was almost a national celebrity after the Puerto Rican nationalists shot up the House during the 83d Congress, and he was one of the five Members who suffered wounds.

In 1964, when faced with the toughest political campaign in more than two or three decades, Cliff Davis sacrificed days of crucial campaigning to be on the job in Washington. President Johnson's Appalachian regional development bill was in trouble, and it was Cliff Davis who was asked by the leadership to steer the bill through the Public Works Committee and the House. Cliff Davis never refused a job—no matter how tough it was. It was a great sacrifice, because it took many weeks of valuable time away from his campaign. He lost the campaign, but won a great legislative triumph, and it

was President Johnson who publicly gave Cliff Davis credit for the work on this important legislation.

Cliff Davis was on the ballot 32 times in his life, and won smashing victories 31 of those times. In his last campaign, he had one of the largest youth organizations ever formulated in a Memphis campaign—a testimony to the devotion people had for him. Cliff was always on the lookout for assisting young people with their careers just as he was interested in helping me make a good start on my job when I first came to Congress.

At a testimonial dinner for him in 1965, he was praised by some of the most important people in the Nation, from the President on down through the ranks of his colleagues and local and State officials. But one of the most heartening testimonials came from a chapter of his fraternity, Sigma Alpha Epsilon. The young men at the local university presented him with a plaque commemorating 50 years of service to the community and especially to the young people.

Cliff often told his colleagues and friends that the singularly biggest asset he had in his public life was his wife, Carrie. Mrs. Davis is one of the most charming, popular ladies in Washington, and she is loved and respected by all. I extend to her my deepest sympathies, and to the Davis family, who while saddened by his passing, must surely be humbled and honored at the unusual man he was and the exceptional service he has rendered to his community and to his Nation.

Mr. Speaker, others will probably be more eloquent than I on this day when we eulogize our departed friend and former colleague. I can only say that his memory will live on in the many legislative triumphs which he accumulated over his 24 years in Congress, and 40 years of public service. It will live on in the city of Memphis, in the modern, progressive city he assisted in so many ways.

Mr. Speaker, I suppose many of us have a certain nostalgia for the golden days of Tennessee politics which produced such colorful people as Fats Everett and Cliff Davis. For truly now, an era has passed, the like of which we may not see again for many generations.

Mr. ANDERSON of Tennessee. Mr. Speaker, will the gentleman yield?

Mr. EVINS of Tennessee. I yield to my distinguished colleague from Tennessee.

Mr. ANDERSON of Tennessee. Mr. Speaker, I appreciate the distinguished dean of our Tennessee delegation yielding. I feel honored to have the opportunity to add to the meaningful remarks which have been made here this afternoon concerning Judge Davis.

I was not privileged to serve in the House during the time he was here. However, I did have the privilege of meeting him subsequent to my arrival in Washington and the opportunity, with members of our Tennessee delegation including the distinguished gentleman in the well, to have lunch on several occasions with him, and to hear other Members in very large numbers speak of their high regard for him and their high respect for his performance as a legislator of wis-

dom, as a legislator of great impact on many, many bills that passed through the Halls of Congress.

I observed them and found that there was a common feeling among all of those here who knew him and loved him that he was a gentleman in the truest sense of the word, a gentleman who never spoke an unkind word about anyone.

It is a great loss to the United States of America and, as our distinguished colleague from Tennessee (Mr. BLANTON) just pointed out, he was a man who always put his Nation first and himself way down the line when it came to approaching matters of concern to the United States, to the State of Tennessee, and his own congressional district.

His was a great life of public service and one which will be a hallmark for young people to follow as time goes on.

Mr. Speaker, I wish especially to express my condolences to his lovely and gracious wife, Carrie Davis, who is a person of great stature and a person who is loved throughout the State of Tennessee and throughout Washington and who has friends throughout the United States who recognize her as a strong and influential person in her husband's behalf.

So it is with great sadness I say we have lost a most distinguished man.

I extend to Mrs. Davis and all of the members of the family my very deepest sympathy.

Mr. JONES of Alabama. Mr. Speaker, I want to pay tribute today to a distinguished former Member, the Honorable Clifford Davis.

I have never had a closer relationship with anyone serving in the Congress than I had with him.

He was the most effective legislator I have ever served with. He had a complete knowledge of his subject matter and engaged it in the service of his country. No one has done more during their tenure to add to the strength of this country than Cliff Davis.

He was entertaining and enjoyable to be around. He was one of the most engaging speakers we have ever known.

He was courteous, considerate, and kind.

He was never so intemperate of mind that it destroyed his purpose to accomplish things which were most beneficial to the people of this Nation.

He was never sectional in his outlook as is attested by the fact that not a State of the Union has escaped his handiwork in building a multitude of water resource projects. Not a drop of water falls in America today and flows through our streams without benefit of the influence of Cliff Davis.

I have lost a fine companion, a great adviser, a stalwart for purpose and, above all else, I have lost a devoted, kind, and generous friend.

His family and his many friends can take comfort and pride in the knowledge that his work will remain a monument to his useful service to the improvement and development of his country.

Mr. WRIGHT. Mr. Speaker, the name of Clifford Davis would loom large in the list of constructive accomplishments performed for the Nation by Congress during the past generation.

When I came to Congress in 1955 and received an assignment to the Public Works Committee, Clifford Davis was chairman of the Flood Control Subcommittee. He conducted a vigorous schedule of committee sessions, demonstrated a deep and personal interest in the needs of every section of America for the development of its water resources. Cliff Davis was not a parochial or insular man. His mind was big, his interests broad and his dedication unswerving to all the country.

Cliff had a gift of friendship which will be remembered by those who had the privilege of serving with him. A natural and instinctive entertainer, he often rescued a situation from the monetary tension of conflict and short tempers by an appropriate story. On such occasions, he surely was one of those of whom it has been said "blessed are the peacemakers."

Throughout the breadth of America, citizens live secure in their homes, freed from the threat of devastating floods, because of the earnest and dedicated service of Clifford Davis. The water resources of our land have been developed at a more expeditious pace because he had the vision to look into the future and see the needs of a growing country.

Those of us who knew him will miss him sorely. But his memory will remain with us to brighten our days and to lighten our load.

Mr. JOHNSON of California. Mr. Speaker, I would like to pay tribute to a great American. The death of our former colleague, Clifford Davis, "the Judge," was a great loss to our country, his State of Tennessee, and a very personal loss to me.

Cliff Davis was a valuable Member of the House of Representatives for 24 years. When I first came to the House and was assigned to the Public Works Committee, of which he was a member, I learned a great deal from him about the committee and the entire legislative process. I will always be indebted to him for his assistance and understanding.

As a member of the Public Works Committee, I had the rare privilege of serving with Judge Davis on the Select Committee on Real Property Acquisition, of which he was chairman. It was indeed a wonderful opportunity to work closely with this tremendously human legislator as he, through a long series of field hearings, Washington hearings, and executive discussions, undertook the most comprehensive study this Nation has ever known of the Federal policies and programs affecting our real property acquisition procedures. As a result of his dogged determination, he uncovered grave discrepancies in the manner in which these land acquisitions were carried out. I feel that, as a result of his efforts, the people of our great Nation have better protection than ever before in these proceedings. As a result of legislation now pending before the Congress, which I hope will soon be enacted, and an outgrowth of the studies made by Judge Davis, they will be even more protected than they are at present.

I do want to make one more brief comment. The Judge had a bulldoglike tenacity for ferreting out wrongdoing, mismanagement and discriminatory acquisi-

tion practices. Yet, I will warrant that no one who met him or worked with him or had any contact with him in any way ever found him to be anything but a gentleman—courteous, considerate, and distinguished. He was a wonderful guy.

The impact of his diligence and hard work can be seen across the country—progress in Appalachia, development of the Tennessee Valley Authority, water resource projects, inland waterway systems and highways.

In addition to being a very capable legislator, he was a warm and wonderful friend. Those of us who were privileged to know him will long treasure the memories of the work we did together and the good times we had together.

My family joins me in expressing sorrow at his passing and deepest sympathy to his lovely wife, Carrie, and their sons and daughter.

Mr. FEIGHAN. Mr. Speaker, it was with deep regret that I learned of the passing of our former colleague, the able and distinguished Member from Tennessee, Cliff Davis.

It was my privilege to know Cliff for more than 20 years and to have served with him in Congress. His passing has brought sorrow to those with whom and for whom he served.

Cliff served his constituency and the Nation well and with distinction.

I extend my deepest sympathy to his family and loved ones.

Mr. FULTON of Tennessee. Mr. Speaker, it is an honor to have the opportunity today to say a few words in tribute to our former friend and colleague, Clifford Davis.

There are many of us here today who had the privilege and good fortune to serve with "Mr. Cliff" for many of his 24 years in the House of Representatives. Unfortunately, it was my privilege to serve with him only during his last term in the 88th Congress, but during that short time I came to know, respect, and develop a great fondness for him.

The 88th Congress was my first term in the House of Representatives and, almost from my first day in the House, Mr. Cliff extended his hand of friendship to me. He helped guide me, counsel me, and assist me during those often lonely and confusing freshman days. For this I owe an obligation of gratitude which I can repay now only through the high respect and esteem which I continue to hold for Clifford Davis.

He was an amiable, well-liked, and able legislator. More than this, he was my friend, and I shall miss him.

Mr. JONES of Tennessee. Mr. Speaker, having known Hon. Clifford Davis all of my life, I want to be among the first to say how much we all will miss the warmth and wit of this outstanding gentleman who served his district, his State, and his Nation so long and so well.

Although I never had the pleasure of being either his constituent or his Representative, our districts were adjoining and numbers of my friends are his friends. We were both involved in campaigning during national elections, and "Judge," as we all affectionately called him, was always at his best when speaking before an audience. With his sharp wit and picturesque language, he could

hold an individual or a group in the palm of his hand in fascinated attentiveness.

His love of people was manifested in so many varied ways. I shall always remember the luncheon in the Speaker's dining room he gave with me, a newly elected Member, as one of the three honored guests. But the best of all memories of Judge will be of that day when I was first elected and he came up to visit me in my office. We spent 30 wonderful minutes together, with him recalling experiences of his lifetime of public service.

During his years here in Congress, he had two brushes with violent death when he was wounded during the shooting on the House floor and he and Mrs. Davis survived a plane crash. So death was no stranger to him, but I am happy that after a vigorous and tempestuous life, it came peacefully to lay him to rest in his own home.

Mr. PATMAN. Mr. Speaker, it was my privilege to be associated with the Honorable Clifford Davis of Tennessee during his long tenure in this House, both as a respected colleague and an honored friend. Clifford Davis above all else was a man of character, moral, intelligent, loyal, and as sturdy and enduring in his beliefs and convictions as the towering broad-based mountains of Tennessee. It is a marvelous thing in our Nation that so often our great statesmen have left the place of their nativity to achieve outstanding recognition in a sister State. Clifford Davis who was born in Mississippi became one of the leading jurists and Congressmen ever to represent the great State of Tennessee. And it is only fitting and appropriate to remember that this remarkable reciprocity worked to the advantage of my own State of Texas, and I have only to mention the revered names of Jim Bowie, Davey Crockett, and Sam Rayburn—all of whom came from their native State of Tennessee to be forever inscribed in the glorious pages of Texas history. There are more of this noble company of illustrious Tennesseans, and with them for the eternity of our country's existence, Clifford Davis is a partner in honor, distinction, and patriotism.

I extend my most sincere sympathy to his wonderful family.

Mr. KLUCZYNSKI. Mr. Speaker, I knew the late Cliff Davis, the distinguished former Representative from Tennessee, for many years. He was a colleague of mine in this body and I knew him to be a dedicated and hard-working Member. He performed his duties both to his district, his State, and his country, in an exemplary way.

Cliff Davis was a man who did his own thinking. Forming his own opinions only after careful investigation, he was firm and fearless in defending his conclusions when once they were formed. When he felt called upon to defend what he believed to be right, or to expose what seemed to him wrong, he did so with all the power of his great intellect, regardless of the consequences to himself.

He has passed to his eternal rest and will be sadly missed by all whose good fortune it was to know him.

Mr. DUNCAN. Mr. Speaker, today I join with my fellow Members of Congress

from Tennessee and with colleagues from throughout the Nation in paying homage to the late Clifford Davis.

The Honorable Clifford Davis repeatedly won the vote of his constituents in Tennessee and they kept him in the House of Representatives for 24 years.

I think his life speaks for itself. He served long and faithfully and had many friends everywhere he went.

As we pay tribute to the memory of this distinguished man, we are thanking him for the lessons he taught us and for the way he paved for those of us who succeeded him in this Chamber.

Memphis and Shelby County, Tenn., will long remember the services of their Congressman, Clifford Davis.

Mr. BARRETT. Mr. Speaker, I should like to join my colleagues this afternoon in paying tribute to a great American.

It was my privilege to serve with our former colleague and friend the Honorable Clifford Davis here in the House of Representatives. I was always impressed, as we all were, with his complete dedication to his district, State, and to the Nation.

He was a great public servant. Perhaps his outstanding characteristic was his spotless integrity.

I extend my deepest sympathy to his lovely wife and family.

Mr. WHITTEN. Mr. Speaker, recently when it was called to our attention about the untimely death of our good and close friend, Hon. Clifford Davis, I joined with several Members in a brief tribute to his life and service. In the short time available I could not begin to enumerate the many contributions that Cliff Davis had made to his city, to his district, to his State, and to his Nation.

Possessed of a delightful personality, a keen and bright mind, he had also a true-love for his fellow Americans. He was blessed in his life with a wonderful family; a wife, Carrie, who was a real partner in Cliff's very successful activities which covered many years as city commissioner and Congressman.

Prior to his service here, when I was a young district attorney in the northern part of the State of Mississippi, I worked very closely with him when he was commissioner for the city of Memphis, Tenn.; and in my service here in the Congress, Cliff and I worked very closely indeed, particularly in connection with public works and electric power.

It was wonderful, indeed, to see Cliff handle a bill on the floor of the House. His poise, his ready answers, his knowledge of his subject, and above all, his sincerity always got over to his colleagues.

As a result, much legislation bears his name; and many of the benefits of such legislation continue on as a constant reminder of Cliff Davis' contributions again to his city, to his district, to his State, and to his Nation.

Clifford Davis of Tennessee was a fine man, a splendid legislator, a grand American. His family can take great pride and comfort in his record.

Mr. ADDABBO. Mr. Speaker, I join with my colleagues in this special order for the purpose of eulogizing and paying tribute to the memory of our late colleague from Tennessee, the Honorable

Clifford Davis. It was my privilege to serve with Clifford Davis during the later years of his 12 terms in the House of Representatives.

Clifford Davis was respected and liked by his colleagues on both sides of the aisle and he proved himself to be a dedicated representative of Memphis and Shelby County in Tennessee.

I extend my sympathies to Mrs. Carrie Davis and to the family and friends of Congressman Clifford Davis. We shall miss him and remember his devotion to public service.

GENERAL LEAVE TO EXTEND

Mr. EVINS of Tennessee. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the life and service of our late colleague and friend, Clifford Davis.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

ECOLOGY BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee (Mr. KUYKENDALL) is recognized for 60 minutes.

Mr. KUYKENDALL. Mr. Speaker, all of us know that a pat on the back is one of the most effective ways to inspire good people to do better things. An ounce of recognition is worth several tons of nagging. On behalf of my colleagues who have joined me as cosponsors, I wish to introduce today a bill that will help supply that ounce of recognition.

This measure would simply set up a program to honor those people and organizations who make efforts to combat pollution.

The bill would amend the National Environmental Policy Act of 1969, by empowering the Council on Environmental Quality to determine and suitably honor persons, firms, and organizations—manufacturers and civic groups, retailers, outdoorsmen, Girl Scouts and Boy Scouts—who act in positive ways to do something about this national problem.

It seems to me that we can, and should, take a strong lesson from the success of the Army-Navy "E for Excellence" flags that were awarded during World War II, that enlisted the enthusiastic cooperation of industry, from management and labor alike, to accomplish a major national goal. Surely we can have no greater national goal today than to encourage the aid and support of every citizen in every age group in every walk of life in meeting this great challenge—the preservation of our environment.

The type of award and the criteria for earning it would be determined by the Council. But whether it takes the form of a flag to be flown over a manufacturing plant or a cloth badge on a Boy Scout uniform, I predict that it will be sought after and courted, and that it will become as familiar in advertising layouts as the Good Housekeeping Seal of Approval once was.

Mr. LUKENS. Mr. Speaker, I am gratified to announce my cosponsorship of Representative KUYKENDALL's bill providing that a national ecology award be given to any corporation or organization making significant contributions toward eliminating or preventing air or water pollution. It represents another in the long line of steps that will be required to halt the systematic destruction of our environment. This bill is unique, however, because it breaks away from the traditional technique for fighting pollution. Instead of initiating a new penalty for offenders, it creates a positive incentive for working to eliminate this problem by encouraging private citizens and organizations to exert whatever influence they are able.

The U.S. Government cannot end pollution by itself; the problem is too widespread and its solution is both expensive and often difficult to effect. With a significant cooperation from the public, together with Government-published guidelines, progress will be made.

Pollution control can no longer be considered simply a fashionable topic for conversation, for too much destruction has already taken place. How many more rivers must be declared "unfit for swimming" or how many more smog-filled days will have to be endured by us and future generations because we have not combated this problem? We must strive with all our power to stem environmental pollution. The passage of this bill will hopefully bring us closer to this goal.

GENERAL LEAVE TO EXTEND

Mr. KUYKENDALL. Mr. Speaker, I ask unanimous consent that all Members of the House may have 5 legislative days in which to extend their remarks on the bills being introduced by me today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

PRIMARY RESEARCH: WHAT IT IS AND WHAT IT NEEDS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. GUBSER) is recognized for 30 minutes.

Mr. GUBSER. Mr. Speaker, as the Representative of a congressional district which is one of the leaders of the Nation in scientific research, and as one whose committee assignment has exposed him to the importance of basic scientific research, I have become increasingly concerned with what I believe is a mistaken course this Nation is following. I feel strongly that our Nation's scientific effort has lacked consistency and has been funded more in response to the current winds of public opinion than to our Nation's needs and the needs of mankind. I feel particularly strongly that basic or primary research, because it lacks the glamor of an immediate application, has suffered from such a policy.

Because of this concern, I have held frequent meetings with the scientists of Stanford University in my congressional district, and my presentation today is based upon knowledge gained from these outstanding men. For the content of this presentation I am especially indebted to Prof. Henry Taube of Stanford and Prof. William Dauben of the University of California, Berkeley. These gentlemen in turn received assistance from Prof. Stuart A. Rice of the Fermi Institute, University of Chicago.

The material follows:

PRIMARY RESEARCH: WHAT IT IS AND WHAT IT NEEDS

Man's capacity to enjoy and improve the world around him has been shaped by scientific research. What we have learned from the natural sciences has affected the material things that touch our lives; it has had an impact on our political institutions, domestic and international, and it has affected the degree with which we regard and understand ourselves.

There may be differences of opinion on whether the fruits of this endeavor have been good. But knowledge and understanding are not responsive to the test of being good or evil. Only what we, having conscience and feeling, do with them can be called to answer to this test. The question for us is: *should* man try to understand himself and the world around him.

For those who believe in human progress there is no answer but the affirmative. Man's progress is directly proportionate to his ability, to experience, to appreciate and to enjoy. To increase this ability he must free himself from the limitations imposed by the material world, and from the ignorance and superstition of his primitive state. In freeing himself and extending his powers, science is man's most effective ally.

THREE CASE HISTORIES OF DISCOVERY

A child lies ill with pneumonia. A solution of a chemical substance is administered by injection. In 24 hours the fever abates and the child is on the way to recovery. A means is found to release enough energy from one pound of metal to brighten a thousand homes with light and to provide them with the comfort of heat for nearly a year. A small device delivers a ray of light so perfectly defined and controlled that it can be used for precision surgery of the eye. It can puncture a hole in a single red blood cell, or it can be adapted to blast its way through a sheet of high melting metal. Behind these miracles lie the discoveries of penicillin, of nuclear fission, and of the principle of the maser. How were these discoveries made? We have something to learn from them as case histories in scientific discovery; let us follow their stories.

We begin with Professor Alexander Fleming of St. Mary's Medical School of the University of London. Fleming had a research interest in pus-forming bacteria of the staphylococcus group. In 1928, in the course of a series of experiments for which he had prepared cultures of the bacteria, he noted that a spot of mould had appeared accidentally on one of the plates. He noted also that in the area surrounding the mould the bacteria had been killed. This observation aroused Fleming's interest and caused him to study the mould itself. Taking advantage of work done in 1911 by Westling in Stockholm, he was able to classify the mould as *penicillium notatum*. He went on to show that filtered broth in which the mould had grown contained a principle which was remarkable effective against many kinds of bacteria.

The work was taken up at the Pathological Institute of Oxford University by Professor Florey. Here again a significant start was made from what is commonly called basic

research. Professor Florey had a long-standing interest in the natural powers which the body has in protecting itself against infectious diseases. Collaborating with the chemist, Dr. Ernst Boris Chain, Florey succeeded in concentrating the active ingredient which Fleming had discovered, and its curative powers were soon established. At the risk of overdramatizing, I ask this question: How many human beings are alive today because of the unexpected results from this basic or primary research?

What lessons on the course of scientific discovery do we learn from this brief history of penicillin? These are best put using the words of two of the principals who took part in the Nobel Award ceremony in 1945 honoring the work of Fleming, Florey and Chain. Fleming, on this occasion in commenting on his share in the discovery, said "It arose simply from a fortunate occurrence which happened when I was working on a purely bacteriological problem which had nothing to do with antagonism or mould, or antiseptics or antibiotics." Note, please, the disclaimer of an applied mission in the research. Professor Lilljestrand of the Caroline Institute of Sweden, who introduced the recipients of the Nobel Prize, in commenting on the significance of the work they had done, had this to say: "The story of penicillin is well known throughout the world. It affords an example of different scientific methods cooperating for a great common purpose. Once again it has shown the fundamental importance of basic research. The starting point was a purely academic investigation which led to a so-called accidental observation. This gave the nucleus around which one of the most efficient remedies ever known was crystallized."

We turn now to a laboratory of the Chemical Institute of Berlin. There in 1936 Professor Otto Hahn, in collaboration with Dr. Lise Meitner, began a program of research in which he set out to create new elements. In this research, he used a particle called the neutron, which was discovered by Professor James Chadwick of England in 1932, as a bombarding particle. Professor Enrico Fermi, then at the University of Rome, had demonstrated the utility of this particle in producing new nuclei. Hahn, with his background and interests in chemistry, was particularly attracted to the problem of creating not merely new nuclei, but new elements. It was natural for him to turn to the element of the then known highest atomic number as the target nucleus. This was the element uranium of atomic number 92. In Hahn's own words, "For more than 100 years uranium, discovered by W. H. Klaproth in 1789, had had a quiet existence as a somewhat rare but not particularly interesting element." Hahn's work shattered this quiet, with echoes that still resound. The work which was to deliver into man's hands the most awesome power he has been able to command, the energy of the nucleus, was begun by Hahn in 1938 in collaboration with Dr. F. Strassmann. These trained and skilled investigators soon realized that the nuclear events triggered by bombarding uranium with neutrons were not taking the expected course. So unanticipated was nuclear fission, for this was the process discovered by Hahn and Strassmann, that it was only after months of exhaustive and exhausting work that they dared to publish their findings. The dire implications of nuclear fission did not occur to them at the time of discovery; Hahn and co-workers were then completely caught up in the excitement of having found an unexpected new nuclear process of interest to others who worked in this field. By 1943, when Hahn read a paper to the Swedish Academy of Sciences on his work, he did refer to the possibility of a chain reaction in the fission of uranium nuclei. But even then he expressed doubt that the difficulties of realizing a self-sustaining nuclear reaction could be surmounted. "Providence has not wanted

the trees to reach the skies," he remarked on this occasion. He apparently did not know that a team of scientists under Fermi's leadership at the University of Chicago had achieved a self-sustaining nuclear fission reaction on December 2, 1942.

The invention of the laser is partially an outgrowth of Einstein's work. In 1917, he theorized that atoms containing excess energy are stimulated by incoming radiation of proper frequency to emit this energy in the form of radiation. It is also an outgrowth of the technology of microwave spectroscopy which was developed during World War II. Einstein's idea, which implies the principle of amplification, was not put to this particular use until it was combined with the idea of a resonant cavity. Professor C. H. Townes and his associates, J. Gordon and A. Zeiger of Columbia University, in 1954 described a device which produced amplification making use of the two ideas. Amplification was first achieved not with visible light, but with radio waves of short wave length. The validity of the underlying principles was established by this work. The importance of this contribution was recognized by the Nobel Prize, which was awarded to Townes in 1964. The device, called a maser by Townes and co-workers, led Townes, in collaboration with Professor Arthur L. Schawlow, now at Stanford University, to the development of the laser. Before completing the story of the laser, we should consider Townes' own evaluation of the circumstances which led to the discovery of the maser. We refer to an article by Townes in *Science*, published in February, 1968, bearing the title "Quantum Electronics and Surprise in the Development of Technology." Townes makes it clear that the development of the maser arose from his interest in the potential which the then newly developed microwave spectroscopy had "to examine delicately and powerfully the various types of interactions between electromagnetic waves and molecules in ways which were different from ordinary spectroscopy." When he initiated his program of research in this field at the Bell Telephone Laboratories, he had no idea that it would lead to the maser and the laser, though he did try to persuade the research management that the new field of physics, in which he was interested, would provide "worth while contact with commercial applications." However, the research he outlined apparently was too academic for research management, and Townes moved to Columbia University where, with the help of excellent graduate students, the encouragement of colleagues, and the support of a "rather far-sighted Armed Services contract", it flourished. Three other industrial laboratories also made an early start in microwave spectroscopy, but in these cases too, this research eventually moved to university laboratories.

Few discoveries have been as rich as the laser in potential applications. Some applications have already been referred to. Other important ones lie in the field of communications—theoretically, one light beam can carry more information than all the radio and television channels now in use—and in lensless three-dimensional photography. Still others are certain to appear as the properties of the new device are explored and its capacities are tested.

In the article in *Science*, Townes further makes the point that "the idea for maser amplification originated independently in three different laboratories of microwave spectroscopy, and from research rather universally eschewed in applied laboratories. Each of the three origins had slightly different timing and differed appreciably in its completeness and practicality. However, all three came from physicists occupied with basic, university-type research on the microwave spectroscopy of gases."

An oscillator for light of visible and shorter wave lengths was yet to come. The idea for

this was developed jointly by C. H. Townes and Arthur L. Schawlow. Schawlow had worked as a post-Doctoral research associate with Townes in the field of microwave spectroscopy from 1949 to 1951, and at the end of his appointment at Columbia, joined the staff of the Bell Telephone Laboratories. Townes was a consultant at the laboratory and Schawlow and he turned their attention to the problem of developing an oscillator for visible light, using the maser principle. They published a workable idea for the laser in December 1958. This started a race between many experimenters to develop the first laser. The race was won by Theodore Maimann at Hughes Aircraft Company in 1960, verifying the Townes-Schawlow theory and opening the door to a wealth of further developments.

The three discoveries which I have chosen as case histories were made in three different countries, in three different fields and at different times. But despite these differences, there are significant similarities in the processes of discovery in the three cases, and in the conditions which were essential to their being made.

In each of the discoveries there was an element of the unusual, and of the unexpected. Fleming was not searching for antiseptics or antibiotics when he made the observation that eventually led to the isolation of penicillin; Hahn had no inkling of nuclear fission when he began his work attempting to extend the periodic table of the elements; Townes had no idea that his academic interest in spectroscopy would lead to fundamentally new devices of exceptional utility and versatility.

It was essential to each discovery that those involved did not have their activities confined by an applied mission, but felt free to follow where their trained scientific curiosity led. Fleming and Hahn, at the time their significant observations were made, were already in a university environment. Townes, as we have seen, found it necessary to transfer to a university to pursue his interest, and as he has acknowledged, he benefited from the far-sighted policy under which the Armed Services contract by which he was supported was administered.

In each case the primary scientific discovery has led to a chain of discoveries in terms of practical applications. But I want to stress again that none of these applications was formulated or anticipated when the respective research programs were initiated. The element of surprise and of the unexpected is present as much in the development of applications as it is in the initial scientific discovery. This point is well put by C. H. Townes in the article in *Science* already referred to. He writes: "A general conclusion which seems to me to emerge from a historical approach—the examination of a number of research case histories—is that mankind consistently errs in the direction of a lack of foresight and imagination. We continuously underestimate the power of science and technology in the long term. Eminent knowledgeable planners and scientists, in attempting responsibly to make realistic appraisal of research and facing what is at the time the uncertain and unknown, all too frequently fall short in foresight and imagination. The element of surprise is a consistent ingredient in technological development, and one we have great difficulty in dealing with on any normal planning basis." I think we must face the fact that scientists, for all their training and expertise, also have a limited vision of the future. We may, however, place confidence in the subject of their study; extending our knowledge and understanding of the world around us is bound to improve our condition if we use this knowledge with wisdom and foresight.

A point which is easily overlooked when considering only those discoveries having the most direct and dramatic impact on our

everyday existence is that no scientific discovery is created in a vacuum of knowledge. Each of the three was germinated in and nourished by the body of scientific knowledge which, in turn, is the product of man's desire to know and to understand. Hahn's work, for example, called upon an enormous system of descriptive inorganic chemistry involving the heavier elements. It would not have been successful if Hahn had not had available through the chemical literature the record of this vast accumulation of knowledge. This was supplied by different investigators pursuing diverse interests, but united in their desire to explore the unknown. Many of the studies which provided a background for Hahn's discovery in prospect may well have seemed more exciting than the program of research he laid out for himself in 1938. It was the unexpected that raised his work above the level of other work of quality, work of the kind which constitutes the durable main fabric of scientific knowledge.

PRIMARY RESEARCH: THE ROLE OF UNIVERSITIES

The three case histories of discovery were chosen to illustrate the point that the pursuit of scientific knowledge for its own sake brings untold and unexpected benefits. Research done with this kind of motivation is often referred to as basic research, as distinguished from applied research, which is undertaken to learn how a recognized need can be met. I think it preferable to use the term "primary" in place of "basic" to describe research done for the sake of increasing knowledge. Those engaged in applied research can argue that in the dictionary sense of the term "basic", their research is often as "basic" as that commonly referred to as basic. The term "primary" should be taken as suggesting the research which provides the body of knowledge intrinsic to the subject itself, and is, I hope, less offensive to those in applied research. In emphasizing the role of primary research, I intend no disparagement of applied research. The latter also provides scope for exciting discovery, requires imagination and a high level of creativity, and is an essential component in helping us realize material benefits from basic scientific discoveries. Of course, such basic discoveries are often made in the course of applied research. Because applied research leads directly to material benefits, it is generally better appreciated and is therefore less vulnerable in times of economic stringency. By contrast, the vital component of the scientific process constituted by primary research is extremely vulnerable under our present system of providing support for research. As I shall show, primary research in our country is at present suffering severely from lack of encouragement and nourishment.

What organization within our country provides the best environment for primary research? We must agree that it is the universities. Ideally, universities live by the principle that knowledge is worth pursuing for its own sake. There is undoubtedly a serious erosion of this principle in the sciences, owing to the enormous pressure which scientists are placed under to relate their research activity to some applied mission. Despite such pressures, those working in universities strive to uphold the ideal. In many universities, schools of science are closely linked by organization to the humanities. At Stanford University, a private institution located in my District, we find that there is a School of Humanities and Sciences, under one dean. Within this school, the natural sciences are represented by, among others, the fields of anthropology, biological sciences, chemistry, mathematics and physics. This organizational structure would not be stable if the sciences and the humanities did not share common perspectives and objectives. The work in science in universities is evaluated primarily in terms of the creativity it shows, and the significance it has

for the main body of knowledge within its proper subject. These are the standards applied also to scholarly work in history, in language and in literature.

In universities, research is an integral part of the educational process, and is regarded primarily as a vehicle for instruction. Some is done by undergraduates, some by post-Doctoral research associates, and most of it by graduate students working toward the Ph.D. degree. For all categories, research experience advances training in the subject represented. It brings to the undergraduate appreciation of how the body of scientific knowledge has been developed, and helps him to choose his course after graduation. For the Ph.D. candidate, it provides the first opportunity he has to prove himself in independent work on a major problem, and prepares him for a career in research. For the post-Doctoral research associate, it provides an opportunity to strengthen skills, to widen research horizons, and to decide on a future course. By virtue of the skills he has already attained, the post-Doctoral research associate brings valuable experience to the group he is associated with, and so assists in the educational process as well as benefits from it.

With this emphasis on university research as a vehicle for teaching, we may well ask how effective it is, appraised as research. We can supply an answer for the field of chemistry taken from a report, "Chemistry: Opportunities and Needs," prepared by a committee appointed by the National Academy of Sciences. I quote from this report: "A survey of over 5000 articles in leading U.S. and international journals of fundamental chemistry shows that approximately 60 percent of the publications of basic research in U.S. chemistry originate in university laboratories, 30 percent in industry, and the rest in government laboratories and independent research institutions." In this particular context the field of chemistry is perhaps unique because there is a large, busy and efficient chemical industry supporting in-house research, some of which is published in journals devoted to fundamental chemistry. In most other fields of science, the percentage of papers devoted to basic research appearing in fundamental journals and originating in universities is likely to exceed the 60 percent arrived at for chemistry.

A reason for the effectiveness of the universities in doing primary research has already been emphasized. It rests on the freedom that the investigator has to chart his own course, and follow his imagination and curiosity. A second reason must also be acknowledged. A faculty member has as apprentices bright, strongly motivated young people who, in first becoming imbued with the adventure and excitement of independent discovery, are willing to work harder than they ever may be willing to work again; moreover, they bring to the research a freshness and daring which is unmatched. The Federal government nowhere else gets a better bargain in research investment. Even when the total cost is considered, it is likely less per unit of research (measured perhaps in terms of published papers) in universities than elsewhere, because the graduate students work overtime at a very low rate of pay.

FEDERAL GOVERNMENT AS THE PATRON OF RESEARCH

To understand the serious situation which faces scientists in academic work today, we need to review the involvement of the Federal government in sponsoring university research.

In the past 30 years great changes have taken place in the way research in the physical sciences is supported. There has been a rapid increase in total level of support, and with this a shift from local or

private support to Federal. Between 1958 and 1968, the contribution from Federal sources increased tenfold, but by 1965 the rate of growth of Federal support had started to level off, and in the next three year period remained at 7.6 percent per annum. When it is considered that the inflationary factor was approximately the same value, it is evident that Federal support did not permit the growth of primary research in these institutions to keep pace with the gross national product, which increased a total of 40 percent over the same period. By 1968, 89 percent of the support of primary research was contributed by five Federal agencies: NASA, HEW, AEC, DOD and NSF, and 37 percent of it went to universities and colleges.

In 1967 the total support provided by the Federal Government for research and development was approximately \$17 billion. Of this amount, only \$2 billion was devoted to support of "basic" research. If we use the 37% figure already mentioned as representing the fraction of basic research support given to universities, we arrive at an upper limit of \$800 million, or about 0.7% of the total Federal expenditure as being in support of university-based primary research. The figure is an upper limit because, of the various Federal agencies which support university research, all except one are mission-oriented, and the single exception, NSF, provided only 12% of the total Federal support for basic research.

RECENT GROWTH OF SCIENTIFIC RESEARCH—CHEMISTRY AS AN EXAMPLE

Even when we take into account that support of primary research from sources other than the Federal government increased less than tenfold in the 1958-68 period, the fact remains that the total rate of increase in this period was large, and we are bound to ask whether the increased funds were used efficiently. Two independent but complementary social forces contributed to the rapid rise in funding in the decade referred to. On the one hand, we, the general public, had not yet become blasé about new antibiotics, artificial fabrics, and amplifying devices, so that we were then more receptive to lessons of the kind I have extracted from three case histories of discovery. Further motivated by Sputnik, we were willing to underwrite an increased investment in primary research at least as an appendage to increased funding of applied research and of development activities. On the other hand, scientists ready with new instruments and new methods opened up new research frontiers and found themselves in a position to solve problems which only a few years earlier in many cases were not even formulated, and which in others seemed impossible of solution.

To illustrate the transformation which has taken place in scientific research, we view the field of chemistry which, in the complexity of the systems dealt with lies between the fields of physics and of biological science. Within a century, chemistry has evolved from an isolated science dealing with the composition of simple substances to being partially integrated into the two fields mentioned. It relies heavily on physical principles and methods, and finds some of its most challenging problems in the biological systems. At the same time, it contributes to the conceptual framework and practical applications of both. In the course of its evolution, the difficulty and complexity of the problems being studied have increased enormously, and their significance, if anything, has increased. Genetics is being studied on the molecular level as a problem in the chemistry of complex molecules, the nucleic acids. Cancer is undoubtedly a problem in cell chemistry. Providing the working matter in masers, lasers and transistors and understanding its structure and composition in-

volves difficult problems in chemistry. So does the chemical and isotopic analysis of the lunar surface.

Taking first the area of chemistry related to natural substances, we can trace the increase in the complexity of the problems by considering the synthesis of sucrose, table sugar, in the early 1940's and the present day synthesis of the complex molecules such as chlorophyll, cortisone, insulin, peptides, hormones, and finally, the gene. The molecule of sucrose contains 45 atoms; that of a peptide may contain hundreds. The degree of complexity which the present day problems feature, problems related to the synthesis of even larger building blocks of life such as proteins and nucleic acids, points to the ever-changing nature of primary research in a basic science.

In the area of chemistry related to interesting man-made molecules, the synthesis of plastics, detergents, fibers, fabrics, and high temperature stable materials typifies the complexity of present day chemistry. The interrelationship between chemistry and a wide variety of physical and biological sciences has become greater, demanding that chemistry be able to adapt readily to the needs of other sciences. The pollution of our earth is of great current concern. It is a chemical problem, the solution of which will involve also the socio-economic area.

As the problems of chemistry have become more difficult, the sophistication of the equipment needed to solve the problems has increased. Many of the studies mentioned earlier appeared at their beginnings to be very formidable, but the advent of new instrumentation permit them to be solved now in days rather than months or years. This is particularly true with regard to molecular structure of chemical compounds, a knowledge of which permits molecules to be transformed in a predictable way. A total approach is now possible, and it is possible only because highly sophisticated equipment is now available.

In 1945, laboratory techniques were little different from those used in 1900. In the 1950-60's modern electronic spectroscopic methods revolutionized the science; a major one of these, nuclear magnetic resonance spectroscopy, owes its existence to Professor Felix Bloch of Stanford University. Now with the availability of the computer another major step forward is to be made. A few specific examples can serve well to illustrate this increase in the complexity and sophistication of equipment. The automatic amino acid analyzer, a device using chromatography, a modern analytical method, when coupled with a computer permits analysis of complex proteins to be performed in a matter of hours rather than months or years. A decade ago such detailed information as a routine matter was unimaginable. The automatic X-ray diffractometer, when used in conjunction with a computer for analysis of the data, has enabled the chemist to obtain molecular structures in crystals on a routine basis. Now it is possible to use this powerful method to follow the course of synthesis or to apply it to the solution of complex structures which would not have been thought possible in the recent past. The mass spectrometer, when coupled with chromatographic apparatus and computer, offers a new analytical tool which permits study of problems of extreme complexity with a minimum of material. This combined analytical-structural device has enabled chemists to obtain information on the composition of the moon, meteorites, earth, and contaminants in air and water as they relate to the problem of pollution.

The price for this increased application of highly sophisticated equipment to the solution of complex problems is high. Not only are the analytical devices themselves costly items, but the computer required to fully exploit the instruments is of even greater cost.

Thus, in the first year of the '70s, the field

of chemistry has grown and has become involved with a wide variety of our most pressing problems. Although primary research in chemistry did not start out to solve these problems, the evolution of primary research will aid their solution.

The field of chemistry is not alone in having evolved rapidly in the last two decades. Equally dramatic changes have taken place in other fields of science with a commensurate increase in the cost of doing research. One field taken as an example serves, however, to indicate how the increased resources in the 1958-68 period were absorbed. Though the period 1966-68 marks the high point in Federal support of science relative to need, there is no reason to believe that the level of support provided was optimum in balancing need against efficient and productive use of funds. In the report, "Chemistry: Opportunities and Needs", prepared by a committee of the National Academy of Sciences, a strong case was made for the proposition that chemistry was seriously underfunded in 1964. There was a slight increase of support in the two or three years following 1964, but there has been a decline since, and the present level falls far, far short of the level projected as optimum, again using the criterion of satisfying needs without incurring waste.

In turning now to the funding difficulties which face the academic science body today, I shall continue to use the field of chemistry for concrete illustrations, but I want to emphasize again that the other natural sciences face parallel problems.

Let us examine the consequences on departments of science of the recent decreases in funding by the Federal government of research and development. The percentage decline has not been great and the change in the gross figures gives no hint of the severe dislocations taking place in universities. Because of the way that support for primary research is provided, the problem created by the decline of total support is compounded many times over for those in primary research. In a time of financial stringency, the mission-oriented agencies adopt more and more restrictive interpretations of mission relevance, with the result that primary research, which in its very nature usually cannot be directly related to an immediate practical goal, suffers far out of proportion to the total budget cuts. To appreciate the problem, we must examine it from within the science. Let us, for this purpose as well, use the field of chemistry.

Chemistry, concerned as it is with matter—its composition, its structure and its transformations—is a fundamental science and has an important bearing on the work of each of the Federal agencies providing support of research in the natural sciences. The relationship is perhaps most readily apparent and most easily appreciated for NIH, an agency of HEW. Living cells are complex, dynamic chemical systems. Biologically significant components such as proteins, lipids, nucleic acids, steroids, vitamins, and hormones, are chemical substances. Processes such as metabolism, cell growth and its control, muscle and nerve action, and gene reproduction, are problems in chemistry. More and more diseases, whether caused by malfunction or by invasion, are being understood in chemical terms and controlled by chemical means. Despite the importance of chemical principles and knowledge for the mission of NIH, less than 3% of the budget has, in the past, been devoted to support of chemical research in departments of chemistry. This contribution, small in terms of the total NIH budget, and pitifully so considering the general relevance of chemistry to the mission of NIH did, in recent times, account for approximately one fourth of the direct Federal support of chemical research. Within the past few years NIH has narrowed its views in judging relevance, a trend exacerbated by the decline in total level of fund-

ing. Support of chemistry in departments of chemistry is not being reduced merely by the few percent which would be commensurate with the total cutback. Among the institutes in NIH, the Institute of General Medical Science has, in the past, been the most generous patron of primary research in chemistry; if current practices on renewal and new applications in chemistry are continued, a reduction in total support for chemistry of more than 50% within the next few years is in prospect.

NIH is unfortunately not the only agency curtailing sponsorship of primary research in chemistry. The AEC also is responding to the pressures of shortage of funds interacting with concern for mission relevance by adopting a similar posture. The reaction is rather general in the mission-oriented agencies; scientific merit seems to be becoming a secondary criterion in funding proposals. The NSF, with its limited resources, cannot possibly accommodate the established research programs denied support by the other Federal agencies and at the same time show the concern for the beginning investigator which is needed to ensure the continued vitality of basic science. The NSF budget for chemistry in 1969 was \$18 million; in 1970 it is \$17.6 million. Because the cost of doing research is increasing, the actual decline is greater than these figures would indicate.

Though the denial of support is being made as a matter of policy rather than caprice, its effects are as disastrous as if the decisions were entirely capricious. Established programs are cut off abruptly without being given a period of grace in which to terminate in an orderly fashion. This is a much graver matter than it might appear to be at first sight. Once a research team is disbanded, it can take a period of at least two years to restore it to full strength. Thus, even if support were reinstated after a short time, the loss in production would be enormous. Apart from the loss measured in quantity of research which results from termination, there is a loss in quality when first-rate investigators, with a vision of where significant new knowledge is to be uncovered, find it necessary to stifle the free expression of their creative bent so as to be certain to win at least a modicum of support. Finally, we must recognize, in view of the intimate relation between graduate education and academic research, that loss of research support means at once a decrease in the number of those being trained to fill the future needs of industry, of academia and of administration. In drawing attention to this factor, it needs to be acknowledged that there has been a recent decrease in demand for Ph.D.'s in science. But only if we believe in or plan for a declining economy can we regard this trend as normal or healthy. Demand can develop as abruptly as it declined. Here, too, we need to reckon with a time lag of three to four years, the time needed to train a Ph.D. as supply adjusts to demand.

I have referred to the dislocations in research activity in departments of chemistry caused by the recent cut-backs in support. What are the consequences for our society if this pattern is repeated in the other basic sciences? These will be felt in at least three major areas: economic, educational and social.

Wage rates in the U.S. are high, and our standard of living depends on high productivity and highly developed technological products. A comparison of exports in 1940 and 1969 shows a decided shift toward items which depend on advanced technology, e.g., electronics, computers, aircraft, fine chemicals and plastics. Advances in these and related products do depend on advances in science, not only through spectacular discoveries of the kind I used for case histories, but also the less publicized work that is the substantial body of the scientific structure. I quote here from the report "Chemistry:

Opportunity and Needs", (NAS, 1965): "We have examined the publications of nearly 40 inventions or practical discoveries in chemistry since 1946; these include, for example, the discoveries of polytetrafluoroethylene (Teflon), of an important catalyst for producing polyethylene, of antiarthritic steroids, and of psychostimulants. All the footnotes (approximately 750) in these publications have been analyzed to find out where the supporting work cited by the authors was performed, and whether it was published in fundamental or applied journals. The results are summarized in the following table (see also the introduction to Section III of this report):

CLASSIFICATION OF SOURCES FOR ARTICLES CITED IN ANNOUNCEMENTS OF PRACTICAL DISCOVERIES IN CHEMISTRY

[In percent]

Type of invention	Sources of citation		
	Fundamental journals	Applied journals	Patents and others
Industrial.....	67	22	11
Pharmaceutical.....	87	5	8

Clearly, a large majority of the footnotes refer to work published in fundamental journals; furthermore, 60% refer to work carried out in universities (Table 5, Section III). These data go far toward showing that, in chemistry, nothing is so practical as basic research. The conclusion reached by this committee for chemistry applies with equal force to the other basic sciences.

The effect of the cutbacks on the training of Ph.D.'s has already been pointed out, and the present decline in demand has been acknowledged. In considering need for Ph.D.'s, we should not limit ourselves to past practices. There is, for example, a need for improving the faculties of liberal arts colleges, junior colleges and other institutions that now cannot adequately employ trained people. We are moving toward a policy of universal post-high school education, and accepting this as a social goal, which is good in its own right. If this is worth doing, it is worth doing well, and highly trained people are needed to get the greatest benefit from the educational system.

Some of the crises of our day arise from complex interactions of technical political and social problems. While technical solutions alone cannot eliminate pollution, the development of cheaper and more efficient techniques in combating pollution would influence the political climate and make their adoption easier. Similarly, low cost housing requires, in addition to legislative action, new ideas and materials. The solution of these and similar problems is clearly not aided by a decrease in research activity and in the availability of trained scientists.

GENERAL RECOMMENDATIONS FOR THE SUPPORT OF PRIMARY RESEARCH

The consequences of stemming the flow of new ideas in science may be slow in coming, but the consequences are inexorable. Rather than retreat from our national commitment, we should honestly recognize the intimate connection between research in universities and advanced education.

In turning now to recommendations for change, I shall, for the most part, restrict myself to enunciating principles, admitting that specific plans for their implementation will, of course, require additional study and analysis.

We begin by returning to our earlier theme: the nature and structure of primary research. Perhaps one of the major reasons for the difficulty in understanding what it is and what it contributes to the welfare of mankind stems from the fact that it is—and means—many things at the same time. It has been looked upon as a necessary requirement for keeping American industry competitive

with that of other countries, and as a source of the concepts which lead to diversification and growth. It has been looked upon as serving this function also for the mission-oriented agencies for research. It has been looked upon as a fundamental instrument of teaching at an advanced level. It has been looked upon as providing new knowledge as a goal in its own right. Indeed, it is all of these things, and this being so, primary research in science should be viewed as a national resource. It differs from many such resources in that to maintain it, it must be not only protected, but nourished. To ensure its vitality, the Federal outlay in support of the resource should not be left, to the extent that prevails at present, to the judgment of administrators who serve other interests as their principal obligation. It must be protected by being identified as a line item in the budget.

Plurality in the source of support has much to recommend as helping to ensure stability, and also as helping to realize the benefits which flow from primary research.

If we recognize that primary research in universities is an integral part of graduate education, it seems prudent to provide a substantial core of support tied to the graduate student population. To meet the need of the academic community realistically, two changes in current practice should be made. One is that the program of Federally supported fellowships needs to be greatly expanded. Such fellowships best serve science when they are made directly to the students, with selection based on excellence and promise. The student selected as a fellow then has the freedom to study the areas which seem to him to be the most rewarding, and at the institutions that provide the best training and the greatest challenge in these areas. In the past, the support given to a university to cover the expenses of such a fellow have been insufficient to permit the university to develop and maintain modern tools of research. A more realistic approach to this critical component of support must be taken if universities are to properly prepare the new generation of scientists to meet the new challenges in scientific research which they will face.

A broad base of support provided in this way, with perhaps a majority of the students on Federally sponsored fellowships, would do much to alleviate the difficulties arising from the present unstable and erratic funding system. It has the advantage as well that the need is readily assessed. There is no reason to believe that students are attracted to a field by fellowships awarded during student days. What is of greater consequence to the student in deciding on a career are the opportunities and rewards promised at the end of the training period. Fewer graduate students would automatically lead to a proportionate reduction in the total support.

The need for stability and continuity in support should perhaps be enlarged upon. Education is not a machine which can be turned on and off like a water faucet. Once the process has started for an individual, it must be completed because anything less than completion is wasteful of the earlier investment. Although minor fluctuations can be accommodated in the system, abrupt changes of large magnitude do not merely slow down the educational process; they may, in fact, bring it to a halt. Universities do not sell a product and do not have available the simple device of increasing the price upon short notice to make up unexpected deficits in the budget. The major support of graduate education in science and, thus, primary scientific research, stems from the funds available from the Federal government. Such support can be expected to undergo changes, but if this national resource is to be kept viable, the changes must be programmed over a period of time.

It would, in my view, be a serious mistake to completely supplant a research grant system by support tied to the graduate student.

The needs of some of the most enterprising research scientists would not be satisfactorily met in this way. The most active may require, in addition to graduate students, technicians and post-Doctoral research associates. They will certainly need equipment beyond that made available through a departmental pool. The idea of the National Science Foundation administering a research grant program, but beyond this, concerned with the problems of total support, distribution of support and maintaining a balance between the various demands is, in my view, sensible. For such a Foundation to discharge its obligations, it must have a very substantial sum in terms of grant funds to administer. But I think there are good reasons for not restricting the funding of grants to a single agency. Primary research should be part of the mission of each of the Federal agencies making an investment in research. It is important for those in primary research and in applied research to feel themselves part of a common enterprise. This feeling of a community of interest can be fostered by an imaginative administration of research support. In making this recommendation, I want to emphasize the need of having primary research recognized as a line item in the budget of each agency, and the absolute necessity of having scientific excellence rather than mission relevance the criterion in distributing funds thus made available.

As I have mentioned, the National Science Foundation would be concerned with problems of the distribution of support. Among the problems of this kind which are urgent and important is the support of the beginning investigator. Under our present grant system, particularly in a time of declining support, young investigators find themselves in an unfavorable, indeed, an impossible position in competing for funds. They have not had the opportunity to establish themselves as independent investigators and thus do not qualify for support; not having support, they cannot qualify themselves. When funds are scarce, the decision is almost invariably made not to take a chance. Another problem is the distribution of funds between big and little science. Accelerators represent big science, and certainly the frontier in science which they reach continues to yield discoveries which border on the sublime. But how do we weigh the real benefits of these discoveries against the equally real benefits that arise, let us say, from a chemical discovery? How many chemists should be sacrificed to make the next decade in the energies reached by accelerators possible, not tomorrow, but today? I am not providing an answer to this question. I think it is essential for the scientific community to cooperate in a spirit of concern for the corporate body of science, in arriving at answers. The National Science Foundation can be instrumental in promoting the discussion of issues as grave as these.

In pleading for protection of primary research in science, it may seem to some of you that I am advocating a scientific priesthood which is to be shielded at all costs from the vicissitudes of life as it is lived in the real world. Perhaps, therefore, it needs to be remarked that primary research, protected as I have recommended, provides no sinecure for its practitioners. Science is highly competitive. The need to justify one's self-esteem is as powerful in this area as it is in any of the most highly competitive enterprises. Furthermore, the scientist is obliged to put on display the basis of his self-esteem by publishing his findings in the journals. Here they are subject to the critical eye of the scientific community. With this mechanism for evaluation and criticism available and actively used, we need not be too concerned about being overly protective in implementing general recommendations of the kind I have made.

At this time when we are re-examining

many of our standards and values, it is essential for us to see that the success of future generations rests mainly upon that which is not known today. Primary research must be recognized as a vital national resource and the University as a national asset: the two taken together probably comprise a critical element in determining our future. Without adequate funding on a continuing basis of these two units, the future development of this country will be in jeopardy. A better life for all has been and will remain directly related to primary research. Let us ensure its vitality by solving the problem of funding now.

SUPPORT OF H.R. 12284, TO PROTECT COLLECTORS OF ANTIQUE GLASSWARE AGAINST THE MANUFACTURE IN THE UNITED STATES OR THE IMPORTATION OF IMITATIONS OF SUCH GLASSWARE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. HALPERN) is recognized for 5 minutes.

Mr. HALPERN. Mr. Speaker, rarely does a day pass when we cannot read in the press reports of fraudulent deception of consumers. One day it concerns car or TV repairs. Another day it is home repair services. Or short weight in packaged foods. Or mislabeling of textiles. The Congress is showing itself increasingly concerned with these and many other forms of deception in its efforts to provide legitimate protection to the American consumer. Today, I wish to speak in behalf of a measure which deals with still another form of deception, one which may not rank high in the minds of most Americans, but one which can cause a great deal of anguish and financial loss to a small group of us, those who are collectors of antique glassware. Unfortunately, there are those who dupe such collectors into buying as antique glassware, imitations which are difficult to distinguish, for all but the most expert from the original article. It is against this kind of fraud that H.R. 12284, introduced over a year ago, on June 18, 1969, by the gentleman from New Hampshire (Mr. WYMAN), is intended to serve as a meaningful weapon. This bill declares that both the manufacture and the importation of any imitation antique glassware product which is not plainly and permanently marked with the calendar year in which such product was manufactured is unlawful and shall be declared an unfair method of competition and an unfair or deceptive act or practice in commerce under the Federal Trade Commission Act.

Imitation antique glassware is defined as any product made wholly, or in chief value of glass which resembles, by reason of its design, color, texture, and markings any glassware product which was manufactured before 1940. The requirement that such imitation glassware must be permanently marked means that it must be molded into the glass or otherwise permanently inscribed in the glass. I should like to note further that, to protect glass producers from needless governmental interference in the process of protecting antique glass collectors, the Federal Trade Commission is empowered to promulgate regulations exempting

glassware from the provisions of this act if the nature, form, or quantity of such glassware product does not require it to be subject to this act for the adequate protection of such collectors. The enforcement of the act is to be in the hands of the Federal Trade Commission under essentially the terms and provisions of the Federal Trade Commission Act.

This is not a complicated act. It is, however, another piece of legislation needed to complement existing consumer protection law in an area of real significance to some of our citizens who are unable by the nature of the product involved to protect themselves adequately without such law. I therefore urge its prompt enactment.

TAX BENEFITS FOR FAMILIES OF MEN KILLED IN CAMBODIA OR LAOS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. MINISH) is recognized for 5 minutes.

Mr. MINISH. Mr. Speaker, yesterday I placed in the hopper H.R. 18447, to provide retroactive tax benefits for the families of servicemen killed in Cambodia or Laos.

There are many tax benefits and exemptions that normally accrue to the estates of servicemen killed in combat zones. However, Cambodia and Laos have never received combat area designations, although an estimated 331 servicemen have died in Cambodia and unofficial figures indicate that many Americans have also fallen in Laos.

H.R. 18447 would provide equitable treatment for the families of servicemen who gave their lives in Cambodia and Laos. I hope that my colleagues in the House will give this measure full support.

THE NO. 1 PROBLEM OF AMERICA: DRUG ABUSE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from West Virginia (Mr. KEE), is recognized for 30 minutes.

Mr. KEE. Mr. Speaker, during the week of May 4 through May 8, it was my pleasure—my duty—to bring to the citizens of the Fifth Congressional District of West Virginia a professional panel on narcotics and dangerous drugs.

My distinguished colleague, the gentleman from Florida, Congressman CLAUDE PEPPER, chairman of the House Select Committee on Crime, and the Bureau of Narcotics and Dangerous Drugs, U.S. Department of Justice, provided knowledgeable staff assistants who are in my opinion unsurpassed in this field concerning the future of our Nation—our most vital domestic problem.

This panel, in concert with the West Virginia Department of Mental Health and the local medical societies within the congressional district I have the honor to represent, informed our citizens as to the crisis of drug abuse and narcotics use in our country today.

I was amazed to find that many of the usually well-informed citizens of my district were sadly lacking accurate information about this menace. I feel this

public program should, in some manner or form, be repeated throughout the Nation.

In effect, I am saying that we are not asking anyone to do more than his share, but we are asking everyone to do something constructive to help themselves eliminate the odious problem which is besetting our youth and our Nation.

The Honorable Howard M. Jarrett, judge of the intermediate court of my home county of Mercer, originally brought this to the attention of the public at home. Chairman PEPPER—equally concerned—developed the tragedy ahead on a national basis. In the very near future all of America will realize that we owe a debt of gratitude to Chairman PEPPER and members of his committee, as well as John E. Ingersoll, of the Bureau of Narcotics and Dangerous Drugs, because they have clearly pointed out for all to see the real problem we now face. It is up to each of us to meet our responsibilities now before it becomes too late. I simply followed through in my small way to eliminate the continued expansion of this terrible tragedy that could destroy from within the Nation we all respect and love.

This same panel conducted a statewide discussion and question-and-answer period at the University of West Virginia. I am hoping to arrange to have this taped program reproduced—because of its importance.

Because of concern by responsible citizens who care about the future of America, a group of the finest public speakers of America met on Sunday April 19, 1970, in Phoenix, Ariz., each giving of their time—free of charge. Speakers for America with Zig Ziglar of Dallas, Tex. as chairman, Cavette Robert as vice chairman, Dr. Glenn Cunningham, Dan Bellus on the board of trustees, Mr. Wayne Caldwell, CPA, the secretary-treasurer was formed. Mrs. Mary Crowley and Dr. Wayland Tanning have joined the board of trustees also.

The purpose of Speakers for America is to eliminate the continued growth of the drug problem and sell America to all Americans.

Because of the dedication of these respected, outstanding and concerned citizens arrangements have been made for a national conference in Dallas, Tex., on August 29 and 30, Saturday and Sunday.

At this point, Mr. Speaker, I include the following article by Chairman Ziglar be included in the RECORD:

SPEAKERS FOR AMERICA

Purpose.—To wipe out the drug problem and to sell America to all Americans.

History.—On January 19, 1970, while speaking to a S.M.E. sales rally in Winnipeg, Canada, four dedicated Americans who are professional speakers decided that our growing drug problem combined with the alarming decline in patriotism demanded a "best effort" from all concerned Americans. The men: Zig Ziglar, Cavett Robert, Dr. Glenn Cunningham and Dan Bellus were later joined on the Board of Trustees for Speakers For America by Wayne Caldwell, C.P.A. who serves as Secretary-Treasurer, Mrs. Mary Crowley and Dr. Wayland Tanning. On Sunday April 19 in Phoenix, Arizona, Zig Ziglar was elected Chairman of the Board of Trustees and Cavett Robert Vice Chairman. The

wheels were set in motion with each member doing research and writing on drugs and the declining patriotism.

Problem.—Speakers For America feel that we are essentially confronted with a "sales" problem. We feel that the youth of America have not been sold on why they should not use drugs. We also feel that many Americans of all ages have not been properly sold on the real greatness of this country and its future. We further felt that many citizens of all ages were complacent to the degree that they did not truly understand the magnitude of our growing drug problem. For simplicity and brevity we are going to use the word "drug" to include everything from "grass" to "heroin" as well as the up and downers, the sniffers, the addictive and the non-addictive. We at least partially understand the enormous difference but it is our belief that basically they all come into use because of similar problems or for similar reasons.

On June 3rd and 4th, I, Zig Ziglar, spent several hours with Congressman Jim Kee, of West Virginia, who was the first Congressman to initiate a thorough investigation into the drug problem on a Congressional District basis—its causes and solutions. With Congressman Kee was a Congressional investigator who has spent enormous amounts of time on this problem both from an investigative analytical point of view and a study solution point of view. It is the firm opinion of both Congressman Kee and the Congressional investigator that we have a *maximum of two years* to reverse the trend or we can chalk this generation up as "lost". According to Dr. Hardin Jones, a well known drug authority from the University of California, we had some 50,000 people who were users or casual experimenters with Marijuana five years ago. Today the number is 15,000,000. Five years ago the rate of increase of "hard" drug users was 1/2% per month. Today the figure is 7% per month. This means that our number of addicts will double every 10 months. When you realize that less than 5% of the addicts successfully kick the habit once they hit the "hard" stuff and that the normal life expectancy of a heroin addict is 18 months you begin to realize the seriousness of our problem. We believe it is a sales problem so we are mounting a "sales campaign" such as has never been launched in this country.

1. We are officially appointing every concerned American as a "Speaker For America". Each one is requested to wear the official button and pass out the brochures which outline the problem—and the solutions.

2. We are enlisting the support of every professional speaker, sales trainer, and sales training organization in this country to join us in our campaign. We are asking these companies and individuals to include something about the problem and the solution in every talk they make to any kind of group. We are further urging them to solicit unpaid engagements from high schools, colleges, and all civic and service clubs to further spread the word.

3. We are seeking the support of organizations such as Toastmasters International, The American Legion, The Jaycees and the numerous clubs who share our sentiments.

4. We are producing records on a professional basis and of top professional quality that will be distributed through independent sources throughout the country. These records will be "aimed" at all segments of our society but with special emphasis placed on ten to eighteen year olds in one recording and special emphasis placed on the 20 to 35 year olds in the other recording. This way we feel we will be reaching the youngsters who are now at the "vulnerable" age as well as reaching the parents of these youngsters. These records and all of our material will be aimed at "selling" and will not "preach" either to the kids or to the parents. There are so many sound reasons for leaving drugs alone and

so many sound reasons why everyone should be loyal and patriotic to this land that all we need is a good sales job to get the results.

5. Because many people are willing to do—but don't really know "what to do"—we are spelling out in detail some very simple steps that *anyone* can do. These steps are available in pamphlet form. There are special pamphlets for many different walks of life. Not much is asked of anyone—but something is asked from *everyone*.

6. We will hold "training schools" to teach concerned Americans how they can best "sell" the idea of not using drugs. We will also conduct clinics on how to sell America—and its future—to all Americans.

7. We are calling on the schools, churches, and universities to join us in our campaign. Most of the 6,700,000 college students feel the same way we do so we are going to urge them to abandon their "silent" support and make it "loud and clear".

8. Eventually—it takes time—we are going to put together an inspirational radio program of five minutes duration. We will sell it to sponsors who will provide us the money and the opportunity to tell our story to millions of people. The plan is to use one of our professional speakers for one week and then change to another. The radio program will also be printed in the newspaper which gives us another source of income for more activities. The sponsor will get double benefit since he will be mentioned both in print and on the air. All money will be utilized by Speakers For America to further the cause. No speaker will be paid anything for his services.

9. One of our major projects is to publish our own newspaper. It will be called, "Good News From America" and will feature the good things that are taking place all over the country. It will be a week by week progress report on our victories and on our progress in the field of civil rights, foreign relations, and triumphs over disease and poverty.

10. On August 29, and 30, 1970, we are having a "giant" rally in Dallas, Texas, complete with all the fanfare befitting such an occasion. Present on the 29th will be the professional speakers who are available and who support us in what we are doing. Also present will be the heads of as many major companies in America as we can gather together. We will place special emphasis on companies with sales organizations. Visualize, if you will, every sales person making a sales call or putting on a group demonstration of any kind. At the end of the presentation the sales person gives a 60 second talk on drugs and Americanism while distributing a pamphlet explaining more in detail what we are doing for our country. Also visualize the major companies all over the country who publish weekly or monthly bulletins. In each of these bulletins if there were only a few lines devoted to "whipping" the drug problem or "selling" America just think of the impact. Also present at this meeting will be the decision making officers of the service clubs such as Lions, Rotary, Kiwanis, J.C.'s, Business and Professional Women's Clubs, etc. The men and women in these clubs represent the leadership of America and have an enormous influence across the nation. All of these are already engaged in community service so this project will merge with their present goals. In short, this is going to be a giant sales meeting for the purpose of recruiting all Americans to sell America and then to give them tips on how to do it. On the 30th we will have an open rally with the best professional speakers in America "doing his thing" for America. We believe this will give us the momentum and arouse the interest and imagination of enough people around the country to get the sales job done—*now*.

On the western slopes of the Rocky Mountains a giant Redwood is slowly rotting where it lays. This giant was in its glory when Columbus discovered America. It was

living when Christ preached the Sermon on the Mount. It was at full strength when the first Continental Congress convened and was still in its glory during World Wars one and two. It withstood the storms the earthquakes, the rains and hundreds of bolts of lightning. But then a little beetle came along one day and started to eat its way into the bark and later into the depth of the giant. Soon there were hundreds and then thousands of other beetles and each succeeding generation of beetles took its toll and multiplied itself many times over. Finally the proud giant which had taken the best shots nature could give lost its struggle and toppled to the earth.

America is a giant. We have survived storms, floods, riots, wars, epidemics, civil disorders and civil wars, depressions, and the combined efforts of some powerful enemies. We not only survived all of this—we grew strong and dominated the world as no nation has done since the glory of Rome. A few years ago a little beetle started tearing at our inwards and went to work on our vital parts. It went straight to our kids because the beetle—which is obviously drugs—knew that only one generation separated us from all the "isms" in the world. The drug merchants did their own effective sales job of planting apathy and indifference in the minds of the millions of parents who were either too busy or too naive to believe that this thing was serious—that it could happen to "them" or to "their" children. But the sales process went on and converts went the drug route by the hundreds, then by the thousands and now by the tens of thousands. If we start with the ridiculously low figure of 100,000 serious drug cases in the U.S.A. right now and apply the doubling figure every 10 months—which is accurate—we have the frightening fact that in just five years we will have 3,200,000 addicts. Now use your imagination as to how much the cost will be in crime to support these habits.

There is time. This is a sales process. It has started. We need you now. If you are interested—if you want to help—write.

ZIG ZIGLAR,
Chairman of the Board of Trustees,
Speaker for America, Dallas, Tex.

In conclusion, Mr. Speaker, I respectfully invite every Member of the Congress to attend these meetings in Dallas and also urge concerned citizens to write to Chairman Ziglar concerning their desire to be present to learn the facts and determine the best possible preventive programs, designed for all local communities. In fact, this is our last chance, in my opinion, to preserve our way of life.

NEW JUSTICE DEPARTMENT GUIDELINES FOR U.S. ATTORNEYS DISCOURAGEMENT ENFORCEMENT OF 1899 REFUSE ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. REUSS) is recognized for 30 minutes.

Mr. REUSS. Mr. Speaker, recently I brought to the attention of the House the very progressive regulations which the U.S. Army Corps of Engineers issued only a few weeks ago to carry out its responsibilities under the River and Harbor Act of 1899 (30 Stat. 1151). These new regulations will help in protecting and enhancing the quality of this Nation's environment. My speech on this subject, and the text of the corps' new regulations, are in the CONGRESSIONAL RECORD of June 17, 1970, pp. 20252-20256.

But, while the corps has acted respon-

sibly under the 1899 law, the Department of Justice is proceeding to undermine and negate the public interest by discouraging the enforcement of that law.

Several days ago, the House Conservation and Natural Resources Subcommittee, of which I am the chairman, learned that the Justice Department is about to issue guidelines for U.S. attorneys concerning litigation under section 13 of this act 33 United States Code 407—which is also known as the Refuse Act. Upon examining these proposed guidelines, we found that they virtually establish a policy of nonenforcement. Therefore, on July 8, 1970, we wrote to Attorney General John Mitchell objecting to the Department's proposed guidelines.

The 1899 law imposes fines of up to \$2,500 on polluters discharging into the Nation's waters any refuse such as metals, salts, acids, oil and brines, cyanides, grease, food product wastes, animal wastes, and textiles, pulp, and paper mill wastes. It requires all U.S. attorneys "to vigorously prosecute" all polluters who discharge such refuse into a waterway without a corps permit. It encourages citizen involvement by specifying that "one-half" of the fine shall "be paid to the person or persons giving information which will lead to conviction."

In March of this year, the House Committee on Government Operations issued a report, prepared by our subcommittee (H. Report 91-917, March 18, 1970) recommending that the 1899 act be vigorously enforced. Shortly thereafter, I presented information to the U.S. attorneys for the eastern and western districts of Wisconsin urging strict enforcement of the 1899 law against 149 polluters of Wisconsin's waterways. Subsequently, I filed similar charges against an additional 121 industrial polluters in Wisconsin. My colleagues, Congressmen EDWARD I. KOCH of New York, and MICHAEL J. HARRINGTON of Massachusetts, and other citizens and organizations, have also asked U.S. attorneys to enforce the Refuse Act.

However, the Justice Department has been busily preparing a backward policy of nonenforcement of the law. On June 11, 1970, I released a letter from the Department's Assistant Attorney General Kashiwa, who told our subcommittee:

* * * it would not be in the genuine interest of the Government to bring an action under the Refuse Act to secure a criminal sanction against a company which admittedly is discharging refuse into the navigable waters of the United States, but which, pursuant to a program being conducted by the Federal Water Quality Administration, is spending significant amounts of money to secure the abatement of that pollution.

The Department now proposes to embody this absurd doctrine into its proposed guidelines for U.S. attorneys.

This doctrine favors the polluter over the public's interest in protecting the environment. By administrative fiat, the Justice Department has concluded that it is perfectly proper to allow polluters to violate the 1899 law if someday they will abate their pollution under a program of the FWQA. As we said in our July 8, 1970, letter to the Attorney General:

There is no statutory or legislative history for this administrative policy.

Even where the Justice Department reluctantly allows U.S. attorneys to enforce the law in some cases, the proposed guidelines limit such enforcement by exempting polluters who have a State or local license. Under this exemption, a polluter with a food or liquor dispensing license, which is unrelated to the purposes of the 1899 act, could qualify for this loophole.

The 1899 law is not a water pollution control statute. It does, however, complement the Federal Water Pollution Control Act, as amended by section 21(b) of the Water Quality Improvement Act of April 3, 1970 (84 Stat. 91). Under the 1899 act, a polluter must, as I have said, obtain a corps permit to discharge or deposit refuse into the Nation's waterways. Without such a permit, the polluter is in violation of the law.

Furthermore, since the enactment of the Water Quality Improvement Act on April 3, 1970, the polluter who applies for a corps permit must now obtain a certificate from the State in which the discharge originates or will originate before his application can be approved. The certificate provides reasonable assurance that the discharge will be conducted in a manner which will not violate applicable water quality standards. Surely, a State would not issue the certificate unless it had a sound basis for providing this assurance. Thus, when the U.S. attorney enforces the 1899 law and requires polluters to obtain a corps permit, the 1899 law helps to set into motion the amended Federal Water Pollution Control Act, as Congress intended.

But the Justice Department's guidelines are totally inconsistent with this approach to improved pollution control. They frustrate the intent of Congress because they tell the U.S. attorney that he should not enforce the 1899 law, except in very limited circumstances.

Moreover, the negative statements and tone of the guidelines would discourage, rather than encourage, even the most ardent U.S. attorney's efforts to enforce the 1899 law.

The Justice Department should scrap these proposed negative guidelines. The Department should, instead, issue new guidelines which are in accord with the law and encourage its enforcement. The waters of this Nation have been despoiled long enough by polluters who ignore the law. Now that the corps, at Congress' urging, has begun to breathe new life into this 1899 law, the Justice Department should not be allowed to establish administrative loopholes for persons who discharge refuse into our Nation's waterways in violation of the clear mandate of the law.

If the Justice Department lacks personnel to enforce the law, let it promptly ask Congress for funds to do so, or delegate this responsibility to the corps, which has shown a willingness to protect our environment.

I believe the House, and the public, will be interested in the text of our subcommittee's letter of July 8, 1970, to the

Attorney General, and I therefore enclose it in the RECORD at this point:

HOUSE OF REPRESENTATIVES, CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS,

Washington, D.C., July 8, 1970.

HON. JOHN N. MITCHELL,
Attorney General of the United States, Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: We understand that the Assistant Attorneys General for the Civil, Criminal, Land and Natural Resources, and Internal Security Divisions of the Justice Department will soon issue to the U.S. attorneys "Guidelines For Litigation Under the Refuse Act (33 U.S. Code 407)." These "Guidelines" will establish the Justice Department's enforcement policy concerning violations of the Refuse Act by industrial polluters.

We believe that these guidelines (1) are, in many respects, inconsistent with the 1899 Refuse Act; (2) indicate a lack of understanding of the provisions of the Federal Water Pollution Control Act, as amended (33 U.S. Code 466 et seq) and the policies and practices of the Federal Water Quality Administration which administers that Act; (3) are, in some cases, ambiguous; and (4) are unduly and startlingly negative and discouraging toward any hope of vigorous enforcement of the Act. Indeed, the "Guidelines" appear to establish a policy of non-enforcement of the 1899 Refuse Act at a time when the Corps of Engineers has most responsibly issued regulations, pursuant to the Committee's recommendations (see H. Rept. 91-917, March 18, 1970), concerning Corps permit applications under the 1899 law, which show a great concern for our environment.

We believe that the adoption of these "Guidelines" with this policy is not in the public interest and urge that you substantially revise those guidelines.

A. Section II, paragraph 1 (p. 3) of the proposed Guidelines states the Justice Department policy as follows:

"The policy of the Department of Justice with respect to the enforcement of the Refuse Act for purposes other than the protection of the navigable capacity of our national waters, is not to attempt to use it as a pollution abatement statute in competition with the Federal Water Pollution Control Act or with State pollution abatement procedures, but rather to use it to supplement that Act by bringing appropriate actions either to punish the occasional or recalcitrant polluter, or to abate continuing sources of pollution which for some reason or other have not been subjected to a proceeding conducted by the Federal Water Quality Administration or by a State, or where in the opinion of the Federal Water Quality Administration the polluter has failed to comply with obligations under such procedure."

Thus, rather than state affirmatively what enforcement actions Justice will pursue under the 1899 Act, this statement declares that the 1899 law is not a pollution law.

As we have often stated, no one seriously contends that the 1899 law is a "pollution abatement statute in competition with the Federal Water Pollution Control Act." Rather, the 1899 Act complements that law, as we will demonstrate.

Section 13 of the Act (33 U.S. Code 407) prohibits the throwing, discharge, or deposit of "any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state" into any navigable waterway or tributary thereof. It also provides that the Corps, and no other agency, "May permit the deposit" of any such ma-

terial into any such waterway "provided application is made * * * prior to depositing such material." (Underlining supplied). Thus, under the 1899 law a person or corporation either obtains a Corps permit or is in violation of this section if he deposits or discharges such material in a navigable waterway without a permit. It is that simple.

When anyone applies for such a permit after April 3, 1970, he must also obtain a certificate from the State "in which the discharge originates or will originate" (or, as appropriate, from the Secretary of the Interior). This certificate is required by section 21(b) of the Federal Water Pollution Control Act, as amended by the Water Quality Improvement Act of 1970 (Public Law 91-224; 84 Stat. 91, 108). The issuance of such a certificate provides reasonable assurance from the State or Secretary that such discharge "will be conducted in a manner which will not violate applicable water quality standards." We expect these certificates will not be granted until the State or the Secretary is satisfied that there is, in fact, a firm basis for such assurances. Thus, by enforcing section 13 of the 1899 law, and requiring each violator to apply for a Corps permit, the Justice Department will trigger the requirement of section 21(b) of the Federal Water Pollution Control Act. In the absence of such an application for a permit, section 21(b) will not apply. Further, applicants for Corps permits must also comply with its new regulations which are designed to protect our environment.

B. The policy statement specifically states (Section II, paragraph 1, p. 3) that "significant discharges * * * of a continuing nature resulting from the ordinary operations of a manufacturing plant * * * pose the greatest threat to the environment." But it then says: "—but it is precisely this type of discharge that the Congress created the Federal Water Quality Administration to decrease or eliminate." (Underlining supplied). Accordingly, the policy statement of your Department concludes that:

"* * * it is to the programs, policies, and procedures of that Agency that we shall defer with respect to the bringing of actions under the Refuse Act. Therefore, in order that we might coordinate our litigation with the programs of the Federal Water Quality Administration, civil and criminal actions against manufacturing plants which continuously discharge refuse into the navigable waters of the United States are not among the types of actions which the United States Attorneys may initiate on their own authority." (Underlining supplied).

Under the procedures set forth in Section III, paragraphs 3-5 (p. 6) of the Guidelines, the U.S. attorney cannot, without prior approval, initiate (1) a civil action "where the defendant is or has been a party to an administrative proceeding which has been or is being conducted by" FWQA, or (2) a civil or criminal action under the Act against " * * * any person acting pursuant to a license" from a State or political subdivision thereof, or (3) a civil or criminal action under the law where the discharger's unlawful activity "is the subject of abatement litigation or criminal prosecution" begun by a State or political subdivision thereof.

We believe that this policy and procedure are unwarranted for the following reasons:

First, neither the creation of the FWQA, nor the institution of some type of proceedings under the Federal Water Pollution Control Act affects or limits the requirements of the 1899 Act mentioned above. Regardless of what actions FWQA takes against a polluter, it cannot relieve the polluter of the obligation to obtain a Corps permit under the 1899 law or the duty of the U.S. "to vigorously prosecute" (33 U.S. Code 413) all violators of that law.

The Committee on Government Operations recently pointed out, in its report of March

18, 1970 (H. Rept. 91-917, p. 16), entitled "Our Waters and Wetlands: How the Corps of Engineers can help Prevent their Destruction and Pollution," that the Federal Water Pollution Control Act specifically states (33 U.S. Code sec. 466k) that it shall not be construed as (1) superseding or limiting the functions, under any law . . . of any other officer or agency of the United States, relating to water pollution, or (2) affecting or impairing the provisions of . . . sections 13 through 17 of the River and Harbor Act of 1899, as amended (i.e., the Refuse Act).

Thus, the Justice Department by administrative fiat is, by its Guidelines, subjecting the permit requirements of the 1899 Act to the Federal Water Pollution Control Act and allowing a polluter to continue to discharge its refuse material into a navigable waterway in violation of that law. There is no statutory or legislative history basis for this administrative policy.

We request that the Justice Department not undermine the law by adopting this unwarranted abdication policy.

Second, the water quality standards program of FWQA applies only to interstate waters. Other navigable waters and their tributaries are not covered by that program. The Guidelines do not even recognize this fact, but simply assume that all navigable waters and their tributaries are subject to FWQA's water quality standards. Even if the policy expressed in the proposed Guidelines were correct, the Guidelines should have stated that the U.S. Attorneys should "vigorously prosecute" unlawful discharges in such waters.

Third, in many cases, FWQA's sole effort to "decrease or eliminate" discharges of a "continuing nature" into an interstate water has been limited to a "conference" proceeding under section 10 of its law. This proceeding is not part of FWQA's water quality standards program. It is even difficult to classify it as an administrative proceeding because of its informal nature.

In such conferences, FWQA attempts to get all polluters to agree to a timetable under which they will abate their pollution. All too often these timetables are not met and the conference is reconvened and a new delayed timetable is adopted.

FWQA, in effect, follows a practice of trading time for persuasion. The effect of that practice is illustrated by the recently reconvened Lake Erie enforcement conference where it was announced that 44 of our largest industries failed to redeem their earlier pledges to clean up pollution of Lake Erie according to schedule. Of these, 38 are reported to be more than a year behind, with one, Mobil Oil, 32 months behind at its Buffalo, New York plant. While the Department can formalize these proceedings after a conference by holding a hearing and then requesting your Department to institute an abatement suit, it has done so only once since 1956.

Under these schedules, a polluter, even if he is expending substantial sums to abate his pollution, generally proceed at a leisurely pace and with no threat of a court order or fine. During this period, the polluter can continue to discharge his refuse material and befoul the waterways and, if he lacks a Corps permit, he will, under this Justice policy and procedure, escape the requirements of the 1899 law.

Fourth, the provision of the proposed guidelines (Section III, paragraph 3, p. 6) which forbids a U.S. Attorney from initiating, without special permission, a civil or criminal action to enforce the Refuse Act against a polluter who is conducting an activity under a license from a State or local subdivision, is so ineptly worded as to be virtually ludicrous. Under this guideline, any license issued to the polluter for any purpose whatsoever (such as a State or local license for the manufacturer to sell food to his workers in

his cafeteria) would preclude the U.S. Attorney from proceeding to enforce the Federal law. We fail to see any basis in law for the Justice Department to, in effect, excuse violators of a Federal law merely because they have a State or local license.

Throughout the proposed Guidelines runs a highly negativist refrain which will undoubtedly tend to discourage U.S. Attorneys from enforcing the Act. The urgencies of stopping the dreadful pollution of our waterways should have induced your Department, on the contrary, to frame guidelines which would encourage U.S. Attorneys to enforce a law designed to protect our nation's waterways.

It is also curious that the proposed Guidelines state (Section I, paragraph 1) that the Refuse Act authorizes only criminal actions and civil actions for an injunction and fails to mention that it can be used also to secure reimbursement from polluters for the Government's costs in cleaning up their pollution (See *Wyandotte Trans. Co. v. United States*, 389 U.S. 191 (1967)).

Without attempting here to enumerate all of the deficiencies and ambiguities of these guidelines, we hope that your Department will revise these proposed guidelines to make them fulfill, rather than negate, the requirements of the 1899 law, and to encourage, rather than discourage, the enforcement of the law.

We would appreciate your early response.
Sincerely,

HENRY S. REUSS,
Chairman, Conservation and Natural Resources Subcommittee.

TRAVEL AGENTS ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Rhode Island (Mr. TIERNAN) is recognized for 15 minutes.

Mr. TIERNAN. Mr. Speaker, last week we were all shocked by the rash of airline charter strandings which affected thousands of American students who were either already in Europe or were at Kennedy Airport in New York en route to Europe on chartered airlines. Many of these students had saved their allowances and worked for years in order to save enough money to make this trip. According to a report in a national magazine, these students will get no more than 10 cents to a dollar back. But even if they were to be repaid in full, they will never be able to be repaid for their ruined plans and dreams.

In February of 1969, I introduced H.R. 7786, the Travel Agents Registration Act. The purpose of this bill is to "protect the convenience, safety, and well-being of persons who patronize travel agencies in the United States." Basically, the bill would establish in the Department of Transportation a Bureau of Travel Agents Registration whose purpose would be to register travel agents and promulgate a code of ethics for the travel agency industry.

No person would be able to engage in the business of conducting a travel agency, directly or indirectly, without having first received a registration certificate from the Bureau. The Director of the Bureau would require that any applicant be financially qualified and successfully complete a written examination as to competency, in accordance with standards to be established by the Director and his eight-man board.

A reasonable fee would be charged each applicant and the registration certificates would expire on the last day of December each odd-numbered year. It is our hope that the collection of these fees would make the Bureau of Travel Agents Registration, to some degree, self-sufficient.

The need for this legislation is unquestionable. The facts go far beyond the recent World Academy catastrophe. The Civil Aeronautics Board this year alone has complaints against over 50 clubs, organizations and individuals for engaging in "unfair acts or deceptive practices and unfair methods of competition" in providing flights for trips abroad and elsewhere. These offenses varied from refusing to make refunds for overcharges to operating without a certificate of public convenience and necessity or any other authority from the CAB. My bill, by requiring that any individual or organization engaging in the travel agency business either directly or indirectly would have to receive a certificate of registration, will help to put an end to the victimization of substantial segments of the traveling public.

I am today reintroducing H.R. 7786 with 37 cosponsors, representing 17 States and the Commonwealth of Puerto Rico. The need for immediate hearings on this legislation is evident. It is estimated that 700,000 persons will be traveling to Europe on charters this year, and unless immediate action is taken, the potential for another World Academy is great.

Mr. Speaker, I want to make it clear that my bill is not designed to discourage low cost, safe and responsible travel. I am certainly not opposed to charter travel. But I am concerned with the safety and protection of the traveling public, as well as the majority of our travel agents who are honest and responsible businessmen. This is the purpose of H.R. 7786.

Mr. Speaker, a list of the cosponsors of the bill follows:

**COSPONSORS OF THE TRAVEL AGENTS
REGISTRATION ACT**

Ken Hechler (D, W.Va.).
Ed Garmatz (D, Md).
Ray Blanton (D, Tenn).
Buz Lukens (R, Ohio).
John Murphy (D, NY).
Jacob Gilbert (D, NY).
Joseph Addabbo (D, NY).
James Hastings (R, NY).
Jorge Cordova (P.R.).
John Dent (D, Pa.).
Don Clausen (R, Calif).
Martin McKneally (R, NY).
Michael Harrington (D, Mass).
G. Williams Whitehurst (R, Va).
Thomas Rees (D, Calif).
Harold Donohue (D, Mass).
Charles Teague (R, Calif).
J. William Stanton (R, Ohio).
Donald Fraser (D, Minn).
Edith Green (D, Ore).
John Buchanan (R, Ala).
Bert Podell (D, NY).
Jim Burke (D, Mass).
Arnold Olsen (D, Mont).
J. Herbert Burke (R, Fla).
Jim Fulton (R, Pa).
Brock Adams (D, Wash).
Dan Button (R, NY).
B. F. Sisk (D, Calif).
Thomas P. O'Neill (D, Mass).
Fernand St Germain (D, RI).

William Mailliard (R, Calif).
Frank Brasco (D, NY).
William Hathaway (D, Me).
Peter Kyros (D, Me).
John Moss (D, Calif).
Fred Rooney (D, Pa.).

**A MERITORIOUS PERFORMANCE
AWARD TO JACK COKER, MANA-
GER OF WACO, TEX., VETERANS'
ADMINISTRATION OFFICE**

(Mr. PATMAN asked and was given permission to extend his remarks at this point in the RECORD, and to include extraneous matter.)

Mr. PATMAN. Mr. Speaker, the regional office of the Veterans' Administration at Waco, Tex., has been honored every year since 1965 with the Meritorious Performance Award. To earn this award for exceptionally high quality of operation during this period was almost unbelievable, in view of the tremendous amount of work imposed on the Veterans' Administration by the thousands of new veterans discharged each month who are very properly taking advantage of the benefits provided by the Congress.

For that reason, it was truly wonderful when I received the news that Mr. Jack Coker, the manager of the Waco office, and his staff have even surpassed their former achievements—the Waco regional office is the first in history to attain the distinction of achieving the highest possible evaluation rating in all factors for every program that it administers. The chief benefits director of the VA, Mr. Olney B. Owen, recently advised all VA regional offices and centers of this achievement, stating:

You in the field can fully appreciate the magnitude of Waco's accomplishment. It is particularly significant in view of the continuing increase in workloads.

Mr. Speaker, as I have noted in this body before, those of us who are fortunate enough to do business with the Waco regional office have long known that its personnel are outstanding in every respect—they are not only highly efficient, but always courteous and sympathetic as well. I am delighted that these exceptional Federal employees have again received national recognition, and would like to extend my personal congratulations to Mr. Coker and his fine staff, with my deep appreciation for their wonderful work.

**BANKS AND REAL ESTATE TRUSTS:
NEW AND DANGEROUS EXTEN-
SION OF BANKING POWER**

(Mr. PATMAN asked and was given permission to extend his remarks at this point in the RECORD, and to include extraneous matter.)

Mr. PATMAN. Mr. Speaker, a recent development in the expanding economic power of banks, bank holding companies, and life insurance companies is the entrance of these huge financial institutions into the field of real estate investment trusts. This development presents shocking and unparalleled possibilities of conflicts of interest, involves a potential of billions of dollars, poses a real danger to the American economy, and,

in my opinion, appears to be in violation of existing law.

The real estate investment trust was first developed and marketed in 1961. It has been copied in 1970 by the banking industry. So far this year, trusts have been launched by the Chase Manhattan Bank, more than \$100,000,000; the Wachovia Bank, \$65,000,000; and America Fletcher National Bank, \$12,500,000. At least two more are about to be launched: One by Bank of America, \$135,000,000, and one by Wells Fargo, \$65,000,000. Thus, these five banks alone account for over one-third of a billion dollars—and the movement has just begun. Many others have filed, and more are in the process of filing prospectuses with the SEC. In short, a frightening new colossus has been spawned.

All of these ventures follow a similar pattern. The money secured from the public plus additional borrowed money is to be invested in real estate loans of various types and other real estate interests. A bank or an affiliate acts as manager in return for a management fee of 1 percent or more plus a contingent fee. Directors and officers of the bank serve as officers and trustees of the real estate investment trust.

INNUNERABLE CONFLICTS OF INTERESTS

The section "Possible Conflicts of Interest" occupies two pages of the Chase Manhattan prospectus, and other scattered and veiled references to conflicts are contained throughout the prospectus. The possibilities for self-dealing, both those disclosed and the undisclosed ones, are shocking.

The most basic and pervasive conflict is that investment opportunities which are available to the real estate trust are substantially identical with those available to the bank. Although the Chase's and other banks' prospectuses struggle mightily with this problem, the end result is that there are no guidelines or principles under which investment opportunities would be allocated to the bank or to the trust. Real estate investments are not like securities investments; 10,000 shares of United States Steel are exactly like 10,000 other shares of United States Steel, and if investment opportunities arise as to the particular stock or corporation, two affiliates can each participate by buying stock. This is not true as to real estate, where each project and each loan is different. It will be impossible for the stockholders of the bank—or the bank holding company—and the security holders of the trust to know which entity is being favored or prejudiced as to any particular real estate projects or on an overall basis.

Similar problems arise when the bank and the trust invest in the same project or in the same real estate. Each of the prospectuses studied makes it quite clear that this is contemplated, but who is to tell whether one is being favored over the other in any particular joint investment?

Even more shocking opportunities for self-dealing and conflict of interest arise in actual purchase, sale, and loan transactions between the trust and the bank. Of course, this type of self-dealing would be forbidden by ordinary trust law, but the deeds of trust creating these trusts

specifically permit this unconscionable conduct. The Chase prospectus naively states, on page 5:

Such transactions may not be considered to be arm's length.

A more direct violation of traditional fiduciary standards could hardly be imagined.

One of the considerations that led to the divorcement of the banking business from the securities business in the Banking Act of 1933 was that a bank could not give disinterested investment advice; large numbers of unsophisticated investors depend on banks for investment advice and the banks control huge amounts of money in their trust departments. There are absolutely no restrictions whatsoever on a bank recommending purchase of securities of its affiliated real estate trust to investors or purchasing such securities for trust accounts. In engaging in these activities, a bank could hardly be regarded as disinterested and objective. Certainly, in this instance the banks have found a way to get back into the securities business.

The lack of disinterest extends not only to the original issuance of shares of these real estate trusts in which the bank has a direct economic interest, but also to the continuing market price of the shares. The market price of any security is largely a function of supply and demand for that security, and banks are in a position directly to affect the demand side of the market. Thus, not only may there be lack of disinterested advice to investors and trust accounts, but there may even be market manipulation.

Another fertile area for self-dealing may arise when a shaky investment or loan made by a bank is shored up by further financing from the resources of the real estate trust. The reverse can, of course, also be true. In either case, analysis of the proposed additional financing is necessarily affected by the interest of the affiliate, and a rational, dispassionate judgment is difficult if not impossible.

Another familiar and reprehensible pattern of conduct is the use of the assets of the trust as a "bird dog" to generate bank business. Thus, real estate loans or investments may be made by a real estate trust only on condition that compensating balances are maintained in the bank, or that other profitable banking relationships are entered into as a condition of the loan or investment by the trust. The Chase prospectus blatantly indicates that the bank intends to take advantage of these possibilities and states, on page 14:

It is not contemplated that the Trust will benefit from any of such banking relationships or compensating balances.

In fact, the trust itself is expected to maintain compensating balances with the bank in connection with the loans made by the bank to the trust.

Another fertile field for bird-dogging operations arises out of the generous commissions generated by real estate operations. Banks have had a long history of conducting their security operations to benefit themselves by the brokerage. In 1963, former SEC Chairman Cary testified before Congress as follows:

We have learned that at present brokerage is often distributed by banks according to a formula which rewards those brokers who keep balances in the banks or have other business relations with the bank.

With this background, it is difficult to believe that banks will not take similar advantage of the even richer brokerage available in real estate transactions.

A further situation involving a conflict of interest between a bank and its affiliated real estate trust would arise in connection with a particular investment which goes sour and should be foreclosed; if both the bank and the trust have an investment in the property, it is quite likely that one loan will be senior to the other. Thus, a foreclosure which would be beneficial to the senior creditor might well be detrimental to the junior creditor, and thus, a foreclosure which should take place if the bank were speaking with one voice would not take place.

Two additional areas of conflict arise in connection with the cash position of the trust. It seems to be assumed in all of these prospectuses that the cash assets of the trust will be deposited with the affiliated bank. This "float" is, of course, highly remunerative to the bank and the bank is under a continuing temptation to keep the float higher than it should be in the interests of the security holders of the trust.

However, not only the amount but also the form of the cash deposit can be a source of conflict. Prudent investment management would have as little as possible of the assets of the trust invested in non-interest-bearing obligations. There is no reason why short-term Government securities cannot be used to draw interest on the portion of the assets of the trust which must be liquid. This does not seem to be the intention.

In cases where banks have recently been involved in securities operations, they have clearly shown themselves to be subject to the temptations posed by various conflicts of interest similar to those outlined above. For example, the SEC brought an injunction action against First National City Bank and others for operating an investment service without registration under the Securities Act of 1933 and the Investment Company Act of 1940. The SEC alleged that—

Approximately 47 percent of the assets held by . . . [the investment service] were invested in securities issued by companies affiliated or controlled by persons who are also directors of Citibank. (SEC Litigation Release No. 4534 (Feb. 6, 1970).)

ECONOMY AND HOUSING ENDANGERED

There are other conflicts of interest which involve not only the possibilities of self-dealing but direct dangers to the entire economy. Probably the most important of these involves the tremendous power of banks to affect the prime rate of interest which is so basic to our economy. Not only will advance knowledge of prime rate changes enable affiliates of a bank to engage in transactions in the securities of the trust at the expense of investors who do not know of these impending changes, but the judgment of the bank in fixing prime rate will necessarily be affected by the effect of any prime rate change on the market value of the

securities of the trust and on the costs of borrowing by the trust. It would seem clear that in such an important area to the entire economy, banks should not be permitted to serve two masters.

Another great danger to the economy arises out of the tremendous financing required by these trusts; a large part of these financings will be directly from the affiliated bank and from other banks. Necessarily, this will have a tremendous effect on the loans available to other creditworthy borrowers, including competing real estate trusts that are not affiliated with banks. By use of their tremendous economic power and prestige, banks have a new vehicle for exerting their power in an uncompetitive way in the money markets, to detriment of less powerful competitors. Very serious anti-trust questions are latent in this power structure.

Serious housing problems are also raised by this trend. The banks, which have demonstrated quite clearly their lack of interest in mortgage financing for housing, will be able through their real estate trusts to raise money in public markets for their traditional commercial real estate loans, to the detriment of nonbank real estate trusts, which have over the years demonstrated constant support of housing. This will have a most detrimental effect on the Nation's ability to meet desperate housing needs.

In another area, the banks are under a considerable temptation to maximize the amount of loans made to these trusts by themselves and others, since their management fee is 1 percent or more of total assets, including borrowed funds. Thus, for every dollar that a bank lends its affiliated trust, it makes a management fee of 1 percent or more per annum, in addition to earning interest. The power of major banks over other banks to influence them to make loans to their own real estate trusts necessarily causes a drying up not only of the available supply of money of the affiliated bank but of many other banks throughout the system.

Another danger to the economy is the fact that real estate investment trusts are necessarily somewhat risky operations. The caption "Risk Factors" in the Chase prospectus occupies almost five printed pages. There does exist the possibility that one or more of these trusts would go under; there would necessarily be a loss of confidence by depositors and others in the affiliated bank if any such catastrophic event should occur.

A further risk to the economy lies in the extension of the tremendous holdings which banks already have in equity securities. The percentage of the Nation's equity securities held or controlled by banks is already a matter of deep concern to interested observers. The dangers of investment by the bank's trust departments in the equity securities of affiliated trusts have already been discussed. Furthermore, there is the problem that additional equity securities are likely to come as a result of bank control under these affiliated real estate trusts. For example, the Chase prospectus, at page 12, states:

The Trust may acquire ownership of or participants in the ownership of equity interests in real property. These equity in-

terests may be in the form of direct ownership, with or without lease-back provisions, in existing real property or in real property to be developed. These interests may be in the form of stock, stock purchase warrants, or other interests in the entity owning or developing the real estate.

ILLEGALITY

The most disturbing aspect of these bank-sponsored real estate trusts is their very shaky legal foundation. The Banking Act of 1933 sought to establish a complete divorce between the banking business and the securities business. In particular, section 32 of that act provides in effect that no officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities can legally at the same time be an officer, director, or employee of any member bank of the Federal Reserve System. The Board of Governors of the Federal Reserve System has consistently held that an open-end investment company; that is, a mutual fund, is principally engaged in these activities through the regular sale of its own shares and that, therefore, no officer, director, or employee of a member bank may also be an officer, director, or employee of a mutual fund.

In 1961 the Governors of the Federal Reserve Board ruled on interlocks between member banks and real estate investment companies—12 C.F.R. section 213.104. Real estate investment trusts were not then common. The Board specifically noted the objection mentioned above about impairing of confidence, as follows:

Apart from the legal question, the Board noted that an arrangement of the kind proposed could involve some dangers to an affiliated bank because the relationship might tend to impair the independent judgment that should be exercised by a bank in appraising its credits and might cause the company to be so identified in the minds of the public with the bank that any financial reverses suffered by the company might affect the confidence of the public in the bank.

However, the Board ruled that—

On the basis of the facts stated, the Board concluded that the companies involved would not be subject to Sections 20 and 32 of the Banking Act of 1933, since they would not be principally or primarily engaged in the business of issuing or distributing securities but would only be issuing their own stock for a period ordinarily required for corporate organization. The Board stated, however, that if either of the companies should subsequently issue additional shares frequently and in substantial amounts relative to the size of the company's capital structure, it would be necessary for the Board to reconsider the matter. [Emphasis added.]

Even assuming that the Board is correct in this ruling, necessarily any bank-affiliated real estate investment trust must be constantly concerned, when considering the desirability of the issuance of additional equity securities, with whether or not such issuance would render the entire operation illegal under this ruling. It follows, then, that any bank-affiliated trust will be unable to engage in the amount or volume of

equity financing which might well be desirable from the point of view of the interests of the investors in the trust. This could lead to a debt-heavy financial structure of the trust, with consequent increase of risk to investors.

Even more dangerously, the 1961 ruling of the Board of Governors was made before real estate trusts were common, and without awareness of the fact that these trusts necessarily and continuously engage in the issuance of securities. The constant issuance of these securities is substantially identical with the constant issuance by mutual funds of their shares, and would seem to be covered equally by section 32 of the Banking Act of 1933. That provision, of course, covers not only stocks but also bonds and similar securities. The Chase prospectus, for example, states on page 16:

The Declaration of Trust authorizes the Trustees to borrow money and for this purpose to issue notes, debentures, bonds or other type of debt obligations including commercial paper.

The remainder of this section makes it quite plain that the trust intends to engage in this type of activity on a regular basis. The legal status of these trusts seems, therefore, to rest on very shaky foundations.

As the Supreme Court has stated in *Board of Governors v. Agnew*, 329 U.S. 441 (1946):

Section 32 is not concerned, of course, with any showing that the director in question has in fact been derelict in his duties or has in any way breached his fiduciary obligations to the bank. It is a preventive or prophylactic measure.

CONCLUSION

The numerous and substantial conflicts of interest involved in the establishment of bank-affiliated real estate trusts, and the dangers to the economy which they create, would seem to indicate that the "preventive or prophylactic" measures of section 32 should be applied and that the Justice Department should evaluate the antitrust dangers.

As indicated earlier, insurance companies are also forming real estate investment trusts. Connecticut General Life Insurance Co. has formed a \$125,000,000 trust and Mutual of New York a \$100,000,000 trust. Other life insurance company-sponsored trusts are being formed. Many similar conflict-of-interest, antitrust, and economic problems are raised.

There should be no question that the growing trend toward establishment of these trusts as affiliates of banks, bank holding companies, and insurance companies should be stopped immediately and divestiture should be required of those already established.

Mr. Speaker, as I have made clear, this relatively new development is laden with grave danger to the entire economy, including the banking community itself. It is further evidence of the predatory intent of a few large banks to control and dictate, by horrendous conflicts of interests, the Nation's economic forces—an intent that must be stopped if other businesses are to survive and prosper and if our economy is to be strong and competitive.

I am convinced that the national well-

being dictates that steps must be taken to sever existing ownership of real estate trusts by banks, bank holding companies, and life insurance companies, and to prevent their further encroachment into this field.

I shall call this serious matter to the attention of the Federal Reserve Board and the Anti-Trust Division of the Department of Justice, with the request that those agencies take appropriate action to halt and undo this dangerous development, and I urge all Members of Congress to in their own right take action to prevent this new and dangerous economic trend.

RED RIVER EMPLOYEES FEDERAL CREDIT UNION OF TEXARKANA, TEX., ROLLS BACK INTEREST RATES—INTEREST CHARGES REDUCED FROM AVERAGE OF 6½ PERCENT TO LESS THAN 5 PERCENT

(Mr. PATMAN asked and was given permission to extend his remarks at this point in the RECORD, and to include extraneous matter.)

Mr. PATMAN. Mr. Speaker, the Red River Employees Federal Credit Union, sponsored by the Red River Army Depot of Texarkana, Tex., has done something about interest rates.

At a time when banks across the country are raising interest rates and cutting off funds to many small borrowers, the Red River Employees Federal Credit Union has taken an opposite course. On July 1, the credit union reduced its interest rates on loans from 1 percent a month on the unpaid balance to three-fourths of 1 percent per month on the unpaid balance. Based on an annual percentage rate on a 12-month loan with one-twelfth being paid on the principal each month and the interest at 1 percent a month on the declining balance, the effective interest rate for the year is about 6½ percent on a three-fourths of 1 percent a month, the new rate is less than 5 percent per annum, the reduction was from 12 percent to 9 percent, or, quite simply, a 3-percent savings for credit union members. Not only has the credit union put the new lower rate into effect for all loans made after July 1, but also reduced the interest rate for those loans which were outstanding as of July 1.

It should be pointed out that the Red River Federal Employees Credit Union is not only giving an interest break to borrowers, but at the same time is paying a 6-percent interest rate to shareholders, the highest rate allowed under National Credit Union Administration regulations.

The actions of the Red River Employees Federal Credit Union are typical of the outstanding work being done by the nearly 24,000 credit unions in the country. As I have said on so many occasions, next to the church, credit unions do more good for people than any other institution. If the large banks of this country would follow the lead of the Red River Employees Federal Credit Union and reduce interest rates, this country would quickly recover from the brink of recession that it now faces.

The little people of this country are

doing their share in our economic struggle and it is up to the big boys to follow their lead.

THANKFUL TO BE AMERICANS

(Mr. RANDALL asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. RANDALL. Mr. Speaker, a short time ago I received a letter from a constituent who lives in my home city of Independence, Mo. Its contents so impressed me that I then concluded it should be shared with my colleagues and all of those who may read the CONGRESSIONAL RECORD. First, I had to write to receive consent of my correspondent in order to publish her letter. The answer was to the effect that I could tell everyone who cared to listen about her letter and in fact to tell the whole world, that they thank God every day, again and again, that they live in America.

Last fall, for some unexplained reason, our constituents decided it would be best to return to West Germany. Last October they sent three of their children who stayed with Mrs. Butts' parents and attended German schools. Early this spring the family decided to dispose of their home and convert it into cash and to proceed to make their home in Germany.

They left Kansas City on April 18. The events which thereafter transpired are well documented and beautifully described in their letter. In order to leave they had to convert into cash the equity in the home which was the result of 16 years of hard work and represented the entire savings of this family.

Along with my fellow Members of Congress I had always been led to believe that West Germany enjoyed one of the highest standards of living in the world. That may be true but after the receipt of this letter from my constituent I am convinced that life in America is far ahead of West Germany which is regarded by many as one of the most prosperous countries in the world.

As soon as the Butts family arrived in Germany they discovered their destination was suffering from the very worst kind of inflation. They learned there is little or nothing being done to control it. I am wondering what our people would think if they had to pay \$6 for a small jar of coffee which sells for 65 cents in the United States, or \$4.25 for a gallon of milk or \$2 for a loaf of bread? I am told these are actual prices when the deutsche marks are converted into dollars. What would our people do if they had to pay \$11 for 10 weiners which is over a dollar per weiner, or \$3 for a can of peas, \$5.50 a pound for chicken and \$2.85 for a can of green beans?

Well, our one-time constituents, now returned, found their former home in Germany was not as attractive as they had remembered it particularly in comparison with their home in America. For them 4 months were enough. One of the things which so impressed me about their letter was their description of the first time they saw an American flag flying in Germany. It was such a pretty sight it made them cry. Regardless of

what the bystanders thought or said the Butts family was proud to proclaim "up there flies my flag."

The John Butts family is now back home in Independence, Mo. They are starting anew. When they arrived in Germany they realized very quickly and all too well the good things they had left behind them in America. As their letter states they are glad to be back in complaining, but wonderful and glorious America.

I was impressed by the suggestion of Mr. Butts that our country should provide free plane trips abroad to our complaining youth. If we did this there would be no more riots on our campuses. Our youth would come back to this country humble and on their knees, thankful to be Americans. She is so very right when she said the mouths of our young people should be filled with praise for this country rather than full of complaints coupled with efforts to try to tear it down. For the Butts family a big disappointment was remedied in time. Four weeks in West Germany were not only enough but far too long. They are glad to come back and tell it like it is.

Mr. Speaker, I have never received a letter which is a better testimonial to what is right with America. The comments of Mrs. John Butts, Jr., who after several disappointing weeks is thankful that her family can once again return to the good life in America. Her thought provoking but beautifully descriptive letter follows:

INDEPENDENCE, MO., June 30, 1970.

DEAR Mr. RANDALL: For weeks I wondered if I should write to you or not. Well I have just called you at your office to talk to you and was told that you are in Washington, so here goes a letter.

I really don't know where to start or how to write for fear of wrong spellings but I will try my best.

Maybe you remember my letter to you last fall. I asked you about going to Germany and if our children could go to School for U.S. Dependents Overseas? Well to make it short our three oldest went to Germany last October. They stayed with my parents and went to German schools and they thought it was fun.

Well my husband practically gave our home away so we could sell it fast and get cash money. We sold everything we had and gave the rest away. We left Kansas City April 18, a beautiful sunny day, and arrived in Germany April 19, a dark and dreary Sunday. As we rode with a taxi through streets which should have been familiar and a joy for me to see, I experienced without a doubt the biggest disappointment of my life. It was like a kaleidoscope in my mind. The past 16 years went through my thoughts, the hard work my husband had to work, the saving we had to do, the hardships we had. You know raising 7 children is a joy but it can also be worrisome at times.

Well all those things flashed through my mind and still all those dark thoughts were pushed aside by remembering all the good things I left behind, like smiling people, gaily colored houses, wide streets, nice cars, and big stores. The streets over there seemed so dark and unfriendly, people dressed in dark colors, houses all looked alike, stucco that was once white and now everything was grey and dirty, dark and gloomy. By now you probably know that I was sorry right away, when we got there, for everything I left behind.

Of course it was nice seeing my parents

and three brothers again. My parents are considered fairly well off, but it still was a far cry from the way we four lived here. You could not afford this or that, this is only for special occasions and so on. My husband John and I went to the butcher-shop to get some meat. The lady gave us a discount everytime we came because she remembered us. It was well to get a roast and some soup bones for 40 DM with enough bologna for some sandwiches.

Now you might think 40 DM is only \$10.00 but you really cannot figure this way. You see my husband works for a non-union company and does not make as much as some people but it is steady every day work. Well he brings home \$140.00 per week without overtime. Now over there the average workman brings home from 150-200 DM for a week working Saturdays too. So you can almost say 1 DM over there is like a dollar over here in salary. A small jar of instant coffee (American brand name) that costs here at the most 65 cents is 5.85 DM. 1 liter milk cost 1 DM. 4.05 liter (one gallon) would cost about 4.25 DM. Milk to drink for a large family is out. 1 pack cigarettes (husband John smokes—2.00 DM. 1 loaf of hard bread—1.25 DM. I bought 20 lb. of potatoes.

The lady at the store thought she did not hear right. She sent the manager over to inform me that the store only has good potatoes and they are new ones too. Well I said yes I need 20 lb. because we were going to have a family get together. Manager and all started digging in the potato sack to pack 20 lb. Nothing comes ready packed. You carry everything home in little plastic bags or bring your own bag. Well none of the potatoes were more than 2½ inches round, about like a marble, that was 15 DM. 10 pair wieners with discount were 11.00 DM. We got 20 pairs and I could not eat a one. I thought of the many times we had hot dogs in the states and complained because that was all we could afford on certain days. And here my nephews and nieces thought it was the greatest treat.

I asked my brother if he would get me a can of tomatoes from the store (he was going anyway). He said they don't have anything like that. Well I went to the store with him and I found the tomatoes. No wonder he did not know that they had them. 2.85 DM a can. 2.85 DM a can green beans. 3.00 a can sweet peas. 5.50 DM per pound chicken. Everything and everyone is so petty.

My old home town has a cathedral with the highest tower of any church in the world. I used to be very proud of this. Now it makes me sick. I stood before this work of art. There is not one foot of stone without fancy stonework and figures. The figures' faces all look so mean and stern. To me they were a mirror of misery of the people who were forced to create and build this cathedral, and all at once I understood why I never found peace and calmness inside of me whenever I was inside the cathedral. Its walls are cold and foreboding. The angels inside looked bitter and grim like they would rather harm me than protect me. You see all the walls inside and out were lined with plaques dedicating this figure to this king and to this city father. The chapel was dedicated to a king that visited there. Nothing was built to the glory of God. You can not find comfort in there.

Mr. Brandt was here in the United States asking to keep U.S. boys in Germany. Yet I heard German people speak badly about Americans. Our children were overheard speaking English and they were called bad names. I never was called any bad ones here. People love American made stuff over there yet they are not big enough to say this to Americans. I was so proud to wear my little U.S. Flag on my coat. One day as we were in town we saw the American Flag fly among other flags. It was the prettiest sight my eyes have seen in a long time. I could not

help but cry. My husband who is no sissy had wet eyes. I didn't care that people stared. I was so happy to say, up there flies my flag. We had to wait for our money for our return tickets from the Chrisman Sawyer Bank or we would have been back in this great land, the U.S.A., sooner.

I wish I was a famous person and could talk to those kids in colleges. They are wasting precious time on the prettiest campuses in the world, tearing down the most perfect land in the world. Things can get quite a bit more worse as they say, yes I mean we can still go a long way in the wrong direction, and we still will be headed in a better direction than any other nation on earth. I wish you could make a suggestion to our President, Mr. Nixon. He should provide free plane transportation to all those kids who complain so much. They would come back humble and on their knees, thankful to be Americans. They would be better citizens for the rest of their lives. I doubt if they would let their children grow up to run down this land. What it would cost to fly those people out of the U.S.A. would probably be a very profitable business. It would fill their mouths with praise instead of complaints. I could just go on and on. We are starting anew. All the money is gone on plane tickets, but we are tickled pink to be back. We were gone four weeks. That was enough. You may have the means and power to tell people to stop and think what good things they have. I hope you can make out what I was trying to tell you. I really should go over this letter and correct mistakes but I won't because I might not send this letter at all if I do. So I will just go on and send this letter to you. Keep up the good work and we are all behind you.

A very grateful citizen of the United States of America.

Mrs. JOHN D. BUTTS, JR.

IMPORTS—THE DEEPENING CRISIS

(Mr. CLEVELAND asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. CLEVELAND. Mr. Speaker, during my 8 years as a Member of Congress, I have been deeply concerned by the troubles of our textile industry. I have seen the flood of imports coming into our country force the closing of important factories in my district in New Hampshire. At the same time advocates of so-called free trade have been calling for even fewer restrictions on imports. My urgings that we act to insure that free trade also be fair trade went unheeded by many though of course not by workers who saw their jobs disappear or employers who laid them off. The battle for relief of the hard-pressed textile mills has been a lonely one, with all too many people willing to stand by while factories closed.

In 1964 I made a major issue out of the imports coming into America which were threatening to destroy our textile industry. But at that time my warnings were scoffed at as "reactionary" or "groundless." Now times have changed and people are awakening to the problem. Regrettably, the hour is late for industry and too late for many factories and workers.

The House Ways and Means Committee is to be commended for acting on this major problem, and for holding exhaustive hearings to demonstrate to all the need for legislation. The Mills bill, of which I am a cosponsor, and which is the

principal bill being considered by the Ways and Means Committee, is one of the most heartening developments on this subject since I have been in Congress. I only regret that it comes so late, since many factories have already closed or will be forced to close before relief is obtained from any bill passed by Congress this session.

Mr. Speaker, the difficulties facing the textile industry were again brought sharply to my attention by a resolution passed at the July 6 meeting of the City Council of Franklin, N.H. The impact of the flood of imports on communities in my district was well expressed in this resolution by the mayor and Council of Franklin. It expresses a need felt by many Americans, and is a call for us in Congress to act on this problem. I urge the Ways and Means Committee, the House, the Senate, and the administration to heed this call.

The hour is late and the textile industry and workers, just as many others, need help.

The resolution and my response to it follow:

RESOLUTION No. 15 OF CITY OF FRANKLIN, N.H.

In the year of our Lord on thousand nine hundred and seventy.

A Resolution Pertaining To Protection of Textile Mills From Foreign Competition On Basis of Tariffs.

Resolved by the City Council of the City of Franklin as follows:

Whereas, the textile mills in Franklin and Tilton of J. P. Stevens & Co., Inc., represent the oldest industry and the largest employer of this area:

Whereas, over the years this industry has survived the handicaps of high transportation, fuel, and electric rates:

Whereas, recently, due to the additional burden of continuing inflation, this industry, both in New Hampshire and nationally, has been adversely affected:

Whereas, these conditions have given foreign textiles a tremendous and unfair advantage over domestic manufacturers and caused local markets to be flooded with cheap imports:

Whereas, many textile concerns, due to the above conditions, have been forced to liquidate and close their mills, while others, including J. P. Stevens & Co., Inc., have been compelling to greatly reduce their work force, jeopardizing the economic welfare of this community and its many citizens:

Be it therefore resolved that the Council and Mayor of the City of Franklin earnestly solicit the help of all its Washington Congressional delegation in providing adequate protection for American textile concerns.

Be it further resolved That the City Clerk send duly authenticated copies of this resolution to the President of the United States, Richard M. Nixon, the Governor of our State, Walter Peterson and the Members of our Congressional delegation Senator Norris Cotton and Thomas McIntyre and Congressmen Louis Wyman and James Cleveland.

JULY 15, 1970.

BARBARA S. LORDE,
City Clerk,
City of Franklin,
Franklin, N.H.:

Resolution No. 15 is acknowledged with thanks. Please advise the Mayor and the Councilmen that I deeply appreciate their interest in the important problems which pose a direct threat to the textile industry and have for a long time. During my years in Congress, I have repeatedly urged that

reasonable protection for industries particularly vulnerable to the flooding imports from countries where low wage scales and poor working conditions prevail. Our governmental policies for the past eight years have resulted in the exporting of jobs and the creation of unfair trade conditions with serious and unfair results for large segments of New Hampshire industry. This has been proved by the closing of industries in my district. Mounting concern has resulted in the Nixon administration partially supporting legislation to meet this problem. The Mills bill, of which I am a cosponsor and in behalf of which I testified at length before the Ways and Means Committee, is expected to be ready for House action in the near future. It is regrettable that this action by Congress has come at such a late date.

Thank you again for your resolution which I am placing in the CONGRESSIONAL RECORD together with my own remarks urging long overdue action by Congress in this critical area.

JAMES C. CLEVELAND,
Member of Congress.

PUBLIC LANDS, TIMBER RESOURCES AND HUMAN NEEDS

(Mrs. MAY asked and was given permission to extend her remarks at this point in the RECORD and to include extraneous matter.)

Mrs. MAY. Mr. Speaker, few domestic issues are as critical to both the short-term and long-term interests of the citizens of the United States as the proper management of national assets to meet public needs.

The necessity for sound national policy to insure that all our citizens derive maximum benefits from public resources has nowhere been more dramatically underscored than in the case of national commercial forest lands and their productivity so essential to the fulfillment of our national housing goals.

This is, of course, a matter of deep interest and concern to many of us in this country. Along with a number of my colleagues with whom I have the privilege of serving in this body and on the House Agriculture Committee, I have devoted a great deal of time and attention to the development of legislation to meet this national policy objective with regard to national forest lands. In view of recent events, I believe it is appropriate at this point in time to review this whole issue in an effort to bring these new developments into better focus and perspective.

THE LUMBER-PLYWOOD-HOUSING CRISIS

In late 1968 and early 1969, prices for softwood lumber and plywood, essentials for the construction of housing, rose sharply in a short span of time to unprecedented heights. Supplies of both were short of demand in the face of an anticipated rise in housing and other construction activity.

Both the Senate and the House of Representatives undertook investigative hearings to determine the causes of such sudden and sharp price rises for end products which had traditionally been plentiful and reasonably priced. Because of the significant impact supply-demand imbalance for softwood lumber and plywood had upon housing, these investigations were undertaken by the Housing Subcommittees of the Senate and House Banking and Currency Committees.

Each of these distinguished committees readily ascertained that the principal cause of supply shortages and high prices in the face of heavy demand was an inadequate availability of timber suitable for manufacture. They further established that more than half of the national softwood sawtimber inventory was federally owned, mostly in the national forests administered by the U.S. Department of Agriculture. It was clear that forestry and timber growing on our Federal lands was being neglected. Many millions of acres were and still are relatively nonproductive for lack of timber growing investment. Parenthetically, it was recently estimated that up to 15 billion board feet of timber is lost annually to overmaturity, insects, disease, and fire in the United States—more than enough for all housing currently being built. Two-thirds of this huge loss of usable wood occurs in the West and most of it on Federal forest lands.

The committees found that unless steps were taken, either legislatively or administratively, to increase the availability of timber from public commercial lands over the long term, lumber and plywood supplies would not be sufficient to meet the Nation's increasing housing needs.

Senate Document No. 91-27, "Effect of Lumber Prices and Shortages on the Nation's Housing Goals," dated June 16, 1969, in its foreword and in its conclusions and recommendations, clearly established the direct correlation between public timber and national housing needs. See appendix, item I.

President Nixon had acted promptly to effect corrections of the short term problem. Actions involving prompt increases in the allowable cut, restrictions on Federal purchase of lumber and plywood, and ICC measures to free boxcars for transportation of lumber and plywood had, in fact been taken, while the Senate investigative hearing was in progress.

Furthermore, the President had created a Cabinet level Task Force on Softwood Lumber and Plywood to explore solutions to the long term problems which were clearly ahead.

A FOUNDATION FOR LEGISLATION

While the congressional committees clearly discerned the need for immediate remedies related to housing, they also anticipated the means to overcome development of future wood product shortages. In previous months there had been a separate series of hearings and investigation by the Congress, and the Departments of State, Commerce, Treasury, and Agriculture, into the need to control log exports from Federal lands.

These studies, investigations, and the testimony of expert witnesses made it eminently clear that the primary and practical solution to wood shortages was to grow more trees. The committees recognized that timber, alone among major industrial raw materials, is a renewable resource and they wisely laid the groundwork for legislation to make it possible for the Federal Government to guarantee that its commercial timberlands in the national forests could provide an eternal source of timber.

Briefly, these studied judgments were the foundation of the National Forest

Timber Conservation and Management Act of 1969, originally introduced in the Senate and the House by leaders of both parties who were members of the Banking and Currency Committees, as well as by many others in both bodies who were members of the Agriculture Committees or who were familiar with timber as a resource and the critical housing needs of the Nation.

I was one of the sponsors of the measure on which the House and Senate Agriculture Committees conducted legislative hearings. Our House committee, with but one dissenting vote, recommended passage of a thoroughly revised bill—H.R. 12025—which took into account changes sought by the Forest Service as well as the anxieties expressed by those who felt—and I believe incorrectly—that the legislation would in some way prove detrimental to other national forest benefits and values such as recreation, fish and wildlife, watersheds and wilderness areas.

Our House Agriculture Committee report eloquently argued the case for adoption of H.R. 12025, and emphasized the safeguards against exploitation of the timber resource or its concomitant benefits. See appendix—item II.

H.R. 12025 AND THE CONGRESSIONAL CLIMATE

The National Forest Timber Conservation and Management Act, however, did not reach the floor of the House for debate. Although 158 Members voted to grant it a rule for House consideration on its merits, the opposition and confusion surrounding this resource management measure in the face of a rising environmental awareness sweeping the country and the Congress, cast a deep shadow over the possibility of fair and objective consideration. The basic problem, of course, was not with the legislation itself, which was both sound and responsible, but with the climate in which it was engulfed as it moved to the threshold of House debate—a climate of mistrust, misapprehension and misunderstanding.

Refusal of the House to debate H.R. 12025 was the result of many factors. At the time of this action, homebuilding was hit by rising interest rates and tight money, and lumber and plywood prices crashed to 20-year-low levels as demand evaporated.

Although the administration fully supported the bill, their position was the subject of some last minute confusion.

There were others who recognized the need for positive legislative support of improved forest management but who were concerned about the possibility of ecological damage, or reduction of support in other areas, such as recreation and protection of wildlife and wilderness areas. Still others had become confused or uncertain about the merits of the bill by some of the vociferous and emotional attacks which had been made upon it.

Of significant influence on the debate of the rule on February 26, 1970, was the upcoming report of the Public Land Law Review Commission—the result of nearly 5 years of study on Federal land and related matters. Two distinguished Members of the House, one the chairman and the other a member of the Commission,

spoke to the issue and urged delay. My colleague, the gentleman from Iowa, JOHN KYL, succinctly summarized his concern with H.R. 12025, and stated that Congress needed assurance "that the funds are expended for the best opportunities for growing timber."

The distinguished Chairman of the Commission, my colleague, the gentleman from Colorado, WAYNE ASPINALL, who also serves with distinction as Chairman of the Interior and Insular Affairs Committee of the House, urged legislative patience. He told the House that timber management on Federal lands was one of the studies undertaken by the Public Land Law Review Commission but that the report would not be completed until late in June. He further cautioned that should H.R. 12025 be defeated, "such action may make it a little more difficult for the recommendations of the Commission in this matter to be brought more successfully before the Congress."

He said that, in his opinion, the motives behind the introduction and furtherance of the proposed act "were correct".

Representative ASPINALL declared:

What we have at the present time is an unnecessary controversy between the so-called preservationists and those who believe in the wise use of our national resource values, including timber. . . . If this bill is not considered at this time, and it has to wait its turn for recommendation by the PLLRC, we will have a much better chance of reviewing this controversy, which is always a difficult one for the members of this House.

THE PLLRC REPORT DESERVES CAREFUL STUDY

Chairman ASPINALL's recommendation for caution was extended to other interested parties as well. In May 1970 at a meeting of the National Forest Products Association in Washington, while acknowledging that "we will need some measures that will produce a greater yield of timber", he urged the industry to study carefully the Commission's report when issued.

He emphasized that each of the 137 major recommendations would have to be discussed thoroughly—pro and con—between issuance of the report and the time of the next legislative session. He said:

Then at the start of the next Congress, let us be prepared to start the legislative process.

Careful study would be necessary, he said, because of the comprehensive nature of the report and the many overlapping considerations it embodied.

The report was presented to the President and the Congress on June 23, 1970. On the occasion of its release, Chairman ASPINALL again urged complete analysis by all interested parties, emphasizing that responsible evaluation can only come from consideration of each of the 137 major recommendations and some 250 subsidiary recommendations in relation to each other.

Sixteen of the 20 sections in the 342-page document deal with resources and recommended classification of public land and well as treating public land policy, the environment and planning for future public land use.

One section of the report is devoted to timber resources and makes clear that timber production could be increased in national forests while protecting both future growth and multiple use of commercial timber lands.

TIMBER AND HOUSING TIES REAFFIRMED

Prior to issuance of the Public Land Law Review Commission report in June, President Nixon fulfilled his statutory obligation to report to the Nation on national housing goals.

The President's second annual housing report to Congress of April 2, House Document No. 91-292, again affirmed the need to plan for increases in lumber and plywood production. He said:

Only through an accelerated management program in both public and private forests could there be any reasonable expectation of adequate supplies of such lumber over the decade to meet all the likely needs at reasonable prices.

The message held that sufficient softwood lumber and plywood should be forthcoming approximately at current price levels during fiscal 1970 and 1971. But, it added:

Beginning in 1972 supply probably will not keep up with likely demand at current prices. The estimated deficit rises from 1 billion to 8.5 billion board feet a year by 1976.

Getting to the crux of the problem, the President said:

To head off likely pressure on lumber prices, there is a need for a well-conceived program of accelerated forest management, which would permit an increase in the rate of growth of timber, while preserving the multiple use and sustained yield characteristics of the national forests. Steps along the lines proposed in the National Forest Timber Conservation and Management Act will help solve this potential lumber shortage while preserving the essential character of our forests.

The President then declared that:

There must be a comprehensive effort at timber planning and harvesting; reforestation, construction of additional access roads for increased lumber, recreation, park lands, and other uses, and resource protection from fire, pests and other improvements.

See appendix—item III.

The President's housing message clearly showed that his Cabinet officers and advisors with all the vast research facilities at their disposal, had come to the same conclusions as had all others seriously studying the timber supply and demand situation.

THE WHITE HOUSE TASK FORCE REPORTS

On June 18, 1970, the White House Task Force on Softwood Lumber and Plywood delivered its long awaited report. Its major thrust was that a substantial increase in the supply of softwood timber products will be needed to meet the Nation's growing requirements, especially in order to attain our goal of providing adequate housing for all our people by the end of this decade. The report stressed that while this increase in supply can be met, it must be achieved in a manner consistent with the preservation and enhancement of the quality of our environment.

The task force was appointed by the Cabinet Committee on Economic Policy in March of 1969 to look into the causes

of the rapid increases in prices and to find ways of increasing supplies of timber products.

The group promptly focused its attention on the short-range problems and recommended a series of steps to alleviate the immediate price pressures. The steps proposed included those to which I referred earlier: Action by the Interstate Commerce Commission to relieve the rail boxcar shortage; requests to the Congress for supplemental appropriations for fiscal year 1969 and fiscal year 1970 to increase the amounts of Federal timber sold without exceeding the allowable cut; action by the Department of Defense to reduce its procurement of softwood products; and an approach by the State Department to Japan seeking to curtail log exports from the United States.

These steps were approved by the White House in March of 1969.

The task force then turned its attention to the long-range situation with the objective of insuring that the supply of softwood timber and its products would not impose serious constraints on meeting the Nation's housing goals. The panel was also concerned with avoiding extreme price fluctuations in the lumber and plywood industry such as those of 1968 and 1969. Although lumber and plywood prices during the past year dropped sharply, the task force found that the long-range outlook indicates renewed pressure on timber supplies and prices as housing construction recovers.

As part of the work of the task force, the Forest Service submitted a report on August 1, 1969, entitled "Possibilities for Meeting Future Demands for Softwood Timber in the United States." Its purpose was to indicate actions on public and private lands that might be taken to alleviate the future long-range timber supply demand-price situation. The report considered the potential demands for softwood lumber and plywood products based on projections of growth in population; gross national product; disposable personal income and expenditures for construction; supplies that might be made available under different price levels and management inputs; and forestry program alternatives to provide increased supplies of softwood timber for housing and other purposes and to dampen prospective increases in timber prices.

The report's projections of softwood sawtimber supplies and demands indicated that if forest management were intensified only in line with recent trends, a balance between supplies and demands could be achieved only with substantial increases in prices. Up to 1980 supply and demand would be roughly in balance with the relatively high 1968 price levels, but beyond that year supplies would fall increasingly short of the projected demand.

With accelerated management on Federal, State, and private forest lands, as proposed by the Forest Service, projected demands could be met at prices about half way between those prevailing in the 1962-67 period and the late 1968 price level. Adoption of the accelerated management program outlined in the report would thus meet potential timber

demands over the next couple of decades without a sizable increase in prices of timber products.

When the Forest Service published Forest Resource Report No. 17, "Timber Trends in the United States" in 1965, it noted that to meet the Nation's expanding needs for timber and at the same time provide for adequate recreation and other uses of the forests, intensified forestry programs were needed. The Forest Service has long recognized that accelerated management could increase timber yield without sacrificing either the quality of the forest environment or other forest resources, and that total allowable cut could be increased gradually over time as necessary tree planting, thinning, road construction, improved forest protection, and suitable coordination with other national forest purposes is accomplished.

With this background, the June report of the Softwood Lumber and Plywood Task Force flatly stated that effective programs are necessary to expand timber availability, and that "of the sources of supply directly controllable by the Federal Government, the national forests offer the principal possibility for expansion. The national forest cut can be expanded through appropriate investment in more intensive management."

It added that an increase of 7 billion board feet in annual timber harvest can be attained by 1978 without impairing sustained yield and environmental objectives if properly planned and financed, and that increased output from non-Federal lands obviously must play a major part in matching supply to demand.

The report forecast that a rapid build-up in demand for softwood timber will occur after 1971, when housing construction is likely to expand significantly. This demand would be about 11 billion board feet higher by 1974 than it was in 1969. Domestic consumption of softwood lumber in 1969 was 33.773 billion board feet; plywood production that year totaled 14.5 billion square feet.

The report recommended:

That the Forest Service push ahead with development and implementation of programs to increase timber yields from national forests, with a goal of about 7 billion board feet annual increase by 1978.

That Federal agencies should create greater flexibility in adjusting timber sales to demand fluctuations, including increasing the amount of timber in the pipeline available for sale and cutting on areas with adequate roads.

That State and private forest lands—especially the latter—be looked to for steadily increasing supplies of lumber and plywood.

That larger net imports of lumber be obtained.

That a panel of outside experts be invited "to study these problems and their possible solutions objectively and carefully" and that the panel should submit an independent assessment of the probable consequential costs, and benefits of alternative solutions.

PRESIDENT NIXON ACTS ON THE REPORT

In releasing the task force report on June 19, President Nixon said he fully endorsed the findings of the group. With

regard to the Task Force proposals, he said:

While some of these recommendations require further intensive study and continuous reassessment in the light of changing conditions, I am directing that the following initial steps be taken promptly.

Among the steps he enumerated were: The Secretaries of Agriculture and Interior should formulate plans to improve the level and quality of management of forest lands under their jurisdiction in order to permit increased harvest of softwood timber consistent with sustained yield, environmental quality and multiple use of objectives, with any required additional funding to be reviewed by the Bureau of the Budget.

Reasonable flexibility in sales should be provided to take account of anticipated swings in demand.

The Secretary of Agriculture should press ahead with programs to increase production harvesting on State and private lands, consistent with maintaining environmental quality.

The Secretary of Housing and Urban Development, with the Secretaries of Agriculture and Commerce, should continue programs aimed at improved and more economical wood products utilization, including development and utilization of substitute materials.

Necessary steps should be taken for the appointment of the panel of experts recommended by the report. See appendix, item V.

While many of us hailed the President's action as a significant step toward maximizing public benefits from an important national resource, the Task Force report and the President's implementation of its recommendations have come under attack from other quarters as an attempt to do by administrative means what Congress had refused to do legislatively.

These charges, of course, are directly related to the earlier—and equally unfounded allegations—that the proposed National Forest Timber Conservation and Management Act would direct an increased timber cut from the national forests in disregard of the principles of multiple use and sustained yield.

It might be useful at this point to recall that Congress did not reject, but rather, deferred consideration of the timber bill. A technical point, perhaps, with which some might argue, but one which must be made, nevertheless. Many voted against the rule last February, it is true, because they opposed the bill. But many others voted nay for a number of other reasons: Because they feared premature defeat of good legislation; because they wanted to wait for the findings of further studies such as the task force report and the Public Land Law Review Commission report; because they felt the bill about to come before them could be improved to make it more acceptable to them or to others. Who can count the motives behind the votes? And who can say if the House would have approved or defeated the bill. There can be no doubt that Congress will, in the future, be asked to consider legislation with similar objectives.

In any case, it is clear that the report

of the task force and the President's actions did not constitute an attempt to legislate by administrative means. The President's directions were obviously well within the bounds of his constitutional authority and responsibility as Chief Executive—and if there are any serious questions as to whether or not this is the case, the Constitution also provides the mechanism to test those questions.

I believe it would be appropriate, also, in view of the criticisms which have been leveled, to emphasize again three especially important points about the task force report and the President's actions.

First. The recommendations of the task force and the directed action by the President made it clear that any increase in timber cut in the national forests would be done only under strict provisions to protect and enhance the environment. The President also directed that plans to increase the timber cut should be developed in consultation with the Council on Environmental Quality.

Second. The task force recommended steps to increase timber supplies from State and private lands—especially the latter. The President directed the Secretary of Agriculture to press ahead with the development of programs designed to increase the production and harvesting of timber in State and private lands, consistent with maintaining environmental quality.

Third. The President directed that a panel of outstanding citizens be invited to study the entire range of problems involved in insuring that the achievement of our housing goals is not constrained by an inadequate supply of softwood lumber and plywood, while fully protecting and enhancing the quality of our environment. Such a panel would be composed of persons of outstanding ability and broad experience, with no ties or commitments that might prejudice objective judgment.

THE PUBLIC LAND LAW REVIEW COMMISSION REPORT AND TIMBER

Chronologically, the Public Land Law Review Commission report became public 4 days after the President's statement regarding the task force report. The scope of the Commission report was much broader than that of the task force report but both studies reflected data and trends which had been clearly established by a whole host of independent investigations spanning several years.

The 5-year, \$7 million study of the PLLRC is one of the most significant ever to be issued by a public body. A basic principle set forth by the Commission is that all public lands should be used in ways that will result in "maximum public benefit," and that a designation of "dominant use" should apply to all public land classifications, such as recreation, watershed, wildlife, fish, wilderness, mining, and timber production.

Chairman ASPINALL defined "dominant use" as "where one use within a limited area takes precedence over every other one. And in that use, we then would say in regard to timbering, that harvesting would be permitted. That does not mean that there will not be any recreation. That means that, perhaps for a short time, recreation will be limited because

you cannot harvest and have recreationists in the area while you're harvesting."

Representative ASPINALL noted that values in the timber areas of Federal lands "must be considered as a great natural resource potential for the use of the United States."

One of the more sweeping recommendations in the report was that the Forest Service be merged with the Department of the Interior into a new Department of National Resources. It also called for congressional jurisdiction over public land programs to be consolidated into a single committee in each House of Congress, the provision for statutory authority for public land citizen advisory boards, and the setting of guidelines by statute for their operations.

Other recommendations concerning timber resources included:

Passage of legislation to provide that public lands highly productive for timber could be classified for commercial timber production as the dominant use.

Federal programs on timber production units be financed by appropriations from a revolving fund made up from receipts from timber sales on these units. This was, of course, the purpose behind the Timber Supply Act. Forestry on Federal lands will always be neglected unless timber sale receipts are required to be used first to regain the trees that are harvested. Nothing is more basic to conservation.

The PLLRC also recommended that dominant timber production units should be managed primarily on the basis of economic factors to maximize net returns to the Federal Treasury.

Major timber management decisions, including allowable cut determinations, should include specific consideration of economic factors, such as fluctuations in demand for timber.

Communities and firms dependent on public land timber should be given consideration in management and disposal of public land timber.

Controls should be imposed to assure that timber harvesting minimizes adverse impacts on environment on and off public lands.

The PLLRC's recommendations on timber production as a "dominant use" have been the target of some severe criticism since the report was released, and, without passing judgment one way or the other on the PLLRC proposals I think it might help to bring things into a little clearer focus by quoting some excerpts from the report itself in explanation of PLLRC's "Recommendation 28," that "there should be a statutory requirement that those public lands that are highly productive for timber be classified for commercial timber production as the dominant use, consistent with the Commission's concept of how multiple use should be applied in practice."

Page 93—"One Third of the Nation's Land"

In harmony with our belief that effective multiple use planning can be accomplished only by classifying lands for their highest and best uses, lands classified for inclusion in this system would be those that are capable of efficient, high quality timber production, and are not uniquely valuable for other uses. By no means would all of the public lands

currently defined by the Forest Service as "commercial forest lands" be included in the system. The Forest Service definition, for example, requires, among other things, that such lands be capable of producing at least 25 cubic feet of timber per acre per year. This standard excludes only those forest lands of the very poorest quality. Much of the land defined as commercial is at higher elevations in the West or on ridges or swamps of low productivity in the East. The Commission does not intend that these lower quality timberlands be included in timber production units.

Criteria for establishing timber production as a dominant use on public forest lands must involve consideration of other existing or potential uses. Those lands having a unique potential for other uses should not be included in timber production units.

Timber production should be the dominant use, but secondary uses should be permitted wherever they are compatible with the dominant use.

The actual limitations placed on other uses would not be as severe as they might appear at first glance. The best sites for timber growing are mostly at lower or middle elevations in the West and in the southern states. In the West, outdoor recreation use tends to occur at the higher elevations where the scenery is more spectacular, where there is snow for winter sports, and where the ground cover is more open and suitable for hiking and other summer sports. The conflicts resulting from outdoor recreation on the better national forest timber production areas in the South occur less frequently than in other regions.

The total area that would be included in timber production units would probably be less than one-half of the total forest land now in Federal ownership, and less than one-fourth of the total area of the national forests.

The significance of PLLRC's carefully developed recommendations has a direct bearing on congressional attitudes towards timber growing and towards the recommendations of the PLLRC contained in chapter V, "Timber Resources."

It is not possible, as Chairman ASPINALL has made eminently clear, to evaluate these recommendations without reference to all of the others. However, the rationale for their recommendation is pertinent to an understanding not only of the purposes being sought by the Commission but in the context of the fulfillment of America's increasing need for additional timber products.

Without prejudging the recommendations of the Public Land Law Review Commission report, it appears obvious that its findings closely parallel the findings of the other responsible bodies in American public life with respect to the role of the national forests in meeting the Nation's timber needs for the future. See appendix, item IV.

MEETING THE NEED FOR HOUSING

The Congress has taken actions which are wholly pertinent to the subject of present and future timber supply.

In recent weeks both the Senate and the House have approved the emergency credit bill to increase the availability of mortgage credit for home building. The measures are now in conference.

Provisions call for:

A \$250 million authorization to subsidize the interest rate on Federal Home Loan Bank Board advances to member savings and loan institutions, which is expected to generate lending for 240,000 homes.

Establishment of a secondary market for conventional mortgages in the Federal National Mortgage Association and in a new Federal Home Mortgage Corporation to be operated by the FHLBB.

Provision of \$1.5 billion in special assistance funds for the Government National Mortgage Association to increase its purchases of mortgages underwritten by the Government.

The measure is expected to unlock the tight mortgage money market and provide a shot-in-the-arm for lagging homebuilding. Any such stimulation of homebuilding will certainly stimulate a rising demand for lumber and plywood as anticipated in both the PLLRC report and the report of the Task Force on Softwood Lumber and Plywood.

The Congress must be prepared to respond to that public need by enabling the production of more timber.

BALANCING HUMAN NEEDS

The National Forest Timber Conservation and Management Act, the Task Force Report on Softwood Lumber and Plywood, the President's endorsement of its findings and his implementation of its recommendations, and the comprehensive report of the Public Land Law Review Commission all have at least two basic things in common.

First, they were all initiated in response to very real and pressing public needs, and they are all founded on exhaustive and extensive analysis of those needs and the resources available to meet them, as I believe has been amply shown in my statement today. Their findings as to our national timber needs, and our resources available to meet those needs are similar.

Second, they have all met with varying degrees of criticism from groups and individuals who seem to be concerned primarily over the possibility that environmental, ecological and conservation values may somehow be damaged or discarded as a result of these proposals, recommendations and actions.

I, too, am very keenly aware of the critical importance of these values, and the need to protect, conserve and enhance our environment. So is our President, and so are those who served on the Public Land Law Review Commission, as well as those Members of Congress who supported the timber management legislation.

These values have been recognized and planned for in every study, every finding, every recommendation, and every action I have cited here today.

Now, I am not saying, and I do not think anyone else is, either—that this recognition and planning has been perfect. I know of no instance in the development of public policy where perfection has been attained. The point is though that the effort has been and is being made, by responsible and reasonable people.

In implementing proposals of the Task

Force on Softwood Lumber and Plywood, President Nixon pointed out that:

Some of these recommendations require further intensive study and continuous re-assessment in the light of changing conditions.

Chairman ASPINALL and members of the Public Land Law Review Commission have recognized that the Commission's nearly 400 recommendations will require complete analysis and responsible evaluation by all interested parties.

In developing the timber conservation and management legislation in Congress we attempted in every way possible to provide protection for all the national forest values so important to us all.

What we must come to understand here is that we are really seeking a balance among human needs—something with which all of us, as individuals, are quite familiar, because we are faced on our own personal level with the necessity of seeking this kind of balance for ourselves a hundred times a day.

And this balance of human needs can be achieved on a national level as well, if we approach our problems with reason and understanding. But when objectivity and reason fail, we are left only with misunderstanding and bitterness—and with nothing accomplished.

Our pressing environmental and ecological needs must be met—and so must our housing needs. It is not a question of which is most important, but rather, how each can be met in balance, without damaging the other. I believe this can be done.

And the fact is that trees can be harvested, replanted, cultivated, grown to maturity in cycle on Federal, State, and private lands without damage to any other important values, and in a way that will preserve, protect, and enhance our environment.

This has been the judgment of the House and Senate committees which conducted thorough investigations and heard all sides; this has been the judgment of a special White House Task Force with access to the most expert of opinion and limitless scientific, economic, and social data; this has been the judgment of private citizens highly qualified in forestry, manufacturing, ecology, homebuilding; this has been the judgment of industrial forest land managers around the world who do it routinely every day; it is a proven concept in the management of the vast forests owned by my own State of Washington.

What we are searching for here is sound national policy to insure that all our citizens derive the maximum benefits from our public resources. We are still far from achieving that objective, but we must continue the search—and continue it together.

APPENDIX—ITEM I

EFFECT OF LUMBER PRICES AND SHORTAGES ON THE NATION'S HOUSING GOALS

FOREWORD

In the early months of this year, skyrocketing prices and critical shortages of softwood lumber and plywood reached such serious proportions as to threaten our basic housing program and our effort to meet the national housing goals established by the

Housing and Urban Development Act of 1968.

On March 19, 20, and 21, 1969, the Subcommittee on Housing and Urban Affairs held hearings to determine the causes of the crisis and what could be done about it. It is the purpose of this report to summarize the testimony of the hearings and to give the subcommittee's conclusions and recommendations on the action needed to remedy this serious problem.

Representatives from Government and private groups involved in producing and distributing lumber, as well as homebuilders, contractors, conservationists, and consumers testified before the subcommittee.

The testimony covered every phase of timber growth and the distribution of timber throughout the economy, both domestically and abroad. From the point of view of the subcommittee, the most important testimony involved the relationship between the supply of lumber and the volume needed to meet homebuilding requirements now and in the future. Other important issues involved the pricing and marketing of timber, the export and import of logs and lumber, and the necessity of managing our Federal forests to create a proper balance between the Nation's recreational and conservation needs, on the one hand, and homebuilding and economic needs, on the other.

Basic to the hearings were data which gave the subcommittee some dimensions of the problem before it. On the demand side, the subcommittee was inclined to agree with HUD Secretary Romney's estimate that softwood lumber and plywood needs for housing would double by 1978, and that the total consumption would be 50 percent higher over last year's consumption of 35 billion board feet. On the supply side, it was made clear that there was no shortage of hardwood lumber and that the shortage of softwood lumber was somewhat artificial in view of the vast forest areas which covered about one-third of the land area of the United States; that although one-third of these forest lands was unproductive or reserved for recreational or conservation uses, two-thirds of the forest lands were commercial and thus available for selective timber cutting. Furthermore, over one-half of the inventory of softwood sawtimber was in the national Forest Department of Agriculture. Of this inventory, 60 percent is under the administration of the U.S. which is estimated at over 1 trillion board feet, the Department currently has an allowable cut limit of about 11 billion board feet per year. The remainder of the 30 billion board feet produced domestically last year came out of the other 1 trillion board feet of sawtimber in forests under other public ownerships, industry owners, farmers, and other private owners. With such a tremendous source of timber, and with every indication that improved techniques in forest management could sharply increase the yield, the subcommittee saw no excuse for our Nation failing to provide the lumber and plywood needed to meet our housing needs indefinitely.

The testimony revealed that the lumber crisis had two dimensions—a temporary one and a long-range one. The temporary crisis was the result of a number of factors which occurred all about the same time—rising exports to Japan, a boxcar shortage, a waterfront strike, bad weather conditions, an increase in construction starts, and wide publicity from the 1968 Housing Act calling for a 60-percent average increase in housing units in the next 10 years. However, more serious than the temporary crisis was the long-term projection raising grave concern about the ability of the U.S. forests to provide adequate timber to meet the future lumber needs of our Nation.

At the conclusion of the hearings, the subcommittee recognized the need for action on a number of fronts to remedy both the

temporary problem and the long-run problem. These include reconsideration of export and import controls, improved transportation facilities, both by freight and by water, an analysis and correction, if possible, of pricing practices which lead to highly fluctuating timber and lumber practices, and additional research to develop lumber substitutes and final approval of new lumber standards. Most important of all, was the general agreement that there must be a prompt and significant increase in softwood timber output. Some of this increase could come from better management of private nonindustry timber holdings. But, in view of the preponderant ownership (60 percent) of softwood sawtimber by the U.S. Government, the subcommittee concluded that the only sure way of increasing the timber output would be by financing improved management techniques on a sustaining basis in the National Forests.

Furthermore, in recognition of the great potential income that could be derived from the sale of timber, it appeared obvious to the subcommittee that any funds spent for improved management would represent an excellent investment for the Federal Government. The U.S. Forest Service reported that \$1 million invested in intensive forest management would add additional timber cuttings worth \$215,000 annually. In addition to making money for the U.S. Treasury the subcommittee was convinced that a program of intensive management of the Federal forests could be undertaken without diminishing the use of the forests for recreational and conservation purposes.

The subcommittee concluded that the Federal forests are one of America's great resources which belong to all of our people. A more intensive management of these resources will benefit the people, not only for greater recreational and conservation opportunities, but by supplying the timber needed to build our homes and to meet the needs of an ever-growing economy.

CONCLUSIONS

A combination of events—increased exports to Japan, shortages of water and freight car transportation facilities, a waterfront strike, bad weather, and a sharp rise in consumer needs aggravated by overestimating and some questionable pricing practices—were the visible causes of the recent crisis in the price of lumber and plywood. However, the underlying cause, which has both temporary and long-term significance, is an artificial shortage of available timber from our Nation's forests. The early-year crisis appears to be a temporary one and, in fact, seems already to be partially solved largely as a result of a number of Government emergency measures and partially by a reduction in demand because of mortgage credit shortages.

The long-range problem is by far the most serious one because, unless softwood timber production is sharply increased, our Nation will find itself critically short of lumber and plywood in the years ahead.

To reach the Nation's housing goal of 26 million units in the next 10 years, lumber availability would have to be increased by 60 percent. The subcommittee was convinced that this increase is well within our resources provided the necessary investment is made in intensive forest management on a continuing basis. About one-half of the Nation's inventory of mature softwood timber, estimated at 2 trillion board feet, is under Government ownership in the National Forests, administered by the Department of Agriculture.

Considering that the National Forests are contributing only 11 billion board feet annually out of this huge inventory, the problem can be seen to be one of management and adequate funding to build roads, to plant trees, to thin, to prune, to fertilize, and to apply the latest technological de-

velopment to the forests. Obviously, this can be done, but whether or not it will be done, depends upon the approval by the Congress of a dependable continuous adequate financing device. The subcommittee concluded that the best sources of such funds are the forests themselves and the receipts from the sale of timber produced by these forests.

The subcommittee was convinced that, with the necessary financial input, the solution to our long-range problem could be resolved without impairing the use of the forest to meet the conservation and recreation needs of the American people.

The subcommittee also concluded that the export and import factors involved in the current crisis would be resolved on a supply and demand basis once the Nation's forests were operating more productively. However, the subcommittee saw a continuing difficulty with freight car and water transportation problems under existing conditions. The subcommittee also recognized serious dilemmas in pricing and distribution of lumber, starting at the auction process conducted by the Forest Service. Finally, the subcommittee concluded that lumber would continue to be the single most important material in homebuilding but saw increasing opportunities for use of other materials as we move into the mass-production stage of homebuilding in the years ahead.

RECOMMENDATIONS

The subcommittee's recommendations are directed both at the temporary problem and the long-range problem. We are calling the current situation temporary because, for the most part, as a result of congressional hearings and action already taken by the administration, the crisis which threatened to bring homebuilding to a halt early this year has been resolved.

THE TEMPORARY PROBLEM

The President and the Federal agencies are urged to:

- (1) Offer for sale the full allowable timber cut on Federal lands.
- (2) Loosen the personnel restriction on timber-management agencies.
- (3) Negotiate with Japan to release part of its unshipped timber for domestic purposes and postpone its purchases for the first half of 1969.
- (4) Hold back Federal purchase of lumber.
- (5) Issue the appropriate regulations to free boxcars for lumber shipments.

THE LONG-RANGE PROBLEM

The President and the Federal agencies are urged to:

- (1) Develop closer regulations of boxcars to meet the shipment needs for lumber.
- (2) Arrange with Japan an automatic reduction in lumber shipments when domestic shortages reach an intolerable level.
- (3) Free lumber and plywood shipments from "Jones Act" limitations.
- (4) Speed up processing of revisions in U.S. lumber standards.
- (5) Cooperate with the Forest Service on the following:
 - (a) Offer for sale all accessible salvageable dead and damaged timber.
 - (b) Concentrate road building where it will generate the maximum timber.
 - (c) Offer for sale the full allowable cut on national forests.
 - (d) Implement the Morse amendment to prevent substitution of public timber for exported non-Federal timber.
 - (e) Aggressively pursue intensive forest management practices to increase timber yield, including the salvaging of dead and decaying timber.
 - (f) Reexamine present methods of selling and pricing Federal timber to prevent instability and upward pressure on lumber prices resulting from Federal dominance of the market.

The Congress is urged to:

(a) Approve legislation providing for the application of high-yield forestry techniques to Federal commercial timberlands similar to the bill now before the Committee on Agriculture and Forestry.

(b) Approve legislation now pending before the Agriculture Committee to fund such a program with income from the sale of timber it produces.

(c) Review the timber-selling practices of Federal agencies.

(d) Approve emergency funds and personnel for National Forest management—legislation is now pending before the Committee on Appropriations.

(e) Consider amending the Jones Act to exempt lumber and plywood from its coverage under certain circumstances.

APPENDIX—ITEM II

NATIONAL FOREST TIMBER CONSERVATION AND MANAGEMENT ACT OF 1969

[Report together with dissenting views]

The Committee on Agriculture, to whom was referred the bill (H.R. 12025) to provide for the more efficient development and improved management of national forest commercial forest land, to establish a high timber yield fund, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike out all after the enacting clause and insert the following:

That this Act may be cited as the "National Forest Timber Conservation and Management Act of 1969."

STATEMENT OF FINDINGS

SEC. 2. The Congress hereby finds that in order to meet increasing national demands for lumber and other wood products, including that needed for home construction, it is necessary to increase substantially the timber yield from the commercial forest land of the Nation including that in the national forests; that, through intensified development and management, such land is capable of producing a substantially increased yield; that the national forests are the source of a substantial part of the present and future supply of timber within the policy of the Congress stated in the Multiple Use-Sustained Yield Act approved June 12, 1960 (74 Stat. 215, 16 U.S.C. 528-531); that increased annual harvests from national forest commercial forest land may be permitted under sound conservation principles on the basis of short-range accomplishments so long as long-range goals are assured; and that to accomplish increased annual harvest it is necessary to provide a reliable and adequate source of funds.

DEFINITION

SEC. 3. As used in this Act the term "commercial forest land" means forest land which is producing or is capable of producing crops of industrial wood and not withdrawn from timber utilization by statute or administrative regulation.

HIGH TIMBER YIELD FUND

SEC. 4. There is hereby established in the Treasury of the United States a high timber yield fund, hereinafter referred to as the "fund". Except as hereinafter provided, beginning July 1, 1969, there shall be credited to the fund all receipts from the sale of timber and other forest products from the national forests: *Provided, however,* That the foregoing shall not modify or repeal any provision of law that authorizes or directs that deposits in connection with or receipts from the sale of timber and other forest products from national forests be used for a specific

purpose, and such deposits and receipts shall continue to be utilized for the purposes so specified by law and shall not be deposited into the high timber yield fund.

APPROPRIATIONS

SEC. 5. Moneys credited to the fund shall be available for expenditure for the purposes of this Act only when appropriated therefor. Such moneys as may be appropriated shall be available until expended. Any money credited to the fund and not subsequently authorized for expenditure by the Congress within two fiscal years following the fiscal year in which such money was credited to the fund shall be transferred to miscellaneous receipts of the Treasury.

DEVELOPMENT AND MANAGEMENT OF NATIONAL FOREST COMMERCIAL FOREST LAND

SEC. 6. Moneys appropriated from the fund shall be allocated in each fiscal year for expenditure as determined by the Secretary of Agriculture or the appropriation Acts making them available. Money allocated to any national forest under this section shall be used in conformity with the provisions of the Act of June 12, 1960 (74 Stat. 215, 16 U.S.C. 528-531) only for increasing timber yield in such national forest by—

- (1) obtaining regeneration at the earliest practical date after harvesting, or after deforestation by fire or other catastrophe of better site lands, and for reforesting unsatisfactorily stocked better site lands;
- (2) precommercial thinning to control spacing or stand composition;
- (3) semicommercial thinning both to control spacing or stand composition and to produce material with commercial value in excess of the additional costs required for its harvesting;
- (4) pruning, if justified by a subsequent reduction in age at which the trees become marketable;
- (5) planning, preparation, including marking and execution of thinning, salvage, and understory and overstory removal and harvest sales;
- (6) fertilization;
- (7) development, production, and procurement of seed or stock with superior growth capabilities or characteristics; and
- (8) such other timber production improvement practices as the Secretary of Agriculture deems appropriate.

IMPLEMENTATION

SEC. 7. The Secretary of Agriculture, subject to the provisions of the Act of June 12, 1960 (74 Stat. 215, 16 U.S.C. 528-531) shall immediately establish programs to carry out the policy and purposes of this Act and shall specifically—

- (1) develop into optimum timber productivity as soon as possible the national forest commercial timberlands;
- (2) revise the allowable annual harvesting rates in national forests to take into account (A) rotation ages estimated to be appropriate for markets and technology at the expected time of harvest, (B) the need for and benefits from use of high level current harvest rate options available within sustained yield limitations, and (C) increased timber yields which will result from application of the measures authorized by section 6 of this Act, as rapidly as possible after such measures have been undertaken: *Provided,* That appropriate reduction in allowable harvesting rates will be made if planned measures are not satisfactorily accomplished;
- (3) submit to the Congress within one year from date of enactment (A) a program for the development and management of all national forest resources and (B) a program for the development of all the Nation's commercial forest lands for high sustained timber yield including reference to farm and other small woodlands;

(4) report annually to the Committee on Agriculture and Forestry of the Senate and the Committee on Agriculture of the House of Representatives on the operation and effectiveness of this Act; and

(5) establish policies governing the sale of timber from each national forest that will, to the extent possible, assure that small business concerns collectively obtain a fair proportion of the total timber sold in each year from each national forest. As used in this subsection (5): (1) the term "small business concerns" is hereby defined as any concern that (1) is primarily engaged in the logging or forest products industry; (2) is independently owned and operated; (3) is not dominant in its field of operation; (4) together with its affiliates employ a number of employees as proscribed by the Small Business Administration. Business concerns are "affiliates" when, either directly or indirectly, (1) one concern controls or has the power to control the other or (2) a third party has the power to control both, (1) the term "fair proportion" is hereby defined as an amount not less than the average of the percentages of the total timber sold from each national forest which small business concerns collectively obtained from such forest during the preceding three calendar years.

GENERAL STATEMENT

For more than three decades it has been declared Federal policy that programs should go forward to encourage the building of adequate and livable housing for the people of this Nation. Yet, in these past 30 years none of the goals established have been met or even approached. Indeed, the goal established only recently of 2.6 million units annually—set in the Housing and Urban Development Act of 1968—will not be met and cannot be achieved unless the materials needed to construct these dwellings are provided. And this at a time when the United States is experiencing its first problems of lumber shortages. There is not a shortage of sawtimber that cannot be met on a short-term basis, but there will be a continuing shortage of timber for our construction needs in the years ahead unless the Congress acts promptly to establish and promote the intensified forest management needed to increase the harvest and sustain an augmented yield of timber on the commercial forest lands. Therefore, the first place for the Government to start is on the commercial forest lands in our national forests—and this is an objective of H.R. 12025.

If we are to rebuild America along lines that will permit each citizen to obtain a decent domicile, these materials must be provided. The Kerner Commission report—and other reports on unrest and violence in our cities—indicates that overcrowded and substandard housing is one of the primary causes of disorders in our inner cities. Slums in these urban communities are areas of concentration of people who reside in decaying and neglected units far below modern standards of habitability. In addition, too large a percentage of our rural housing is substandard and lacking in the most essential of sanitary conveniences.

These conditions are a disgrace to this Nation, degrading to our citizens, costly to our economy, and extremely dangerous to the health of the country. They cannot be permitted to continue to exist. To solve the situation the materials for construction must be provided over a period of years which requires a long-range program. This is an intent of H.R. 12025.

In addition, many rural communities depend on national forest timber harvests as a significant source of income for carrying out their municipal responsibilities. The ex-

pansion of modern technology and management in the national forests in order to benefit these communities and to create new job opportunities is also a goal of this legislation.

PURPOSE

The basic purpose of this bill is to help meet increasing national demands for lumber and other wood products, including that needed for home construction, by substantially increasing the timber yield from the commercial forest land of the national forests. Intensified development and management of national forest commercial timberlands will enable these lands to produce a substantially increased yield and thus provide an important share of the Nation's supply of timber within the policy of the Congress stated in the Multiple Use-Sustained Yield Act approved June 12, 1960 (74 Stat. 215, 16 U.S.C. 528-531). The bill is intended to provide a reliable and adequate source of funds to accomplish increased annual harvest from the national forests under sound conservation principles in such a way that short-range accomplishments will assure that long-range goals are realized. Fortunately, the Forest Service has highly qualified, dedicated professionals to plan and manage all aspects of the enlightened forestry programs envisioned by this legislation.

NEED FOR THE LEGISLATION

The United States has long been faced with the problem of whether its timber resources would be adequate to meet its future needs for wood and other forest products. In testimony before the Forests Subcommittee as well as before the House and Senate Banking and Currency Committees on the Nation's

timber situation, the Forest Services has pointed out that since 1950, domestic consumption of industrial roundwood, that is, all products except fuelwood, has risen from 10 billion cubic feet to 12.3 billion cubic feet in 1968—an increase of 23 percent. Major increases in the future as a result of population and economic growth, even after allowances for possible use of substitutes, are indicated.

The Forest Service also estimates that projected timber supplies, assuming a continuation of recent trends in management intensification and increased imports, will continue to rise over the next couple of decades. They suggest, however, that these supplies are not large enough to meet demands for very long. Projected softwood sawtimber supplies, for example, fall below projected demands in the early 1970's.

The prospective shortfall in timber supplies points to rising prices for lumber, plywood, and other forest products and increased costs of housing, furniture, and other similar products. The economic impact of a shortfall in timber supplies was highlighted in 1968 and early in 1969 when softwood plywood prices rose 115 percent and softwood lumber prices 50 percent.

The construction industry, as a principal consumer of softwood lumber and plywood, sought relief from these unprecedented price rises and urged corrective congressional action.

The Housing Subcommittee of the Senate and the House Banking and Currency Committee conducted extensive hearings earlier this year to determine the cause of these sharp softwood lumber and plywood price rises and to seek means to overcome the

short-range problem and to provide adequate supplies to meet future demands.

These hearings made it clear that the price rises reflected a combination of circumstances such as adverse weather conditions in logging areas, an extended east coast dock strike, a shortage of rail cars, rising log exports, and growing demands for construction materials. It was, nevertheless, established that an important contributing factor, both short and long range, was evidence of a tightening timber supply situation in the face of large prospective increases in timber demands.

Although prices have declined recently, it was established in both the House and Senate Housing Subcommittee hearings that realization of the Nation's housing goals of 26 million units through the decade ending in 1978 would be seriously handicapped unless substantial additional volumes of softwood timber or substitute materials could be made available in the next few years.

The committee feels that if the Nation is going to effectively meet its needs for wood, all forest landowners must increase their efforts to practice the kind of modern, efficient forest management which can produce optimum wood supplies. This bill would create a particular opportunity and obligation in this regard for the intensive management of the national forest system.

This is true because more than half of the Nation's softwood sawtimber inventory is contained on the 19 percent of the commercial forest land administered by the Forest Service in the U.S. Department of Agriculture. The following tables illustrate the relative importance of the national forest commercial timber lands:

U.S. COMMERCIAL FOREST AREA, 1968

Type of ownership	Acres (millions)	Percent	Softwood growing stock (billion cubic feet)			Softwood sawtimber (billion board feet)		
			Inventory	Removals	Growth	Inventory	Removals	Growth
National forest.....	97	19	210.7	2.3	1.9	1,064.1	13.4	7.0
Other public.....	45	9	48.8	.7	.9	232.7	4.2	3.3
Forest industry.....	65	13	70.5	2.7	2.5	325.1	14.4	10.0
Farm and miscellaneous.....	303	59	107.3	3.2	4.7	381.1	12.1	15.9
Total.....	510	100	437.3	8.9	10.0	2,003.0	44.1	36.2

Source: Forest Service, USDA, November 1969.

The total average annual allowable cut on the national forests has about doubled since 1950 as a result of construction of access roads, changes in utilization standards, more effective protection of forests from fire, insects, and disease, and increased reforestation and timber stand improvement. However, it was established at the hearings held by the Subcommittee on Forests that substantial additional increases in timber harvests on the national forests would be possible under intensified management. Forest Service testimony indicated that under an accelerated management program, sawtimber harvests on the national forests could be increased by over 7 billion board feet in the next decade. A major portion of this increase, 5 billion board feet, could be realized if the present backlog of forest management work on the national forests could be accomplished. Testimony showed that this backlog includes 4.8 million acres in need of reforestation and over 13 million acres of young timber in need of thinning and other stand improvement work to produce optimum growth. While this work has been estimated to cost about \$900 million based on present costs when all areas are treated, it is also conservatively estimated that this cost would soon be recovered and this investment would continue to yield additional annual income of \$100 million, based on 1968 stumpage values.

The chairman of the Forests Subcommit-

tee along with over 50 other Members of the House introduced this or similar legislation designed to enable the Forest Service to apply intensive management practices to the commercial timberlands under its jurisdiction and permit these lands to supply their share of the Nation's total timber needs.

COMMITTEE ACTION

Based on these various proposals and on testimony before the Forests Subcommittee on May 21, 22, and 23, 1969, the subcommittee chairman introduced this bill. This new bill sought to incorporate affirmatively the safeguards recommended by the Forest Service and the various conservation groups, labor organizations, homebuilders, farm organizations, construction trade, and timber industry, as well as numerous Members of Congress and other public officials. Both the subcommittee and the full committee have further amended and perfected this legislation in order to more effectively meet the long-range timber requirements of the Nation and to protect the public interest. A discussion of the major elements of the reported bill follows:

THE HIGH TIMBER YIELD FUND

The basic approach of H.R. 12025 is to provide assured and stable support for intensified management of the national forest commercial forest lands. The key element of this approach is the high timber yield fund which the bill would establish. An unal-

located receipts from the sale of timber and other forest products from the national forests would be deposited in this fund for use, when appropriated, only for intensified timber management practices on the national forests.

The committee believes that adoption of the high timber yield fund concept is essential to put national forest timber management on a prudent, businesslike basis. National forest management is a unique Federal activity, for these lands produce high level annual revenues resulting from harvest of renewable resources. The timber production which results in these revenues cannot be increased, or even maintained, unless investments are made in those practices which increase growth and improve the quality of the timber resource. Adequately high levels of timber production cannot be achieved unless greater investments are made to maintain and improve the quality of the lands and timber growth. To date, the gap between sound and necessary investment opportunities and investments actually made on the national forests has been substantial. The high timber yield fund will help close that gap. It will provide the stable, high level financial support for timber management which is a prerequisite for timber yields. The level of funding that can result is illustrated by the following table based on national forest receipts for the last 5 years and estimates for 1969 and 1970:

U.S. DEPARTMENT OF AGRICULTURE FOREST SERVICE

[In thousands of dollars]

Fiscal year	Statement of resource revenue		Receipts shared by the Forest Service with local governments	Roads and trails for States-National forest fund (R. & T. 10 percent)	Estimate of funds available for high timber yield fund under H.R. 12025
	Timber only	Total including timber			
1964	127,962	137,514	30,680	12,001	
1965	138,772	149,239	33,532	13,141	
1966	164,940	175,616	36,214	14,204	
1967	172,791	184,517	42,619	16,778	
1968	205,627	218,323	44,627	17,566	
1969 ¹	314,000	327,000	53,000	21,000	
1970 ²	328,000	338,000	79,000	32,000	
1970 ³	361,000	371,000	79,000	35,000	229,000

¹ Estimated.² Estimated under present authority.³ Estimated under H.R. 12025 formula.

⁴ Receipts shared with local governments are paid in the fiscal year following receipt so the local government share actually paid would not increase under H.R. 12025 until fiscal year 1971.

⁵ An addition of \$33,000,000 to timber revenue which would normally be K-V deposits and a deduction of \$9,000,000 from timber revenue for O. & C. and Tongass funds was made to calculate the estimate for the high timber yield fund.

The committee expects that in the first years the fund will be used in part to eliminate the current backlog of needed work. The prompt and direct result of its use will be substantial increases in timber harvests on the national forests, thus allowing these public lands to make their contribution to supplying America's growing timber needs. In turn, timber receipts can be expected to increase, and ultimately the committee expects that by bringing national forest commercial forest land into optimum productivity, a substantial return on timber management investments will be realized.

APPROPRIATION OF FUNDS

Under the provisions of H.R. 12025 the key step in the use of the high timber yield fund would be appropriation of the moneys made available through the fund. The bill would not bypass the appropriations process. Section 5 specifically provides that moneys would be available only when appropriated. In addition, moneys not appropriated within 2 fiscal years after the fiscal year they are credited to the fund would be automatically transferred to miscellaneous receipts of the Treasury. These provisions together with the annual report provided for by section 7 assure regular congressional review of progress and practices under the act and retain congressional control of the moneys which will be in the fund.

THE HIGH TIMBER YIELD FUND AND MULTIPLE USE

The committee was disturbed by charges at the hearings that H.R. 12025 would displace or supersede the Multiple Use-Sustained Yield Act of June 12, 1960. Such an effect was not its purpose, but in order to lay at rest any possible misunderstanding, the committee has amended the bill to include an explicit statement of the relationship of this legislation with the 1960 act. H.R. 12025 provides that moneys from the high timber yield fund shall be used in conformity with the Multiple Use-Sustained Yield Act and that implementation of programs to carry out H.R. 12025 shall be subject to that act.

The committee recognizes that H.R. 12025 will result in major increases in the moneys which will be available for timber management on the national forests but will not itself provide for concurrent increases in moneys for other resource management activities, such as outdoor recreation, fish, and wildlife, watershed, and range. It is not the intent of the committee that timber management funding be increased at the expense of increased funding of other resource activities, or independent of such funding. Unless development of other national forest resources keeps pace with development of timber resources, an imbalance will result. The

committee expects that the balance which is essential for true multiple-use management of the national forests can and should be achieved through the same, regular appropriations process under which moneys from the high timber yield fund will be made available.

Some have expressed concern that H.R. 12025 would endanger those portions of the national forests suitable for wilderness designation. The Multiple Use-Sustained Yield Act, to which H.R. 12025 would be subject, provides that establishment and maintenance of areas of wilderness are consistent with its purposes. It is the understanding and expectation of the committee that H.R. 12025 shall not interfere with existing procedures for the designation of wilderness prescribed by the Wilderness Act, or with the present practices for multiple-use management of the national forests under the Multiple Use-Sustained Yield Act.

It should be further noted that there is no intent or purpose in this legislation to repeal any of the several statutes affecting national forest resources management. This includes the basic act of 1897, as well as the Multiple Use-Sustained Yield Act of 1960, the Wilderness Act of 1964 and the National Scenic Trails and Wild and Scenic Rivers Acts of 1968. Indeed, the bill is intended to sustain all of these laws while strengthening the organic Act of 1897, which established the national forests. That act clearly states:

No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flow, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States.

The committee is confident that the program authorized by H.R. 12025 is needed to meet this initial requirement with no danger of erosion or threat to other uses of our national forest lands.

USE OF THE HIGH TIMBER YIELD FUND

H.R. 12025 originally provided that moneys appropriated from the high timber yield fund would basically be allocated to the national forests in amounts substantially the same as the contribution each national forest made to the fund. The report of the Department of Agriculture on H.R. 12025 pointed out that much of the development work on the national forests is needed in national forests that are producing low receipts at the present time and that the allocation provisions could result in inadequate amounts of the fund, in relation to development needs, for some national forests now returning low timber receipts. Relative regional needs are demon-

strated by the following table presented at the Forests Subcommittee hearings:

TIMBER MANAGEMENT INTENSIFICATION OPPORTUNITIES BY REGIONS

Timber trend region	[In thousand of acres]			
	Reforestation acres	Thinning acres	Release acres	Total thinning and release acres
Rocky Mountain	1,169	7,045	1,367	8,412
Pacific	1,270	1,362	605	1,967
South	1,554	222	1,286	1,488
North	796	493	1,034	1,537
Total	4,789	9,122	4,282	13,404

Note: This backlog of opportunities does not contain management work required by current harvest activities.

Source: Forest Service, USDA, May 1969.

It is also quite possible that allocation needs of individual national forests may shift over the years. For these reasons the committee amended H.R. 12025 to provide that the Secretary of Agriculture would determine the allocations of moneys from the fund. The committee expects that in the use of this allocation authority the Secretary of Agriculture will place emphasis on work on highly productive sites and on areas where intensive management will result in needed increases in national forest timber harvests.

Section 6 of H.R. 12025 spells out a number of practices for which the high timber yield fund could be used. These practices include those which are both necessary and desirable in carrying out intensive forest practices. Their utility and effects have been proven by experiences of the Forest Service and industrial and other private forest managers. The committee deleted road construction from this list of practices because existing authorities and procedures for financing national forest timber development roads are adequate to meet intensive forest management needs. However, moneys from the fund could be used for project road construction in connection with particular yield improvement projects.

Testimony given the committee indicates that investments in forestry can produce returns of 9.2 percent on the best lands, 7.7 percent on the next lowest category, and so on, down to 4.8 percent. Because of the underinvestment in the national forests, it was also stated that each \$1 million in additional forest management investment would return about 21 percent.

Since 1961 a forest management program similar to the one envisioned by this bill has been in operation on the forest lands owned by the Department of Defense. On the lands managed by the Army income has gone up from about \$1.5 million in 1961 to \$4.6 million in 1968. In total the military forestry programs have produced almost \$12 million in net income to the Federal Government. The self-funding program of the Bureau of Land Management has also produced equally impressive results from more intensified forest management.

IMPLEMENTATION

A basic principle of the National Forest Timber Conservation and Management Act is that when funds are made available from the high timber yield fund and the Forest Service begins an intensive management program, national forest timber harvests can be promptly increased. On the other hand, the committee expects that these increases will be based on sound sustained yield forest management principles. Accordingly, H.R. 12025 was amended to provide that the Secretary of Agriculture shall revise allowable annual harvesting rates in national forests to take account of application of intensive management practices as rapidly as possible after such measures have been undertaken.

APPENDIX—ITEM III

[Second annual report on national housing goals]

BUILDING MATERIALS

The studies conducted during the past year conclude that the Nation's suppliers of building materials probably can meet without difficulty most of the demands stemming from an expansion of housing production in line with the 10-year goals. In most materials supplying industries there is either ample unused capacity and/or evidence of sustained growth that would meet increased demand resulting from the projected levels of housing production. One major problem area is apparent, namely, the projected increase in the need for lumber and wood products. Only through substantial efforts to increase the supply of softwood timber and to develop adequate lumber substitutes will the threatened "lumber barrier" be overcome. Supplies of finished materials that depend upon copper or alloys of copper, and of some fabricated metals products may also present problems at times—though not so serious as to become major impediments to expanded housing activity.

Lumber

The problem of softwood lumber and plywood was underscored by the spectacular rise of lumber and plywood prices in the winter of 1968-69 when housing production temporarily expanded. By April 1969, a broad index of lumber prices was up to a level more than 60 percent above the 1962-67 average. This spectacular price rise partly reflected supply shortages caused by unusually severe weather conditions that hindered both logging and shipping. Also, freight cars were not available in adequate numbers to transport lum-

ber, and imports of plywood had been delayed by the longshoreman's strike. The price trend was finally reversed by a series of effective actions by the administration to release additional amounts of stumpage, cut back Government purchases of lumber and plywood, and improve the availability of freight cars for shipping. Meanwhile, housing production was also declining sharply, which contributed to the reversal in the rise of lumber and plywood prices. As a result, by the end of the summer of 1969, lumber prices were down 21.6 percent from their earlier peak. The ratio of lumber prices to the overall wholesale price index remained, however, about 11 percent above its 1962-67 average.

This volatility of softwood lumber and plywood prices made imperative a careful special examination of the impact on these prices that was likely to result from efforts to achieve the housing goals. The analysis undertaken considered probable demands for softwood lumber and plywood stemming both from the housing industry and from the remainder of the economy. The study showed that only through an accelerated management program in both public and private forests could there be any reasonable expectation of adequate supplies of such lumber over the decade to meet all the likely needs of reasonable prices.

Projections of lumber supply and expected demand indicate that sufficient softwood lumber and plywood should be forthcoming approximately at current price levels during fiscal 1970 and 1971. Beginning in 1972, however, supply probably will not keep up with likely demand at current prices, as shown in table XV. The estimated deficit rises from 1 billion to 8.5 billion board feet a year by 1976.

TABLE XV.—ESTIMATED SUPPLY AND DEMAND FOR SOFTWOOD LUMBER AND PLYWOOD¹

[In billions of board feet]

Fiscal year	Demand ²			Present management		Accelerated management	
	Total	Housing	Other	Supply	Surplus or deficit	Supply	Surplus or deficit
Average of—							
1968-69.....	50.0	15.5	34.5	50.0
1970.....	49.0	13.6	35.4	51.0	+2.0	52.4	+3.7
1971.....	50.3	14.5	35.8	52.4	+2.1	54.8	+5.0
1972.....	54.1	17.6	36.5	53.1	-1.0	56.6	+3.2
1973.....	57.6	20.6	37.0	53.7	-3.9	58.6	+2.0
1974.....	60.9	23.3	37.6	54.1	-6.8	59.9	+2.2
1975.....	63.1	24.8	38.3	54.7	-8.4	61.5
1976.....	63.8	24.7	39.1	55.3	-8.5	63.2	+1.0
1977.....	64.4	24.4	40.0	55.9	-8.5	64.9	+2.1
1978.....	65.0	24.0	41.0	56.5	-8.5	66.5	+3.1

¹ Assumes that prices shown are 113 percent of the 1962-67 average wholesale prices for all lumber and plywood. This is the level reached after the severe pressures on lumber prices in 1968-69 had abated.

² This table is based on a moderately different composition of new and rehabilitated units over the decade than shown in the projected production schedule for the national housing goal.

To head off likely pressure on lumber prices, there is a need for a well-conceived program of accelerated forest management, which would permit an increase in the rate of growth of timber and utilization of mature timber, while preserving the multiple use and sustained yield characteristics of the national forests. Steps along lines proposed in the National Forest Timber Conservation and Management Act will help solve this potential lumber shortage while preserving the essential natural character of our forests. There must be a comprehensive effort at timber planning and harvesting; reforestation; construction of additional access roads for increased lumber, recreation, park lands, and other uses, and resource protection from fire, pests, and other improvements. A research program to increase softwood saw-timber growth potential and productivity and to improve utilization of forest products should also be undertaken.

If a program of accelerated management of our forests is initiated, the yield of lumber—particularly from our national forests—can be increased while preserving the

principle of sustained yield and the character of these forests as multiple-use resources as presently required by law. Without such a program, unless we have major changes in our technology, we can anticipate rapidly rising lumber prices coupled with a shortage in supply. It must be emphasized that even with an accelerated management program, softwood lumber and plywood prices will rise somewhat in the years ahead. This will, of course, encourage the development and use of substitutes for softwood lumber.

APPENDIX—ITEM IV

MEMORANDUM FOR CABINET COMMITTEE ON ECONOMIC POLICY

Subject: Findings and Recommendations of Task Force on Softwood Lumber and Plywood.

The Task Force on Softwood Lumber and Plywood was appointed by the Cabinet Committee on March 7, 1969, in response to the extremely rapid and sustained increase in the price of these products over the preceding 15 months, and because of the Committee's concern about the impact of these price increases

on the costs of housing. At its first meeting on March 8, the Task Force agreed to devote its attention not only to the immediate situation, but also to the longer range problems involving the relation between the supply of softwood timber and the Nation's growing need for timber products for housing and other essential requirements.

During the remainder of March, the Task Force focused its attention on the immediate market situation and recommended a series of steps to alleviate the immediate pressures. These steps were detailed in a memorandum to the President on March 17 and were approved and summarized in a White House press release of March 19. The steps included measures by the ICC to relieve the boxcar shortage; requests to Congress by the Forest Service, the Bureau of Land Management, and the Bureau of Indian Affairs for supplemental appropriations for FY 1969 and 1970 to increase the amounts of timber available for sale; action by the Department of Defense to exercise strict control over procurement of softwood products; and an informal approach by the State Department to the Japanese to restrict imports.

Following these actions, the prices of softwood lumber and plywood turned around sharply and are currently (May 1970) at levels close to those prevailing at the beginning of 1968. Although the price declines reflected a number of changes in market conditions, including the decline in housing construction, actions taken by the Task Force clearly played a contributing role.

Since April 1969, the Task Force has turned its attention to the longer range problem, with the major objective of insuring that the supply of softwood timber and its products would not impose a serious constraint on the achievements of the Administration's housing goals. The Task Force also has been concerned with the importance of avoiding a repetition of the extremely sharp swings in prices that occurred during 1968 and 1969, and which had a serious disruptive effect upon all elements of the industry.

In developing its findings and recommendations, the Task Force has assumed that achievement of the established housing goals for the coming decade is high on the list of national priorities. It assumed also that there will be a rapid expansion in the number of housing units created during the early 1970s reaching a peak of over 3 million units in 1975 and leveling off thereafter. At the same time, it bore in mind the need to insure that programs to increase the nation's supply of timber be compatible with the preservation of the quality of the nation's environment.

I. FINDINGS

A. Basic objectives of forest policy

The forest lands of the United States, both public and private, are one of our most valuable national resources. It is essential that this resource be so managed as to make its maximum contribution to all aspects of the national well-being. Our need for timber—especially softwoods—will grow rapidly in the years immediately ahead to satisfy the requirements of an expanding economy, including the satisfaction of our housing goals. Our imports of timber products exceed and will continue to exceed our exports by a substantial margin. It is equally important that our physical needs for softwood timber be met in such a way as to preserve and enhance the quality of our environment for this and future generations. The Task Force is convinced that there is no inherent conflict between these two objectives; they can and must be fully reconciled. Such reconciliation is the basic challenge to policy and management for the seventies and future decades.

B. Softwood timber output

1. Inadequate supplies of softwood timber and its products may act as a constraint on the achievement of the nation's housing goals

and will increase the cost of meeting those goals unless effective programs are developed to expand timber availability. Such programs must give equal weight to other national objectives of forestry policy, including sustained yield and multiple use criteria.

2. Of the sources of supply directly controllable by the Federal Government, the national forests offer the principal possibility for expansion. Smaller increments to supply are available in forests under the control of the Bureau of Land Management and the Bureau of Indian Affairs.

3. The national forest cut can be expanded through appropriate investment in more intensive management. An increase of 7 billion board feet (international log scale) in annual timber harvest is believed to be attainable by 1978 without impairing sustained yield and environmental objectives if properly planned and financed. On the other hand, significantly larger increases in harvest during this period could pose a serious threat to these latter objectives.

4. Of 510 million acres of commercial forest land in the United States, 96 million are in the national forests and about 16 million in other Federal ownership. Increased output from non-Federal lands must obviously play a major part in matching supply to demand in the years ahead.

C. Substitute materials

1. The balance between the supply and demand for softwood products at any time will have a substantial impact on the prices of those products. These prices will, in turn, affect the balance by increasing or decreasing the use of substitutes, by stimulating or retarding the cut of timber, and by widening or narrowing the excess of imports over exports. It should be stressed, however, that pressure on prices will depend heavily on the availability of satisfactory substitutes and the freedom to utilize substitutes without unreasonable institutional and legal constraints.

2. If satisfactory substitutes are not utilized during periods when there are substantial gaps between softwood supplies and requirements, prices will show significant increases. Moreover, inadequate supplies of softwood products or substitutes may act as a physical constraint on the number of housing units that can be built, with a resulting shortfall in meeting the housing goals.

D. The supply-demand outlook

1. *The Initial Period.* Demand for softwood timber will build up rapidly after 1971, and supply-demand pressures are likely to become increasingly acute during the years immediately following.

(a) Housing construction is likely to expand significantly when monetary conditions ease. To meet the housing goals, the number of units to be built should be close to peak by 1974, and remain fairly level thereafter.

(b) Estimates of the amount of softwood timber products utilized in the construction of any given volume of housing, as well as for all other uses, will depend in part upon the price of timber products relative to that of other commodities. Supply will be similarly affected. The following forecasts of the supply-demand balance are based on the initial assumption that the price of softwood lumber, relative to the general wholesale price level, would be approximately that prevailing during July-August 1969, after it had receded sharply from its March-April peak.

(c) On this basis it is estimated that annual demand for softwood timber, consistent with the achievement of the housing goals, would be about 11 billion board feet higher by 1974 than it was in 1969. Even if the Forest Service is authorized to move ahead promptly with a program for greater intensity of management, with due regard to environmental objectives, the increase in the timber harvest from National Forests for 1974 would be not much over 2 billion board feet. An additional

6 billion board feet might be obtained from private holdings and larger net imports. This would still leave an apparent gap of about 3 billion board feet, or more than 5 percent of indicated demand. If these forecasts are correct, the gap would presumably be closed with higher prices, accompanied by accelerated substitution, and possibly a shortfall in the number of units built. While these estimates cannot be precise, it is evident that the balance will be at best precarious.

(d) The impact of the residual gap on prices for softwood products is likely to be large after 1973 unless limitations on the availability of satisfactory substitutes, and institutional and legal barriers to their use, can be overcome.

(e) If an early start toward greater intensity of management is not made, strong upward pressure on the prices of softwood lumber and plywood relative to the general price level is to be expected as housing construction revives, intensifying as the housing program gains momentum. A prompt start on an accelerated forestry program would appreciably lessen, but probably not eliminate, this pressure. In either event, if housing goals are to be met, substitutes for several billion board feet of softwood products would have to be used.

2. *The Longer Range.* After 1974, further increases in total timber demands are likely, even though annual housing starts should level off at about 3 million units. At the same time, if prudent steps are taken to increase timber supply from all sources, as well as to improve the availability of substitutes, the supply-demand gap can be closed, while fully preserving the quality of the environment.

II. RECOMMENDATIONS

In the light of these findings, the Task Force submits the following recommendations for consideration by the Cabinet Committee on Economic Policy. Obviously, the budgetary implications of these recommendations must be subject to the usual Bureau of the Budget scrutiny in the light of overall national policies and priorities, and other constraints.

1. The Forest Service should be encouraged to push ahead with the development and implementation of programs to increase timber yields from the national forests. A goal of about 7 billion board foot annual increase in timber harvest from the national forests by 1978 is believed to be attainable and consistent with other objectives of forest management. With an increase of this magnitude, supply and demand could be in approximate balance by 1978 at relative prices approximating those prevailing in July-August 1969 if: (a) the cut from other lands responds as anticipated, (b) imports increase substantially and (c) adequate substitutes are available at reasonable prices.

2. The Forest Service—as well as the agencies responsible for other Federal forest lands—should develop and implement plans to provide greater flexibility in the adjustment of timber sales to fluctuations in demand, within the long-term constraints of sustained yield. This should include increasing the pipeline of stumpage available for sale and cutting in any year on areas with adequate roads, as well as moderate adjustments in the level of annual sales in response to existing and foreseeable market conditions. If present housing projections are to be realized at reasonable prices, prompt action in this direction will be necessary. This should include the willingness to adjust annual sale offerings to meet emerging situations. Such adjustments may be upward or downward, but should be compensated as promptly as feasible so that the aggregate cut over a period of years remains in line with sustained yield objectives.

3. Steadily increased supplies from State and private lands—especially the latter—will become progressively more important in the years ahead. Steps to elicit such increases

are essential. The Forest Service proposals for increased production, and technical and financial assistance to State and private owners through cooperative forestry programs and for research, could contribute to this objective, and deserve careful consideration.

4. Substantially larger net imports will also be needed to meet growing demand. A considerable increase in imports, especially from British Columbia, is anticipated, but there is some possibility of an offsetting growth in exports. Authority to contain such a growth, should it develop, is available, including that provided in the Morse Amendment to the Foreign Assistance Act of 1968 which expires at the end of 1971. The Departments of Commerce, State, Agriculture, and Interior should continue to monitor the trend of both imports and exports, in readiness to take such action as may be needed and appropriate.

5. The Task Force believes independent analysis is needed to review these programs and to evaluate the probable benefits against the substantial budgetary costs involved. Such analysis is necessary also to review in depth the relation between timber management policies and environmental goals. To accomplish this, the Task Force recommends that a panel of outside experts be invited to study these problems and their possible solutions objectively and carefully, and to submit an independent assessment of the probable consequences, costs, and benefits of alternative solutions. In the judgment of the Task Force, such a panel should be headed by an outstanding public figure and should include as members persons of recognized ability and broad experience, with no ties or commitments that might prejudice objective judgment. In view of the urgency of the problem, such a panel should be requested to submit reports on specific problems as soon as they have been developed and to present its final report not later than November 30, 1970. In the meantime, implementation of the Task Force recommendations should begin without delay, subject to subsequent revision as may be required.

6. While expansion of timber supply—with due regard to other values, including environmental protection and improvement—is a prime requisite, rapid progress toward economizing on timber use through improved wood products utilization, more flexible design standards, and development of satisfactory and economical substitutes is clearly essential. HUD is moving on design standards and substitutes and has indicated its willingness and desire to press ahead. It is recommended that HUD be encouraged to proceed along these lines and that the necessary resources be provided, including such assistance from other agencies as may be appropriate.

7. The Department of Agriculture should also be encouraged to proceed with the development of further plans looking toward longer-range timber production and conservation programs. Such plans could include the coupling of an agricultural land resource adjustment program with tree planting.

8. These recommendations represent only a beginning toward the resolutions of the problems ahead. Continued top-level inter-agency review of progress and developments will be needed for some time. It is recommended, therefore, that the Task Force and its working party remain available for further consultation as required.

Signed:

ROBERT P. MAYO,
Chairman, Task Force on Softwood Lumber and Plywood.

APPENDIX—ITEM V

STATEMENT BY THE PRESIDENT

I have received from the Cabinet Committee on Economic Policy the findings and recommendations of the Task Force on Softwood Lumber and Plywood. The Task Force reports

that a substantial increase in the supply of softwood timber products will be needed to meet the nation's growing requirements, especially in order to attain our goal of providing adequate housing for all our people by the end of this decade. It stresses also that this increase in supply can and must be achieved in a manner consistent with the preservation and enhancement of the quality of our environment. I fully endorse these findings.

The Task Force report includes a number of specific recommendations designed to meet these objectives. While some of these recommendations require further intensive study and continuous reassessment in the light of changing conditions, I am directing that the following initial steps be taken promptly.

1. The Secretaries of Agriculture and Interior should formulate plans to improve the level and quality of management of forest lands under their jurisdiction in order to permit increased harvest of softwood timber consistent with sustained yield, environmental quality and multiple use objectives. As recommended by the Task Force, such plans should take cognizance of the increased requirements for timber to meet our housing goals. They should be developed in consultation with the Council on Environmental Quality with the aim of not only protecting but also enhancing the quality of the environment in our forest lands. Any additional funding required for the execution of these plans will be reviewed by the Bureau of the Budget in relation to overall national priorities.

2. In determining the level of timber to be offered for sale in any given year, the Secretaries of Agriculture and Interior should provide reasonable flexibility to take account of anticipated swings in demand. Such adjustments may be upward or downward, and should be compensated as promptly as feasible to keep within the constraints of long-term sustained yield objectives.

3. The Secretary of Agriculture should press ahead with the development of programs designed to increase the production and harvesting of timber on State and private lands, consistent with maintaining environmental quality.

4. The Secretary of Housing and Urban Development, in cooperation with the Secretaries of Agriculture and Commerce, should continue the development of programs and standards looking toward improved and more economical wood products utilization, including encouragement of the development and utilization of substitute materials.

The Task Force has recommended that a panel of outstanding citizens be invited to study the entire range of problems involved in ensuring that the achievement of our housing goals is not constrained by an inadequate supply of softwood lumber and plywood, while fully protecting and enhancing the quality of our environment. I concur in the need for such a panel, and hereby direct that the necessary steps be taken to select its members, who should be persons of outstanding ability and broad experience, with no ties or commitments that might prejudice objective judgment.

I am releasing the full report of the Task Force at this time, so that the public may be fully informed of the issues involved in this important problem.

TIMBER RESOURCES

(A report to the President and to the Congress by the Public Land Law Review Commission, June, 1970)

The Federal Government has a dominant position in the Nation's timber economy. Just before and after the beginning of the 20th century, vast areas of timberland were reserved from disposal under the public land laws for the express purpose of guaranteeing that the country would have a continuous

supply of timber to meet its future needs. These reserves were later supplemented by additional timberlands acquired primarily in the eastern states.

As a result, the Federal Government now owns some 20 percent of all of the country's commercial forest land, nearly 40 percent of its supply of merchantable timber and over 60 percent of its softwood sawtimber. The degree of potential Federal control over the supply of timber is greater than over that of any other commodity presently produced from public lands.

In part because of the success of management programs on privately owned timberlands, in part because of the conservative manner in which Federal timber has been permitted to enter the economy in the past, and in part because of continuing changes in the wood needs of the country, the Nation's ability to meet its long-range future wood needs is promising, as long as the timber grown on both public and private lands is made available for harvesting. This is in sharp contrast to judgments often made as recently as the 1930's and 1940's.

At the present time, the wood needs of the United States are increasing rapidly. Also, exports of logs, particularly to Japan, increased dramatically during the 1960's. Forest lands, both public and private, are being withdrawn from timber harvesting and set aside for other purposes. Although private timberlands met the major burden of our wood requirements during the first half of this century, the pressure is now on public lands to supply much of the country's wood needs in the near future. Despite this tremendous responsibility of the Federal Government, the statutes applicable to most of the Federal forest lands provide at best inadequate policy guidelines directing how these public lands are to be managed or timber made available to meet our needs.

Regardless of the reasons why the Federal Government became, by far, the country's leading owner and manager of forest lands and timber, and regardless of the relevancy of these reasons to today's conditions, the facts are:

Federally owned timber is vital to the wood economy of the country;

Federally owned timber is vital to the economies of many communities;

Federal policies with respect to the sale of this timber can result in the life or death of firms that use it;

The Federal Government's dominance as a supplier of timber will continue in the future.

Although this chapter sets forth the Commission's recommendations concerning timber as a commodity of the public lands, the recommendations were arrived at, as were all our recommendations, only after giving full consideration to all other uses that can and must be made of the forests. This is emphasized because we recognize that the potential for conflicts among competing uses is particularly high on public forest lands. While wood harvesting, watershed protection, and grazing were always primary purposes of forests on public lands, recreation use, including wilderness areas, has assumed a growing importance in recent years. The availability of a continuing timber supply depends in part on the extent to which public forest lands are allocated to meet the demands for other uses. Despite this and the fact that, of all the various classes of public lands, forest lands generally are capable of producing the most combinations of commodities and, in many cases, the highest values, there are no statutory guidelines to indicate how the various uses are to be balanced.

The diversity and intensity of use dictates that great care be taken on forest lands to assure that environmental values are not lost through poor forestry practices. This is especially important on those forest lands that are managed primarily for the production

of timber. The harvesting of timber, of course, can, when not exercised with care, have very substantial effects on the scenic and watershed values of forest land as well as on surrounding lands and downstream water flows. The United States cannot afford to have its timberlands used so as to degrade the surrounding environment.

We also believe it is important to note the possible effects of some management practices on the lands and forests themselves. Timber management on public lands has progressed over the past few decades from primarily fire protection to the point where a variety of techniques, including controlled fires, pesticides, herbicides, fertilizers, and mechanical equipment, is used. These techniques and the practice of planting large areas to a single species can have harmful environmental consequences over large areas of land. The use of these practices should not be stopped entirely, but, as discussed generally in the chapter on Public Land Policy and the Environment, we favor continued surveillance and monitoring of such programs. These must be supported by a continuing program of research to ascertain all the facts about presently used practices and to develop new and improved practices that will reduce environmental hazards.

In accord with our general recommendations that artificial distinctions between classes of land be eliminated, we believe that policies guiding timber production and use should generally be the same for all public lands. We see no reasons, other than those dictated by varying regional conditions, why the best available practices should not be adopted by all agencies.

There are significant differences now in some timber policies, in the same geographic area, between the Forest Service and the Bureau of Land Management. For example, the Forest Service sells timber on a royalty basis, while BLM sells timber on a lump sum basis, and the methods for measuring timber volumes as a basis for payment are different. Methods of financing timber management programs and timber access road construction differ between the two bureaus. The other agencies managing public lands also differ somewhat. We find that these differences are confusing to the public and should not be retained.

Dominant Use Timber Production Units.— Recommendation 28: There should be a statutory requirement that those public lands that are highly productive for timber be classified for commercial timber production as the dominant use, consistent with the Commission's concept of how multiple use should be applied in practice.

We have previously recommended the concept of dominant use classification as a means of implementing land use planning on public lands not designated by statute for primary use.¹ This concept finds ready application in the case of planning for timber production on public lands.

Legislation creating national parks and wilderness areas, and administrative determinations without legislative sanction placing public forest lands in noncutting zones, and restricting the cut on other areas, have reduced the area of public land—and the value of timber available from it—that is necessary to support the timber industry. In some cases, despite the absence of guidance from Congress, which under the Constitution has the authority to make such rules, timber stands in which substantial sums of public money have been invested are set aside for other use before the timber can be harvested and the public can reap the benefits of its investment.

The amount of forested public land reserved from harvesting or placed under special cutting limitations more than doubled between 1957 and 1967.² Although data are

Footnotes at end of article.

not available to show the extent of the continuing pressure on private forests, land is being cleared for many uses such as residential, commercial, and highway construction. Also significant is the fact that much private forest land is made unavailable for timber harvesting because of the increasing ownership of forest lands by people interested primarily in recreation values.

Lack of assurance that public land timber will be available for harvesting in the future results in:

Lack of security for investment planning by timber industry firms using public land timber, and a concomitant unwillingness to modernize their plants and equipment;

Short-range planning by communities whose economies are dependent on timber harvested from the public lands;

Unwillingness on the part of the Bureau of the Budget to recommend needed levels of investments in timber management;

Concern over the country's ability to continue to meet increasing levels of consumption of wood products without a substantial increase in timber prices;

Resistance to all proposals, however meritorious, to withdraw public land from timber harvesting.

The fact is that the purposes of the 1897 Organic Act³ of the Forest Service, whose major aim was to assure future timber supplies, have been obscured by changing conditions and needs. Yet, the United States continues to require timber and wood products in increasing quantities. The Commission believes that these and other requirements can best be met by the identification of highly productive areas of public forest lands administered by the Forest Service and the Bureau of Land Management, their classification for commercial timber production as the dominant use, and their inclusion in separate timber management systems. *To manage these systems separately from other public lands, there should be created a Federal timber corporation or division within the Forest Service and the Bureau of Land Management.*⁴

In harmony with our belief that effective multiple use planning can be accomplished only by classifying lands for their highest and best uses, *lands classified for inclusion in this system would be those that are capable of efficient, high quality timber production, and are not uniquely valuable for other uses.* By no means would all of the public lands currently defined by the Forest Service as "commercial forest lands" be included in the system. The Forest Service definition, for example, requires, among other things, that such lands be capable of producing at least 25 cubic feet of timber per acre per year. This standard excludes only those forest lands of the very poorest quality. Much of the land defined as commercial is at higher elevations in the West or on ridges or swamps of low productivity in the East. The Commission does not intend that these lower quality timberlands be included in timber production units.

Most of the forest lands to be included in such units are in Alaska, California, Idaho, western Montana, Oregon, Washington, and the southern states. These lands are highly productive; for example, about 70 percent of the national forest lands in the Douglas-fir region of Oregon and Washington is capable of producing more than 85 cubic feet per acre per year. These areas are already the ones where the greatest wood processing capacity is located. However, there are other areas of public lands that should be considered for inclusion in such units. The decision should rest on the merits of each case.

Criteria for establishing timber production as a dominant use on public forest lands must involve consideration of other exist-

ing or potential uses. Those lands having a unique potential for other uses should not be included in timber production units. Critical watersheds, for example, where cutting may be prohibited or sharply limited, should not be included. Similarly, important, or potentially important, intensive recreation use sites close to urban areas should not be included. On the other hand, watershed, recreation, or other uses would not be precluded on lands in the system.

Timber production should be the dominant use, but secondary uses should be permitted wherever they are compatible with the dominant use. Generally these areas would be available for recreation use except during the period when timber is being harvested and the time thereafter required to permit new growth to get started. It may also be necessary to impose greater restrictions than now exist on grazing during periods when timber stands are being regenerated.

The actual limitations placed on other uses would not be as severe as they might appear at first glance. The best sites for timber growing are mostly at lower or middle elevations in the West and in the southern states. In the West, outdoor recreation use tends to occur at the higher elevations where the scenery is more spectacular, where there is snow for winter sports, and where the ground cover is more open and suitable for hiking and other summer sports. The conflicts resulting from outdoor recreation on the better national forest timber production areas in the South occur less frequently than in other regions.

The total area that would be included in timber production units would probably be less than one-half of the total forest land now in Federal ownership, and less than one-fourth of the total area of the national forests. Although the area of forest land that would be so designated does not make up a majority of all federally owned forest lands, this highly productive part the total is vital as a source of timber. This is the land that will react most readily to investments in timber management and will be the key source of public timber for industrial uses in the future.

Financing.—Recommendation 29: Federal programs on timber production units should be financed by appropriations from a revolving fund made up of receipts from timber sales on these units. Financing for development and use of public forest lands, other than those classified for timber production as the dominant use, would be by appropriation of funds unrelated to receipts from the sale of timber.

On the more productive public forest lands, receipts from timber sales generally exceed the costs of financing not only the administration of timber sales, but the overall level of investments in timber management. This is not true of much of the lower quality forest lands.

A revolving-fund method of financing these timber production units would provide the land management agencies with a reasonably assured source of funds to permit long-term investment and management programs; it would assure the industry of a fairly certain continuity of supply; and it would provide Congress and the people of the country with a means of measuring the success of this economic program in economic terms.

Such a fund, as envisioned by the Commission, would not bypass the congressional appropriation process. We propose that no money would be available to the agencies unless appropriated, even though the money came from the production fund. *Funds for timber production on other forested public lands should be provided by direct appropriation from the Treasury as justified.*

Back-door financing, i.e., payments that do not go through the appropriation process,

of timber production programs should be ended, whether in the form of purchaser-built access roads, reforestation payments under the Knutson-Vandenberg Act,⁵ or any other form of indirect appropriation. When timber is sold from public lands, its full value should be collected by the United States and deposited either in the timber production fund or the Treasury.

The Federal timber corporation or division we recommend be established within the administering agency would be charged with overseeing the management of the timber dominant areas and for maintaining records of both expenditures and receipts. Keeping records in a manner that will permit comparisons of expenditures with receipts will be a key to the success of this approach.

Use of Economic Considerations.—Recommendation 30: Dominant timber production units should be managed primarily on the basis of economic factors so as to maximize net returns to the Federal Treasury. Such factors should also play an important but not primary role in timber management of other public lands.

Timber is an economic good that is typically grown and harvested on private, as well as public, lands. The market for timber is well established, just as it is for most other goods and services used by the American public. This system generally works well by producing the desired goods and services in an efficient manner and allocating them to those who need or desire particular products. We find no compelling reason to treat public land timber differently from the way it would be treated by the owners of well managed private forest lands.

It appears to the Commission that timber management and investment programs will be most effective if the market for timber is generally accepted as a guide for Federal actions. On dominant timber production areas, this will mean that the primary directive to the public land management agencies should be to maximize the net dollar return to the Federal Treasury in the long run. This does not mean, of course, that other considerations of these lands are not important. We do not believe that the use of economic guidelines will lead to a deterioration of the land and its capacity to produce other values. Timber production is consistent in many cases with the production of other values and long-term timber production requires the maintenance of the basic productivity of the land.

Although the position of the Federal Government as the Nation's major owner of timber and timberlands leaves it open to the charge that it controls timber markets through the exercise of monopoly power, no evidence was found to indicate that this is actually occurring. Nevertheless, it would be reassuring to the users of public timber to have it well understood, and stated in law, that the Federal Government is not to extract monopoly profits or to use its position to control timber markets. This is particularly important with respect to timber sales to firms dependent on the public lands for their supply of timber.

We have found that failure to make needed economic investments in Federal timberlands has resulted in failure of the Federal agencies to meet their share of the Nation's wood requirements today, even though protection of other values was not involved. Of particular note is timber access road construction, which has lagged behind needs in past years. As a result, considerable areas of timber that could be harvested are inaccessible, and salvage and protection programs have been hampered.

Our recommended approach to the use of Federal funds in timber production programs, utilizing sound conservation practices, will result in higher receipts from timber sales over the long run, and in greater expenditures per acre than at present for the areas

Footnotes at end of article.

involved, without depleting this natural resource. Average annual timber production on these areas will be increased substantially by directing the land management agencies to maximize the net return to the Federal Treasury. The Commission notes that there are many opportunities on national forest lands for investments that would more than pay for themselves.⁶

Economic Factors.—Recommendation 31: major timber management decisions, including allowable-cut determinations, should include specific consideration of economic factors.

Although timber is an economic good, and there are data on the costs and returns to timber management, the Commission found that the public land agencies do not generally make specific economic analyses as a basis for their management decisions. Allowable-cut determinations, which provide a basis for determining most of the timber programs, are particularly confusing with respect to the use of economic factors. Those that are used are commonly hidden behind cumbersome definitions and are combined with other assumptions in complicated formulae so that their actual use and effects are completely obscured.⁷

The Multiple Use and Sustained Yield Act of 1960⁸ confirmed the policy long enforced by the Forest Service that timber harvesting should be accomplished on a sustained yield basis. This has been interpreted by the management agency to require establishing annual allowable cuts that do not vary widely from one year to the next. Biological factors predominate in the methods used to determine allowable cuts. The species mix, growth rate and age classes of the existing timber stands all enter into the resulting calculations.

The public lands have large volumes of overmature timber, in part because of the conservative cutting policies that have been followed and in part because these forest lands were more inaccessible than the private lands that were the base for logging in past years. Consequently, mortality rates are high and net annual timber growth is less than in managed forests with a lower average age. For example, the annual growth rate in western national forests is somewhat less than one-half of 1 percent, while managed forests can be expected to grow at several times this rate. To convert an over-mature forest with large volume of timber to a balanced managed forest requires liquidating the old growth timber over a period of time. The public land agencies have generally chosen to do this over a fairly long period of time so that the volume of timber harvested from one period to the next does not vary considerably. On the other hand, commercial forest operators have usually cut old growth faster so that the goal of a balanced managed forest capable of rapid growth is reached sooner. Such a policy includes a larger allowable cut in the earlier stages and a reduction in allowable cut later on as the age classes become balanced and the annual net growth rate becomes stabilized. To an extent, investments in reforestation and thinning can tend to offset this reduction, although the extent of their effect depends on the length of time set for converting old growth to a managed forest.

In Federal forests the rotation age, i.e., the time to grow timber from seed until harvest, has been traditionally determined by the log size suitable for manufacture into lumber. These large sizes are not required to meet the increasing demands for pulpwood and kindred products, for which shorter rotation periods and younger trees are more suitable. These changes in the demand for wood products should be reflected in allowable cut determinations.

We have also noted that the demand for wood products tends to fluctuate with

changes in the economic cycle, and the availability of construction credit. Since the existing allowable cut policies are designed to lead to approximately equal timber sale offerings each year, fluctuations in the demand for timber are not taken into account in any important sense. The restriction on sales offerings in any one year or period tends toward greater fluctuations in the cut of non-Federal timber and greater fluctuations in prices of all timber than would be the case if Federal policies were more flexible.

Sales Procedures.—Recommendation 32: Timber sales procedures should be simplified wherever possible.

At present, timber from the public lands is generally sold at market value, and the market itself usually determines the price through competitive processes. However, the Commission found that the process of selling timber is confusing in its complexity and ambiguity.

Much of the confusion arises because of statutory requirements that timber be sold at not less than its appraised value. The Commission believes that the Federal Government should receive the same price for its timber as would be received by a private landowner. Therefore, the competitive market should serve as the guide for the price that is received by the Federal Government. In fact, it appears that in many cases, competition can be relied on to set prices without resort to costly appraisals. Appraisals should be viewed as a means of establishing a minimum price for timber wherever competition cannot be relied on to set a price that reflects the value of the timber. But in all cases, the pricing objective should be to obtain the competitive price.

There must be flexibility in both the timing and the size of sales. Because of varying needs in different regions and at different times, we do not believe that detailed statutory directives can be devised. The land management agencies must recognize this and adjust their offerings accordingly.

In particular, we note the problems caused by the very long-term commitments of public land timber in large sales in Alaska. These sales, some of which have committed national forest timber to a single firm for 55 years, greatly limit the flexibility of the public land agencies in meeting changing conditions and changing timber values.

Coupled with flexibility there should, nonetheless, be some degree of regularity. The assurance of regular sales would complement our earlier observation that the establishment of timber production units on an economic basis would promise the availability of a continued supply, by providing the vehicle to move that supply to the market.

We agree with those who have urged that bidders show financial responsibility and, where applicable, a satisfactory past performance on timber sales operations. Among the reasons for this are: (1) the degradation of the environment that ensues from an incomplete job or from failure to clean up the site; and (2) extensions of time for completion of contracts, which also have the effect of withholding timber from the consumer. It follows as a corollary, that land management agencies should carefully scrutinize any request for extensions of time, and grant such extensions only when specific conditions set forth in the regulations are met.

METHODS OF SALE

We recommend that, for both economic reasons and in the interests of conservation, the method of selling timber on the lump sum, or cruise, basis be adopted generally by the Federal land management agencies when selling timber. The Forest Service and Bureau of Land Management differ in the basis on which each sells timber. The Forest Service generally uses scale selling, in which payment is based on the measurement of the volume of each log removed from the forest. The Bureau of Land Management, on the other

hand, uses a "cruise," or estimate of the total volume of timber in a sale, as the basis for a lump sum payment.

The economics of logging is such that fewer logs and marginal trees are left in the woods under cruise, or lump sum, sales than under scale sales. The interests of the purchaser, once he has paid for all the timber in a lump sum sale, encourage him to utilize all of the timber that will pay the direct costs of logging. This leads to complete utilization with a minimum need for administrative surveillance. Not only does the better utilization leave the forest less susceptible to insect, disease, and fire, but the lack of a need to scale each log results in lower costs in administering timber sales. Lump sum sales encourage more thorough logging and, therefore, produce more favorable environmental conditions than scale sales.

Access Road Construction.—Recommendation 33: There should be an accelerated program of timber access road construction.

The practice followed by the public land management agencies of having timber access roads constructed in large part as an adjunct of timber sales has limited the construction of those roads. By requiring timber operators, who are not, or do not desire to become, road builders, to handle road construction activities, the agencies have also limited some legitimate operators from obtaining public timber sales. In many instances roads are required to a standard higher than necessary merely to harvest timber.

Agency reliance on purchaser-built timber access roads has a number of other serious disadvantages. First, road development must be keyed to timber sales which can lead to inefficient design and size specifications. Second, it can lead to undesirable harvest schedules. And third, lack of suitable access road networks has made salvage of dead or dying timber impossible as well as inhibiting measures to control or prevent disease and fire losses. Timber saved as a result of suitable access would be reflected subsequently in net growth computations and allowable cuts.

The Commission believes that a "catch-up" program of access road construction must be authorized and supported with appropriations. These access roads would make available merchantable timber within the dominant timber production units recommended above. The initial funding for these roads will have to come either from direct appropriations from the Treasury, or from the revolving fund we have proposed, if that fund in its inception is granted borrowing authority.

In addition, by making these new areas available for the protection, management, and harvesting of public land timber, this accelerated road program, which we believe could be completed in a 10-year period, would each year permit the salvage and sale of considerable timber that must now be abandoned after it has either fallen or been blown down. As part of the protection of the lands, these roads would provide access for fire, insect, and disease control. It would also allow the agencies to make economic investments and carry on management programs in areas that cannot be reached now. Finally, it would simplify existing timber sales programs by separating road construction from timber harvesting, and eliminating allowances for road construction costs from the timber sales procedures, a practice we suggest earlier in this chapter as one to be ended.

Dependent Communities and Firms.—Recommendation 34: Communities and firms dependent on public land timber should be given consideration in the management and disposal of public land timber.

Many communities and firms, particularly in the western United States, are dependent on public land timber. If the public lands were suddenly eliminated as a source of tim-

Footnotes at end of article.

ber, some of these communities and firms would cease to exist. Others would experience very difficult times.

Through its timber management and sales policies, the Federal Government over the years has in effect made a commitment to communities and firms that it will make timber available to assure their continued existence. The provision of the 1968 Foreign Aid Act⁹ that limits exports of logs to Japan from the western public lands and the long-standing primary processing requirement for timber harvested from the national forests in Alaska¹⁰ are examples. The Small Business Administration set-aside program to limit eligibility for some timber sales to firms having less than 500 employees is an example of a regulatory commitment to small firms.¹¹

The Commission recognizes that changes are continually taking place both in the structure of the timber industry and in the viability of particular firms and communities. But we also recognize that the Federal Government has an obligation to those who depend on public lands for their livelihood. Federal policy should be directed at achieving a balance between healthy change and the assurance of opportunity for existing users and communities dependent on Federal timber.

The use of a procedure whereby timber "quotas" were allocated to dependent areas was attempted in the past to provide an assured supply of timber to firms in each designated area. The Sustained Yield Unit Act of 1944¹² provided a statutory basis for assigning quotas to areas established under that Act. A number of units were established, one of which involves joint consideration for management purposes of public and private timberlands in an area. We have found that these attempts to use quotas as a means of assuring timber supplies to a firm or an area have not been entirely successful. Their usefulness is limited by changing conditions.

Obviously, where there is a limited timber supply, the allocation of timber to one firm restricts the opportunities for another. The long-term commitment of Federal timber to the existing sustained yield units under the 1944 Act has limited the flexibility of the Government and of the involved firms and communities to meet changing conditions. We do not believe that a quota system is a necessary tool for Federal policy and, furthermore, we believe that it is inconsistent with our free enterprise system. For the foregoing reasons, we recommend that the 1944 Act be repealed with provisions, of course, for units now in operation to continue until terminated in ordinary course.

Timber harvested from public lands should ordinarily be processed by domestic mills, but interstate shipment should not be limited. The export of unprocessed logs from public lands damages those firms and communities dependent on a public land timber supply.

Therefore, the ban on exports of public land logs should be continued. Those who export logs from their private lands should be prohibited from evading this policy by purchasing public land timber for their domestic needs.

The Commission believes that the United States should assure that small firms and dependent firms be given some opportunity to obtain public land timber. The current definition by the Small Business Administration of small firms as having less than 500 employees sets this limit at an unrealistically high level for the timber industry, where most firms have fewer employees. Accordingly, *the size limit for this industry in terms of qualifying for Small Business Administration assistance should be flexible enough to recognize actual conditions and to give real advantages to small firms when conditions warrant.*

The Commission also believes it desirable

to allow oral competitive bidding in public land timber sales. Oral auction, starting from a base fixed by sealed bids, permits the firm dependent on Federal timber to engage in bidding on sales it believe necessary to its existence, and limits the ability of other firms to squeeze it out of the market. Whenever it appears that smaller firms or dependent mills are disadvantaged by sealed bidding, the public land agencies should allow oral auction procedures.

Acquisition and Disposal.—Recommendation 35: Timber production should not be used as a justification for acquisition or disposition of Federal public lands.

The Commission believes that neither increasing nor decreasing the area of Federal public forest lands can be justified on the basis of need for timber production. As stated earlier, the Federal Government already owns 20 percent of the Nation's forest land, 40 percent of its merchantable timber, and over 60 percent of its softwood sawtimber. The acquisition of additional forest land by the United States would not, in our opinion, improve the timber production potential of the country.

If there is a need to acquire additional land, it should be done; but the United States should not acquire private lands under the guise of a need for timber production when in fact the land is to be used for some other purpose.¹³ While timber production should continue to be an authorized use of acquired forest lands, it is no longer by itself an appropriate reason for acquiring lands.

Public lands should not be transferred to state or private ownership simply to reduce the proportion of timber producing land in Federal ownership. We have found no significant differences between Federal and other lands in the manner in which timber is produced or sold that would require that public lands be transferred to the states or private ownership. Nor would "monopoly" be the basis for such transfer because, as indicated earlier in this chapter, no evidence was found that the Federal Government is exerting monopoly control over markets.

The many other public values that also occur on forest lands may themselves justify the retention of much of the Federal timberlands in public ownership.

We believe, however, that the public land agencies should be authorized to exchange, acquire, and dispose of forest lands when necessary to improve ownership patterns and to ease administrative problems. Limitations on general disposal and acquisition authority should not preclude meeting the necessities of administration.

Environmental Impacts.—Recommendation 36: Controls to assure that timber harvesting is conducted so as to minimize adverse impacts on the environment on and off the public lands must be imposed.

The cutting of timber has substantial adverse effects on environmental values on a large area of public lands each year. The immediate environmental impacts of timber cutting are often dramatic, particularly where the technique of clear-cutting is used, although new growth may alleviate the situation in a relatively short time and restore the area to a substantial extent within a decade or two.

Where all the timber on an area is cut, the effect on scenic values and the quality of water flowing from the area is significant under many conditions typically encountered in logging public lands. Even on areas where only a portion of the trees are cut, effects on scenery and other environmental factors can be substantial. Inasmuch as logging is conducted to one degree or another on about a half million acres of public lands each year, it is evident that the potential for problems is great.

We realize, of course, that to halt all timber cutting on the public lands would not be in the public interest. We also note that the

public land agencies have used roadside and streamside strip zones, in which cutting practices are prohibited or modified, to reduce some of the undesirable effects of logging on what they believe to be the visible scenery and water quality conditions.

In addition, they have planned timber harvesting and road construction to minimize environmental impacts, and have included provisions in timber sale contracts to control adverse impacts.¹⁴ While such provisions generally might be adequate to accomplish environmental protection objectives, their enforcement, for various reasons, leaves much to be desired.¹⁴ *Consequently, we conclude, consistent with the recommendations contained in the chapter on Public Land Policy and the Environment, that even efforts must be made in the future.*

The results of most logging are esthetically unattractive to many people. The fact that future stands of timber will be attractive is not an acceptable rationale to them to tolerate unnecessary environmental effects now. The United States has an affirmative obligation to minimize the impact on the environment from logging on public lands, even though this is a complex task. *Such efforts should be directed not only to scenic effects, but air, soil, and water quality as well.*

The development of new multipurpose road systems and widespread public travel by air means that nearly all forest lands are visible to the public at large. Logging systems and layouts, in addition to protective roadside strips, must be designed to minimize scenic impacts. Logging practices must be such that waste is minimized, that logged areas are restored as soon as possible to an esthetically pleasing condition, and its effects, as well as those of road construction, on stream quality are minimized. We believe the agencies should make a continuing effort to improve controls over logging practices to assure that these desirable results are achieved. Further, a continuing research effort is necessary to find techniques and design systems that will help meet environmental quality objectives. Timber harvesting must also be recognized as a means of improving the condition and appearance of average forests. Public land forests must be managed through harvesting and regeneration so that we have an improved living resource for producing the multitude of values that can be obtained from healthy, growing woodlands.

Timber purchasers should be required to comply with Federal, state, and local environmental quality standards in processing plants using timber from the public lands. Timber processing plants, particularly pulp and paper mills, contribute to both air and water pollution. Regardless of whether plants that process timber in the first manufacturing stage are on or off the public lands, compliance with established environmental quality standards should be required as a condition of obtaining a timber sale contract. We believe this is a desirable way to help enforce established standards for air and water quality and other aspects of environmental quality.

Inasmuch as most environmental quality standards are established and policed by the states or local governments insofar as timber processing plants are likely to be concerned, we believe that close cooperation by the public land management agencies with the states and local governments can provide a workable means of implementing this recommendation. Responsibility for establishing that a plant is violating standards should generally rest with the state or local government. The public agencies would then use state or local actions as a basis for qualifying possible timber purchasers and for enforcing their possible timber purchasers and for enforcing their failure to comply with contractual provisions.

Footnotes at end of article.

We believe that this recommendation should be applied only to those plants that convert logs, pulpwood, or other roundwood products from the public lands into a new form. Thus, sawmills using logs from public lands would be subject to such restrictions, but plants using lumber from these sawmills would not be. Since most plants using timber from the public lands are located close to their source of timber, the practical effect of this restriction would be felt mainly in public land areas. But we see no reason why plants that are further from the public lands should not be similarly restricted if a part of their timber comes directly from public lands.

We believe implementation of this recommendation will provide a practical means of requiring timber processing firms to comply with established environmental quality standards. We see it as an important adjunct to other methods of improving the quality of our day-to-day life.

FOOTNOTES

¹ See Chapter Three, Planning Future Public Land Use, for a discussion of the Commission's recommendation on this point.

² George Banzhaf & Company, *Public Land Timber Policy*, PLLRC Study Report, 1969, App. G.

³ 16 U.S.C. §§ 473-478, 479-482, 551 (1964).

⁴ If merger of the Forest Service and the Department of the Interior is accomplished, as recommended in Chapter Twenty, Organization, Administration, and Budgeting Policy, merger into one system should be possible.

⁵ 16 U.S.C. § 576 (1964).

⁶ George Banzhaf & Company, *Public Land Timber Policy*, Ch. 8, PLLRC Study Report, 1969.

⁷ Allowable cut is the amount of timber that may be harvested from a timber management unit over a prescribed period of time in accordance with a timber management plan designed to provide a sustained discussion of the methods used in planning the annual cut is contained in George Banzhaf & Company, *Public Land Timber Policy*, Ch. 6, PLLRC Study Report, 1969.

⁸ 16 U.S.C. §§ 528-531 (1964).

⁹ 16 U.S.C. § 617 (Supp. V, 1970).

¹⁰ 36 C.F.R. § 221.3(c) (1970).

¹¹ George Banzhaf & Company, *Public Land Timber Policy*, PLLRC Study Report, 1969.

¹² 16 U.S.C. §§ 583-5831 (1964).

¹³ Acquisition of forest lands by the Forest Service is accomplished under the authority of the 1911 Weeks Law (16 U.S.C. §§ 500, 513-519, 521, 563 (1964)). This provides for acquisition of forest lands "necessary to the regulation of the flow of navigable streams or for the production of timber." Forest Service acquisitions that are actually being accomplished for recreation purposes, as was the case of the Sylvania tract in Michigan, now must be justified on the basis of either timber production or watershed protection.

¹⁴ Ira M. Heyman and Robert H. Twiss, *Legal and Administrative Framework for Environmental Management of the Public Lands*, PLLRC Study Report, 1970.

HIGHWAY SAFETY: THE DRUNK PATROL—A TOUGH DUTY

(Mr. CLEVELAND asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. CLEVELAND. Mr. Speaker, the problem of drunken drivers and the deaths, injuries, and destruction they are causing is one which needs our attention. Though drunken drivers receive little publicity, except in the daily accident reports listing their latest victims, they are a menace which must be stopped.

The men who actually have the task of getting drunken drivers off of our highways, our State and local police, receive too little attention and support from the public and press. It has perhaps become trite to say that these men are risking their lives to make ours safe; but it is nonetheless true. Their job is difficult for a number of reasons. One is the lack of manpower, as there are too few policemen to do the job. Another involves the weak and inadequate laws they often have to work with. Yet perhaps the basic reason is that the public, the news media, and people in government are just not demanding action. Though drunken drivers are killing over 28,000 people a year on our highways, the public seems relatively unconcerned.

This seeming disinterest in one of our most pressing national problems continues to baffle me. As part of my contribution toward arousing interest in this area, I have recently inserted into the RECORD two articles which appeared earlier in the Christian Science Monitor as part of a series on highway safety. The third article, which appeared in the July 9 edition, discusses the problem from the point of view of the policemen who patrol our highways, and with dedication and commitment try to cope with this growing menace. The story of the policemen is heartening, but the story of the problems they face is distressing.

Mr. Speaker, the third article in the series by Guy Halverson follows, and deserves a thoughtful consideration:

THE DRUNK PATROL—A TOUGH DUTY

(By Guy Halverson)

WASHINGTON.—"Better stand back when we get the door open," the Washington, D.C., patrolman shouted at me as he ran toward the darkened vehicle. "No telling what we'll find."

Inside, we could see a young man slumped motionless across the wheel. The late-model automobile, the engine on and running quietly, was stopped about 30 feet from an intersection.

The driver coughed and twisted as the officer jammed a small vial of smelling salts under his nose. On the cluttered floor of the front seat was an empty can of malt beer.

His recently pressed clothes were in disarray. He said that he was returning home from a party when he "fell asleep" approaching the intersection. Repeated loud bangings and poundings on the side of the car by passing motorists had failed to rouse him.

After producing identification and a driver's license during a brief questioning in the back seat of the patrol car, the driver was asked if he thought he could safely maneuver his vehicle home. Nodding affirmatively, he was allowed to drive off.

The ticket given the man read only: "Failing to give full time and attention to driving."

DALLAS-AREA CHECKOUT

Contrast this cavalier response of the officer to the more purposive methods of three Dallas patrolmen. In March of this year I watched officer Don DeWees and two other Dallas patrolmen (one a citizen police auxiliary) "check out" some two-dozen nightclubs and taverns in a bleak four-block area on the city's racially mixed east side.

As we entered each club, the din and music would grind to a halt as every head turned suspiciously toward the small cluster of men in blue by the door.

"Club owners hate us for this type of

patrol," says officer DeWees, an outgoing seven-year veteran of the force. "But we've gone a long way toward cutting down knifings and fights by our presence. And you can be sure that there are many characters in these places who think twice about that fourth or fifth drink before they hit the highway with us around."

As these two contrasting incidents clearly indicate, the wheels of law enforcement move unevenly when it comes to curtailing and apprehending the drunk driver in the United States today. In some cases, it moves not at all, as departments teeter toward outright nonenforcement.

In hundreds of departments across the country budget and manpower woes plus heightened citizen demands for stepped up anticrime patrolling is causing severe cutbacks in the number of men assigned to traffic details. Results are invariably disastrous. In Detroit, traffic units have been hacked by some 171 men since 1965—almost 30 percent of the total traffic detail—even though the size of the police force itself has swollen by more than 500 men.

SURVEILLANCE FALLS OFF

Surveillance and issuing of tickets has fallen off. Not surprisingly, the accident rate has risen steadily and shows no sign of lapsing.

By contrast, accident rates in rural areas patrolled by the Michigan State Police, who have maintained and in some areas even tightened surveillance, have dropped.

While scores of policing agencies, such as the Los Angeles and San Diego police departments, and the Maine State Police, have mounted aggressive preventive campaigns against the drunk driver, literally thousands of other departments are still relying on antiquated and plainly inadequate control programs. Or worse, they have hidden the whole problem in dusty back-room files.

Admittedly, the problem of apprehending the drunk driver is one of the knottiest problems facing policing agencies today. The social drinker requires a more traditional type of preventive patrol—a response that may have no application for the hard-core problem drinker at all.

As studies have indicated, the problem-drinking driver is not like the typical social drinker. The former often have had long-standing difficulties with police, and other social agencies, and in some cases have even garnered strings of psychiatric evaluation, license revocations and suspensions, and criminal records.

Use of established enforcement ploys, such as dummy vehicles, radar boxes, and helicopter surveillance, often have little practical effect. Some departments, intimidated by the sheer complexity of the problem, have resigned themselves to passivity and inaction.

MANY GO UNAPPREHENDED

Any drunk driver who is at this moment careening across the nation's highways has little likelihood of ever being apprehended. Of the nation's half-million lawmen, only a fraction are on traffic-enforcement duty.

Take the nation's 34,000 state police. They patrol more than one million miles of highway, yet less than 8,000 are behind the wheel at any given period of time—averaging out to about one man for every 125 miles of roadway.

Police, moreover, forced to rely upon limited visual-arrest criteria, are apprehending only the most blatantly intoxicated drivers at peak alcohol blood levels. Hundreds of thousands of drinking drivers at lower illegal levels are going undetected. "I drove non-stop from Pennsylvania to Wisconsin one weekend through five states, and I wasn't stopped by a patrolman once," a key leader of a Milwaukee Alcoholics Anonymous chapter told me, recalling his pre-AA days. "Yet I was so drunk I don't even remember getting into the car."

Top police administrators insist, rightly, that the problem of the drinking driver isn't just a law-enforcement problem. "We're talking about a vastly complicated community problem that is going to require a comprehensive attack on alcoholism," says William H. Franey, a top official of the International Association of Chiefs of Police (IACP).

For its part the IACP has published a number of policy guidelines on traffic safety, including directives supporting implied-consent statutes and a .10 presumptive level of intoxication. (Implied consent means that acceptance of a license implies consent to a chemical blood test in the event of arrest.)

WHAT POLICE CAN DO

Still, many law-enforcement officials, including IACP's Mr. Franey, concede that there is much that police departments can and must do if the highway toll is to be significantly slashed:

Renewed emphasis on traffic safety. This would include clearcut supervisory policies for police personnel. "Tolerances"—or definitions—for example, of what constitutes drunken driving should be clearly defined.

While increasing calls are heard for farming out traffic-safety duties to supplemental or even auxiliary civilian forces, most experts strongly insist that traffic safety must once again be given priority billing within existing police organizations.

"Thousands of officers are now trapped in trivial administrative jobs or forced to respond to unnecessary calls such as chopped garden hoses or overturned bird baths. These men would be more useful out on the roadway," argues James Slaviv, director of the Northwestern University Traffic Institute, and a former chief of the Denver force. "Traffic is the one area where police can exercise tremendous control, unlike, say, the assault area, which usually occurs away from the police."

Detection and apprehension. Police need to upgrade detection methods for better apprehension of drunk drivers. Many law-enforcement officials admit a distaste for dealing with the alcoholic who drives (as distinct from the problem of public drunkenness, the largest category of arrests in the United States).

NATIONAL AVERAGE NOTED

"I'll seldom stop a DWI [driving while intoxicated] unless he's really in bad shape," one officer on a major metropolitan force told me. The national average is about two drunk-driver arrests per each officer per year, clearly inadequate, many feel, when it's recalled that we are talking about a problem involving millions of drivers.

Reporting procedures. Many departments, especially in the South and rural areas in the Midwest and Southwest, need to adopt better accident-reporting procedures. It is from such information that preventive countermeasures can be devised.

States need mandatory chemical tests for victims of fatal accidents. Police records need to be related to state motor-vehicle records in some type of high-speed computerized collection agency.

Many lawmen now are seeking to put together some type of national traffic "information grid" along the lines of the National Criminal Information Center, which provides instant up-to-date information on such things as stolen vehicles. At present the National Register in the Department of Transportation maintains records of mandatory license revocations and suspensions, but the information by law is a service to state motor vehicle departments.

Not all states are "on line." In most states, a police department seeking information from the National Register must first call the state motor-vehicle department, which in turn contacts Washington, a cumbersome and lengthy process.

CONNECTICUT EXPERIENCE

For some states the time lag is substantial. "It takes us about a week to get information," says H. J. Ulrich, superintendent of the Kansas Motor Vehicle Department. His department relies on the United States mail for contact.

Whatever the pace such reforms might take in a department, police traditionalists maintain that in the final analysis there is no substitute for clearcut sanctions for traffic offenses plus intensive patrolling. As proof they cite what happened in Connecticut back in the 1950's.

In 1956, Abraham A. Ribicoff, then governor, waged a massive crackdown on speeders. Anyone convicted, he told a stunned constituency, would face an immediate license suspension and possible revocation. The upshot was that the accident roster sagged sharply during the next year.

Something similar happened at Lackland Air Force Base in Texas not too long ago. Appalled at the rising accident rate, usually involving liquor, base officials announced that all personnel involved in an accident involving a personal injury would be given psychiatric screening plus a review of their service record. As happened in Connecticut, the accident rate went down.

SUSPENSION SUSTAINED

Some departments, using a combination of sophisticated computerized technology and a refined community-action approach, are making tremendous progress in upgrading enforcement and apprehension rates. In Maine—which has tallied 117 traffic fatalities this year as of this writing in late June, compared with 90 last year—the state police are seeking to tighten traffic patrolling, while giving special attention to the drunk driver.

If a Maine motorist loses his license out of state for drunk driving, the same suspension can apply in Maine as well. Repeat offenders face indefinite license suspension and even loss of their registration.

Ask members of the 300-man Maine state police force, and they quickly admit being delighted with the crackdown. Lt. Richard C. Jones, assistant director of the traffic section, explains that the force has applied to the Department of Transportation for a \$10,000 grant for a special study program in detecting drunk drivers at the more difficult blood-alcohol levels below .15 percent.

(The level of .10 to .14 percent is considered "impaired" in Maine, while .15 and above is "intoxicated," a harsher offense.) "All too many of our men just can't spot the 'impaired' levels using visual methods," the officer says.

Lieutenant Jones, like most police officers with whom I've talked, believes that some type of prearrest testing along the lines of the British Road Act and the Baton Rouge and New York State laws, will eventually win widespread national acceptance, despite present qualms over constitutionality. Prearrest testing is being considered in Minnesota, California, and Michigan, as well as in Maine. (See paragraphs under title "Baggie Bill.")

The Maine force has also found that by concentrating on specific "target areas" it can quickly dent accident tolls. Thus, special squadrons have been sent into Aroostook County during the potato harvest time in late fall, a traditionally high accident—high alcohol consumption—period there.

Targeted action has also been successful in San Diego and Kent County, Michigan. In San Diego, some 15 carefully selected officers who are given more than 40 hours of special training use a computer to identify locations drunk drivers are apt to frequent.

This special "traffic-enforcement squad"—which is partly underwritten by a \$62,000 grant from the Department of Transporta-

tion—is credited with having substantially reduced liquor-related fatalities, even though the overall accident picture has gone up.

The Kent County Sheriff's Office (in the Grand Rapids area) has also had similarly successful results using less-sophisticated methods on key roadways.

In addition to consolidation, many lawmen look toward development of mechanical detection devices, such as video-tape units, or even "drunkmographs" (on the principle of the seismograph) that could keep a permanent record of driving patterns right within an enclosed part of the vehicle.

There is also talk of using special coded license plates known only to police for problem drivers, an experiment already tested in Minnesota. "Such a plate could put tremendous social pressures on the problem drinker," argues Northwestern's Mr. Slaviv.

What would you do if you were a relative or friend of the problem drinker and had to borrow his car for a night? After being tailed by a squad of patrol cars for an hour or so you'd probably strongly suggest that he seek rehabilitation—and in a hurry."

"BAGGIE BILL"

The 1971 Minnesota legislative session may set a course for prearrest blood-alcohol testing statutes.

A number of safety organizations there, including the Metropolitan Area Safety Council and the American Medical Association, are pushing what is known as the "Baggie bill," which would tie prearrest screening to the right of an officer to make a license check. It would be an on-the-spot breath test utilizing a small plastic bag.

According to Forst Lowery, executive vice-president of the Minneapolis Metropolitan Areas Safety Council, the Minnesota legislation, like the British Road Act, would only be a guide for arrest. Results could not be entered as court evidence. Upon arrest the suspect would still face the choice of a conventional police chemical test.

The measure, which is being heavily promoted throughout Minnesota, was decisively buried in the 1969 legislative session after lukewarm support from top state officials, including Gov. Harold LeVander.

Proponents now plan to have the measure reintroduced by at least one attorney in next year's session to help ward off legal doubts—a tactic not adopted last year.

LOSSES RESULTING FROM THE USE OF CYCLAMATES

(Mr. SISK asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. SISK. Mr. Speaker, on behalf of myself and Mr. GUBSER, Mr. ABBITT, Mr. BROYHILL of Virginia, Mr. DON H. CLAUSEN, Mr. COLLIER, Mr. CONABLE, Mr. EDWARDS of California, Mr. LEGGETT, Mr. MATHIAS, Mr. McFALL, Mr. MATSUNAGA, Mrs. MAY, Mr. NELSEN, Mr. SCOTT, Mr. STEIGER of Wisconsin, Mr. TEAGUE of California, Mr. WALDIE, and Mr. ULLMAN, I am introducing legislation to alleviate the many losses suffered because of the HEW action last fall barring the use of cyclamates in food. These losses were incurred by persons who relied in good faith on the Government's listing of cyclamates as safe. Because the losses were based on this reliance, and because they have serious consequences for many business enterprises, I believe that the Government should recognize its responsibility for these losses and provide indemnity for them.

Cyclamates and other artificial sweet-

eners have for many years been widely recognized for their value in food products to be marketed to diabetics and to other persons for weight reduction and weight control purposes. Prior to October 18, 1969, existing uses of cyclamates were regarded by the Food and Drug Administration as being of unquestioned safety. They were included among the substances listed by FDA as "generally recognized as safe." In addition, their use was specifically recognized in a number of food standards promulgated by the Food and Drug Administration for artificially sweetened canned fruits. Based on the actions of the Food and Drug Administration prior to October 18, 1969, there was no indication that cyclamates were not entirely safe for use in food at their present levels. The food manufacturers thus were justified, based on this official recognition of the safety of cyclamates, in using these substances in their products.

Secretary of Health, Education, and Welfare Finch on October 18, 1969, announced the discovery that ingestion by rats of cyclamates at very high levels over their entire lifespan led to the formation of bladder cancer. In view of this, the Secretary stated that the Delaney clause of the Federal Food, Drug, and Cosmetic Act required him to ban the manufacture of all foods containing cyclamates. At the same time, however, both Secretary Finch and Deputy Assistant Secretary Steinfeld emphasized that there was absolutely no evidence that cyclamates presented a hazard to humans. Secretary Finch states that his decision "in no sense should be interpreted as a 'life-saving' or emergency measure." Secretary Finch subsequently appointed a medical advisory group who, after studying the available data, concluded that continued use of cyclamates by persons who medically require them outweighed any possibility of harm. Secretary Finch also announced that continued marketing of inventories of foods packed in good faith prior to October 18 would be permitted, and that this limited marketing presented no health hazard.

As everyone knows, Secretary Finch's October 18, 1969, announcement received extraordinarily wide coverage in the news media and prompted considerable public reaction against foods containing cyclamates. In the midst of this furor, the Secretary's assurances that sale of existing inventories of foods containing cyclamates presented no health hazard were largely ignored. Retail sales of these inventories in fact fell off to almost zero and, although they later regained some sales volume, have in most cases never achieved much more than 25 percent of their former sales. Thus, food manufacturers have been left with large stocks of foods containing cyclamates and the reduced value of these foods has caused crippling financial injury. Some manufacturers have had to sell these products at a significant price reduction, to repurchase merchandise already sold to their customers, to give their production to charity, or to destroy unsalable merchandise. Some companies may find it impossible to continue in business unless

reparations from the Government are forthcoming.

Mr. Speaker, it seems to me and others totally inequitable that the affected companies must bear alone these out-of-pocket losses which were a direct result of the Government's announcements on October 18, 1969. Especially since the companies used cyclamates in good faith reliance on earlier governmental actions, they should not be required to suffer serious economic losses for subsequent governmental actions believed necessary to protect the public welfare. In particular, they should not be made to suffer the consequences of public overreaction to a startling Government announcement which rendered ineffective the Government's attempts to minimize losses by allowing continued sale of existing inventories of foods containing cyclamates.

Under these circumstances, I believe that the Government should share the responsibility for the net losses incurred directly as a result of reliance on the FDA listing of cyclamates as safe for use in food and the reversal of FDA's position on October 18, 1969.

In recent years there have been several similar situations in which the Government has acted to compensate losses caused by its sudden changes in policy. The prime example is the cranberry incident in 1959 in which an announcement by then HEW Secretary Fleming destroyed public confidence in the cranberry crop. Ten million dollars was eventually paid to cranberry growers for losses which they suffered. There was another similar incident at about the same time involving the use of stilbestrol in certain poultry products. Also, since 1964, Congress has appropriated funds to indemnify dairy farmers unable to sell milk because it contains pesticide chemical residues. There are a number of other, similar instances including several outside the food and drug area in which the Government has paid compensation for losses caused by changes in its policies. The case for indemnification for cyclamate losses is at least equally meritorious.

The legislation I introduce today would give jurisdiction to the Court of Claims to determine the amounts of losses suffered due to the cyclamate ban. It would provide compensation for both direct and indirect losses but would explicitly exclude any recovery of lost profits.

TAKE PRIDE IN AMERICA

(Mr. MILLER of Ohio asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. MILLER of Ohio. Mr. Speaker, today we should take note of America's great accomplishments and in so doing renew our faith and confidence in ourselves as individuals and as a nation. In 1968 there were more full-time students enrolled in higher education in the United States than any other country. There were 7,571,636 compared to 2,396,000 in the Soviet Union and 1,967,796 in India.

GREATER CORPORATION RESPONSIBILITY TO SHAREHOLDERS AND PUBLIC NEEDED

(Mr. BURTON of California asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. BURTON of California. Mr. Speaker, the U.S. Court of Appeals for the District of Columbia has just announced a remarkable decision which is of interest to shareholders and consumers throughout the country.

Basically, this decision, cited as Medical Committee for Human Rights against the SEC, allows shareholders to have their views presented in proxy statements for vote by the shareholders, and as such should greatly enhance the ability of shareholders to have their voices heard on matters of significant corporate and public interest.

More specifically, shareholders of the Dow Chemical Co. who were arbitrarily denied the right by the Securities and Exchange Commission to have a vote among themselves on the merits of Dow's continued sale of napalm now have been granted this right by the court.

Shareholders in many different companies across the country should benefit from this securing of their rights. This scholarly decision also further focuses attention on the need for greater corporate responsibility both to shareholders and to the public.

I insert this precedential decision for the consideration of shareholders and Members:

[U.S. Court of Appeals for the District of Columbia Circuit, No. 23,105]

MEDICAL COMMITTEE FOR HUMAN RIGHTS, PETITIONER V. SECURITIES AND EXCHANGE COMMISSION, RESPONDENT—PETITION FOR REVIEW OF AN ORDER OF THE SECURITIES AND EXCHANGE COMMISSION

[Decided July 8, 1970]

Mr. Roberts B. Owen, with whom Messrs. Edwin M. Zimmerman, Richard B. Herzog and Paul S. Hoff were on the brief, for petitioner.

Mr. Richard E. Nathan, Special Counsel, Securities and Exchange Commission, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom Messrs. Philip A. Loomis, Jr., General Counsel, and David Ferber, Solicitor, Securities and Exchange Commission, were on the brief, for respondent.

Before MCGOWAN, TAMM, and ROBINSON, Circuit Judges.

TAMM, Circuit Judge: The instant petition presents novel and significant questions concerning implementation of the concepts of corporate democracy embodied in section 14 of the Securities Exchange Act of 1934, and of the power of this court to review determinations of the Securities and Exchange Commission made pursuant to its proxy rules. For reasons to be stated more fully below, we hold that the Commission's action in the present case is reviewable, and that the cause must be remanded for further administrative proceedings.

1. PROCEDURAL HISTORY OF THE CASE

On March 11, 1968, Dr. Quentin D. Young, National Chairman of the Medical Committee for Human Rights, wrote to the Secretary of the Dow Chemical Company, stating that the Medical Committee had obtained by gift several shares of Dow stock and expressing concern regarding the company's manufac-

ture of the chemical substance napalm.¹ In part, Dr. Young's letter said:

"After consultation with the executive body of the Medical Committee, I have been instructed to request an amendment to the charter of our company, Dow Chemical. We have learned that we are technically late in asking for an amendment at this date, but we wish to observe that it is a matter of such great urgency that we think it is imperative not to delay until the shareholders' meeting next year. . . .

"We respectfully propose the following wording to be sent to the shareholders:

"Resolved, that the shareholders of the Dow Chemical Company request the Board of Directors, in accordance with the laws of the State of Delaware, and the Composite Certificate of Incorporation of the Dow Chemical Company, to adopt a resolution setting forth an amendment to the Composite Certificate of Incorporation of the Dow Chemical Company that napalm shall not be sold to any buyer unless that buyer gives reasonable assurance that the substance will not be used on or against human beings."

(App. 1a-2a.) The letter concluded with the following statement:

"Finally, we wish to note that our objections to the sale of this product [are] primarily based on the concerns for human life inherent in our organization's credo. However, we are further informed by our investment advisers that this product is also bad for our company's business as it is being used in the Vietnamese War. It is now clear from company statements and press reports that it is increasingly hard to recruit the highly intelligent, well-motivated, young college men so important for company growth. There is, as well, an adverse impact on our global business, which our advisers indicate, suffers as a result of the public reaction to this product."

(App. 2a.) Copies of this letter were forwarded to the President and the General Counsel of Dow Chemical Company, and to the Securities and Exchange Commission. (App. 3a.)

By letter dated March 21, 1968, the General Counsel of Dow Chemical replied to the Medical Committee's letter, stating that the proposal had arrived too late for inclusion in the 1968 proxy statement, but promising that the company would "study the matter and . . . communicate with you later this year" regarding inclusion of the resolution in proxy materials circulated by management in 1969. (App. 4a.) Copies of this letter, and of all subsequent correspondence, were duly filed with the Commission.

The next significant item of record is a letter dated January 6, 1969, noting that the Medical Committee was "distressed that 1968 has passed without our having received a single word from you on this important matter," and again requesting that the resolution be included in management's 1969 proxy materials. (App. 7a-8a.) The Secretary of Dow Chemical replied to this letter on January 17, informing the Medical Committee that Dow intended to omit the resolution from its proxy statement and enclosing an opinion memorandum from Dow's General Counsel, the contents of which will be discussed in detail in part III, *infra*. (App. 9a-12a.) On February 3 the Medical Committee responded to Dow's General Counsel, asserting that he had misconstrued the nature of their proposal in his opinion memorandum, and averring that the Medical Committee would not "presume to serve as draftsmen for an amendment to the corporate charter." (App. 15a.) The letter continued:

"We are willing to bend . . . to your belief that the management should be allowed to decide to whom and under what circumstances it will sell its products. Nevertheless,

we are certain that you would agree that the company's owners have not only the legal power but also the historic and economic obligation to determine what products their company will manufacture. Therefore, [we submit] . . . our revised proposal . . . requesting the Directors to consider the advisability of adopting an amendment to the corporate charter, forbidding the company to make napalm (any such amendment would, of course, be subject to the requirements of the "Defense Production Act of 1950," as are the corporate charters and management decisions of all United States Corporations), [and] we request that the following resolution be included in this year's proxy statement:

"Resolved, that the shareholders of the Dow Chemical Company request that the Board of Directors, in accordance with the laws [sic] of the Dow Chemical Company, consider the advisability of adopting a resolution setting forth an amendment to the composite certificate of incorporation of the Dow Chemical Company that the company shall not make napalm."

(App. 16a.) On the same date, a letter was sent to the Securities and Exchange Commission, requesting a staff review of Dow's decision if it still intended to omit the proposal, and requesting oral argument before the Commission if the staff agreed with Dow. (App. 17a.)

On February 7, 1969, Dow transmitted to the Medical Committee and to the Commission a letter and memorandum opinion of counsel, which in essence reiterated the previous arguments against inclusion of the proposal and stated the company's intention to omit it from the proxy statement. (App. 18a-19a.) Shortly thereafter, on February 18, 1969, the Commission's Chief Counsel of the Division of Corporation Finance sent a letter to Dow, with copies to the Medical Committee, concluding that "[f]or reasons stated in your letter and the accompanying opinion of counsel, both dated January 17, 1969, this Division will not recommend any action . . . if this proposal is omitted from the management's proxy material. . . ." (App. 20a.) In a letter dated February 28—which contains the first indications of record that petitioners had retained counsel—the Medical Committee again renewed its request for a Commission review of the Division's decision. (App. 24a.) On the same day, the Medical Committee filed with the Commission a memorandum of legal arguments in support of its resolution, urging numerous errors of law in the Division's decision. (App. 26a-32a.) Several other documents were filed by both the company and the Medical Committee; finally, on April 2, 1969, both parties were informed that "[t]he Commission has approved the recommendation of the Division of Corporation Finance that no objection be raised if the Company omits the proposals from its proxy statements for the forthcoming meeting of shareholders." (App. 44a-45a.) The petitioners thereupon instituted the present action, and on July 10, 1969 the Commission moved to dismiss the petition for lack of jurisdiction. On October 13 we denied the motion "without prejudice to renewal thereof in the briefs and at the argument on the merits."

In its briefs and oral argument, the Commission has consistently and vigorously urged, to the exclusion of all other contentions, that this court is without jurisdiction to review its action. We find this argument unpersuasive.

II. JURISDICTION TO REVIEW

A. Timeliness

The Commission's first argument on the jurisdictional point is that the instant petition was untimely filed, thereby depriving this court of power to adjudicate the controversy. This argument is based upon the provision of section 25(a) of the Securities

Act, 15 U.S.C. § 78y(a) (1964), which requires that a petition for review must be filed "within sixty days after the entry" of a Commission order.

In the instant case the Commission's minutes reflect that the decision which was reached after reviewing the petitioner's proxy claim was made on March 24, 1969 (App. 46a), whereas the petition to review in this court was not filed until May 29, 1969—some 66 days thereafter. It also appears uncontested that the Commission gave the Medical Committee some notification by telephone on March 24 that a decision had been reached, although the substance of this conversation is not reproduced in the briefs or record. (Cf. Supp. App. 3.) However, as we noted in the preceding section, petitioners did not receive any written information concerning the Commission's decision until a letter was mailed to them on April 2; in addition, the Medical Committee has asserted, without contradiction, that the Commission temporized for approximately four weeks after the petitioner requested a formal copy of the minutes of the decision, before making this important information available. (Reply Brief for Petitioner at 14 n.2 and accompanying text.)

It must be noted that the Commission is itself rather untimely in making this assertion of untimeliness, for in its July 10 Motion to Dismiss it explicitly disclaimed any intention to press upon us an argument relating to the time of filing the instant petition.² This resolve apparently fell by the wayside, however, and the timeliness argument appeared in full dress in the Commission's responsive brief on the merits, thereby helping to trigger further rounds of briefing by both sides. We need not elevate the Commission's vacillation to the status of a waiver, however, because we have concluded that its timeliness argument must fail on the merits.

The Commission relies primarily upon section 22(k) of its Rules of Practice, 17 C.F.R. § 201.22(k) (1970), which provides:

"In computing any period of time involving the date of the entry of an order by the Commission, the date of entry shall be (1) the date of the adoption of the order by the Commission . . . or (2) in the case of orders reflecting action taken pursuant to delegated authority, the date when such action is taken. . . . The order shall be available for inspection by the public from and after the date of entry, unless it is a non-public order. A non-public order shall be available for inspection from and after the date of entry by any person entitled to inspect it." [Emphasis added.]

In essence, the Commission has taken the position that the date of decision, March 24, must be deemed the date of "entry" within the meaning of Rule 22(k), notwithstanding the language of the rule italicized above, and notwithstanding the fact that no written information regarding the basis of the decision was available until a substantial time after March 24.

None of the cases cited by the parties offers much guidance in resolving the particular timeliness question now before us;³ however, we think it clear that Rule 22(k), together with the 60-day statutory period for filing petitions for review, evidences an attempt by Congress and the Commission to strike a balance between the need to have Commission orders operate with finality, and the aggrieved party's need to have both adequate notice of the substance of the decision, and sufficient time to prepare his petition.⁴ To hold that the running of the 60-day period can be initiated by a mere telephone call, as the Commission urges, would create risk of inequity and hardship to aggrieved parties and defeat the goal of orderly and open administrative procedures embodied in the italicized portions of Rule 22(k) quoted above. Therefore, we conclude that the in-

Footnotes at end of article.

stant petition for review is not barred for reasons of untimeliness.

B. The existence of a reviewable order

The most difficult problems presented by this case arise from a congeries of related arguments supporting the general assertion that the Commission's decision regarding the Medical Committee's proxy proposal is not a reviewable order within the relevant jurisdictional statute. That statute is section 25(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78y(a) (1964), which in pertinent part states:

"Any person aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person is a party may obtain a review of such order . . . in the United States Court of Appeals for the District of Columbia [Circuit], by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part."

Neither precedent⁵ nor the legislative history of the Securities Act⁶ offers an unambiguous answer to the question of whether decisions of the kind presently before us should be categorized as reviewable orders under this provision; thus, we must resort to general principles and analogies in determining whether we have jurisdiction to adjudicate this controversy.

Bypassing for the moment the question of whether deference to administrative discretion should compel us to foreclose review of this petition,⁷ we begin by restating the well-established principle that there is a strong presumption in favor of the courts' power to review administrative action. As the Supreme Court concluded in *Abbott Laboratories v. Gardner*, 387 U.S. 136, 140 (1967), "[A] survey of our cases shows that judicial review of a final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress." This theme has been developed at greater length by Professor Jaffe in his study of the law of reviewability:

"Congress, barring constitutional impediments, may indeed exclude judicial review. But judicial review is the rule. . . . It is a basic right; it is a traditional power and the intention to exclude it must be made specifically manifest. . . .

The mere fact that some acts are made reviewable should not suffice to support an implication of exclusion as to others. The right to review is too important to be excluded on such slender and indeterminate evidence of legislative intent. (L. Jaffe, *Judicial Control of Administrative Action* 346, 357 (1965) [hereinafter "L. Jaffe"]. See also *Environmental Defense Fund, Inc. v. Hardin*, No. 23,813 (D.C. Cir. May 28, 1970) (slip op. at 7); *Scanwell Laboratories, Inc. v. Thomas*, No. 22,863 (D.C. Cir. Feb. 13, 1970); 4 K. Davis, *Administrative Law Treatise* 1-32 (1958).)

Several other general observations which we have gleaned from our perusal of numerous cases and commentaries on reviewability must serve as prolegomena to our discussion of that issue in the present case. It appears that the factors most often relied upon in determining whether a particular administrative action is a reviewable order can be subdivided into two general categories. The first of these basic areas of concern involves consideration of whether the administrative action operates with final effect upon a particular individual, entity, or group.⁸ See, e.g., *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967); *Isbrandtsen Co. v. United States*, 93 U.S. App. D.C. 293, 298, 211 F.2d 51, 55, cert. denied, 347 U.S. 990 (1954); L. Jaffe, 358, 403-404. The second line of analysis looks to the formalities preceding and at-

tending the administrative action, for, as one commentator has stated, "the notion of an 'order' implies some formal characteristics." L. Jaffe 419; cf. *Helco Products Co. v. McNutt*, 78 U.S. App. D.C. 71, 137 F.2d 681 (1943); *American Sumatra Tobacco Corp. v. SEC*, 68 App. D.C. 77, 93 F.2d 236 (1937).

Finally, the cases in the area seem virtually unanimous in proclaiming that pragmatic considerations, particularly those relating to the institutional relationships between the courts and the administrative agencies, must prevail over purely doctrinal arguments for or against reviewability. See, e.g., *Abbott Laboratories*, supra 387 U.S. at 149; *American Federation of Labor v. NLRB*, 308 U.S. 401, 408 (1940); *Cities Service Gas Co. v. FPC*, 255 F.2d 860, 862 (10th Cir.), cert. denied, 358 U.S. 837 (1958); *Isbrandtsen Co.*, supra, 93 U.S.App.D.C. at 297, 211, F.2d at 55.

While the problem of whether there is sufficient formality is admittedly difficult in the present case, we need not pause long over the question of the decision's final effect upon petitioner. Here the administrative process had run its course with respect to petitioner's proxy proposal, and there can be no basis for any fear that review of the decision would cause the courts "to interfere in matters yet within the consideration of the Commission." *Cities Service Gas Co.*, supra, 255 F.2d at 862. Here, also, we are dealing with a limited and easily identifiable class of individuals—shareholders of a regulated corporation—whom Congress sought to protect in section 14 of the Act, and who claim that they are wrongfully being denied fair corporate suffrage by the Commission's approval of Dow's decision to omit their proposal. Cf. Jaffe. *The Individual Right to Initiate Administrative Process*, 25 Iowa L.Rev. 485, 528 (1940). In this regard, we cannot see any merit in the Commission's contention that the petitioner has not suffered any "aggravement" under the jurisdictional statute because it may still have relief through a private action against the company in a district court.

The relevance of a possible private action will be examined more fully later in this portion of our opinion. For present purposes, it is sufficient to note that the Medical Committee has been forced to undergo a two-stage administrative proceeding, compelled by the risk that failure to do so would preclude any judicial relief by virtue of the exhaustion doctrine;⁹ its recourse to an authoritative judicial determination of the merits of its proxy proposal has been substantially delayed because of the administrative proceeding, whereas time is clearly of the essence in proxy contests; and not only has the Medical Committee lost the potential benefit of the Commission's resources and expertise as an ally in compliance litigation against the company, it has also had imposed upon it the added burden in a private action of overcoming an adverse Commission determination in face of the principle that the agency is entitled to judicial deference in the construction of its proxy rules. See, e.g., *Union Pacific R. Co. v. Chicago & N.W. Ry. Co.*, 226 F.Supp. 400, 408 (N.D.Ill. 1964). Moreover, we believe that there is a substantial public interest in having important questions of corporate democracy raised before the Commission and the courts by interested, responsible private parties. Cf. *Scanwell Laboratories, Inc. v. Thomas*, No. 22,863 (D.C. Cir. Feb. 13, 1970) (slip op. at 8-10); *Environmental Defense Fund, Inc. v. Hardin*, No. 23,813 (D.C. Cir. May 28, 1970) (slip op. at 5-7). Thus, we conclude that the Medical Committee is "aggrieved" for purposes of section 25(a) of the Act.

Finally, in the context of assessing the reviewability of the Commission's decision—as distinguished from our later inquiry into the scope of administrative discretion—it is

clear that no significance whatsoever inheres in the fact that the administrative determination is couched in terms of a "no action" decision rather than in the form of a decree binding a party to perform or refrain from some particular act. This much has been clear ever since the Supreme Court interred the discredited "negative order doctrine" in *Rochester Telephone Corp. v. United States*.¹⁰ That case, like the present controversy, involved a petitioner's attempt to obtain judicial review of "action by the Commission which affects the complainant because it does not forbid or compel conduct with reference to him by a third person." (307 U.S. at 135.) The Court pointed out that "[n]egative has really been an obfuscating adjective" because it failed to illumine "the real considerations on which rest . . . the reviewability of Commission orders within the framework of its discretionary authority and within the general criteria of justiciability." (307 U.S. at 141.) The Court then concluded:

"An order of the Commission dismissing a complaint on the merits and maintaining the status quo is an exercise of administrative function, no more and no less, than an order directing some change in status. . . . Refusal to change an existing situation may, of course, itself be a factor in the Commission's allowable exercise of discretion. . . . But this bears on the disposition of a case and should not control jurisdiction." (307 U.S. at 142.)

Similarly, section 10(e) of the Administrative Procedure Act provides judicial relief for "agency action unlawfully withheld or unreasonably delayed" (5 U.S.C. § 706(1) (Supp. V 1965-69)), and the courts have had little difficulty in determining when an administrative failure to act presents an appropriate occasion for judicial scrutiny. Compare *Environmental Defense Fund v. Hardin*, supra, with *International Ass'n of Machinists v. NMB*, No. 23,409 (D.C. Cir. Jan. 30, 1970); see generally Goldman, *Administrative Delay and Judicial Relief*, 66 Mich.L.Rev. 1423 (1968). Thus, there can be little doubt that the Commission's decision operates with sufficient particularity and finality to warrant judicial review.

The question of whether the procedures attending the Commission's decision in this case are sufficiently formal to make the determination a reviewable order under section 25(a) is admittedly a close one, but we believe that the considerations militating in favor of reviewability must prevail. At the outset, we note that the decided cases make it clear beyond doubt that the absence of a formal evidentiary hearing does not compel the conclusion that an administrative decision is unreviewable. See, e.g., *Cities Service Gas Co. v. FPC*, 225 F.2d 860, 862-63 (10th Cir.), cert. denied, 358 U.S. 837 (1958); *Phillips Petroleum Co. v. FPC*, 227 F.2d 470, 475 (10th Cir. 1955), cert. denied, 350 U.S. 1005 (1956); *Isbrandtsen Co. v. United States*, 93 U.S.App.D.C. 293, 297, 211 F.2d 51, 55, cert. denied, 347 U.S. 990 (1954).

This is a sound and necessary doctrine because agencies frequently are confronted with situations in which substantial questions of fact, law, or policy may be properly resolved through information-gathering mechanisms less cumbersome than a trial-type hearing. This court has consistently recognized that this kind of flexibility in procedures is a desirable attribute of the administrative process, regardless of whether the power was explicitly provided by statute or rule, or was evolved on an ad hoc basis by implication from a broad statutory grant. However, our deference to the efficient deployment of administrative resources has not been—and logically could not be—considered a matter which touches upon the courts' jurisdiction to review the action in question, in the absence of a clear indication that Congress intended such a result. See generally *National Air Carrier Ass'n v. CAB*, No. 23,012 (D.C. Cir. May 28, 1970);

Footnotes at end of article.

H & B Communications Corp. v. FCC, No. 22,685 (D.C. Cir. Nov. 13, 1969); *Marine Space Enclosures, Inc. v. FMC*, — U.S. App. D.C. —, 420 F.2d 577 (1969). Thus, we must look to the Commission's rules and to the attributes of the proceeding here in issue in order to determine whether this is an appropriate occasion for review.

Although the line is not drawn with complete clarity, the Commission's Rules of Practice distinguish between "formal" and "informal" proceedings. Procedures denominated "informal" by the Commission generally involve negotiation between the Commission and one private party, and normally culminate in a letter of advice to the party from a Commission staff member.²¹ Here, however, there is an important difference which the Commission readily concedes:

"The difference is that in the normal no-action situation, there is only one interested private party and accordingly the Commission has not found it necessary to prescribe any rules dealing with the situation. The private party simply writes a letter which is answered."

"In the case of stockholder proposals, there are two interested private parties: the management and the shareholder. Consequently, Rule 14a-8(d) provides a procedure by which the position of both may be brought to the Commission's attention." (Supplementary Memorandum of Respondent at 10.)

Thus, the Commission's procedural regulations governing proxy proposals incorporate the basic theory of an adversary encounter, and a detailed perusal of Rule 14a-8 and its history reinforces this impression.

For the shareholder who wishes to have his proposal included in management's proxy statement, Rule 14a-8, 17 C.F.R. § 240.14a-8 (1970), is the touchstone of procedural and substantive rights. Rule 14a-8(a) describes the initiation of this process by providing that the security holder "shall submit to the management of the issuer, within the time hereinafter specified, a proposal which is accompanied by notice of his intention to present the proposal for action at the meeting." The basic time period established in this section is 60 days, subject to certain qualifications. Subsection (b) then provides that if management opposes the shareholder's proposal, it must include in its proxy materials a 100-word statement by the proponent of the proposal. The substantive exceptions to the general rule of inclusion are then set forth in subsection (c), and several of these grounds for omitting a shareholder proposal will be discussed at length in part III, *infra*. The following provision, subsection (d), contains the procedural steps which are immediately relevant; it describes the course of proceedings which comes into play whenever management believes that it is entitled under the substantive criteria of the preceding section to omit a shareholder proposal.

Subsection (d) is phrased wholly in mandatory rather than permissive language. It requires management to "file with the Commission . . . a copy of the proposal and any statement in support thereof as received from the security holder, together with a statement of the reasons why the management deems such omission to be proper in the particular case, and, where such reasons are based on matters of law, a supporting opinion of counsel." At the same time, management must "notify the security holder submitting the proposal of its intention to omit the proposal" and "forward to him a copy of the statement of the reasons why the management deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel." This filing and forwarding must be completed "not later than 20 days prior to the date the preliminary copies of the proxy statement are filed pursuant to § 240.14a-6(a)"; this re-

quirement was promulgated "[s]o that the Commission will have more time to consider the problems involved in such cases and the security holder will have an opportunity to consider the management's position and take such action as may be appropriate." 19 Fed. Reg. 246 (1954). Presumably this "other appropriate action" by the shareholder encompasses the possibility of filing with the Commission detailed legal arguments in favor of requiring the company to include the proposal, similar to the one which the Medical Committee filed with the Commission in the present case after the Division of Corporation Finance had made its recommendation, and which the Commission accepted without comment or objection. (App. 26a-32a; see also *id.* at 38a-39a.) Finally, the history of the rule explicitly states that it "places the burden of proof upon the management to show that a particular security holder's proposal is not a proper one for inclusion in management's proxy material." (19 Fed. Reg. 246 (1954).)

We think that these provisions contain persuasive indicia that the Commission's proxy procedures are possessed of sufficient "adversariness" and "formality" to render its final proxy determinations amenable to judicial review, although the scope and content of that review must yet be investigated. This conclusion is inferentially supported by cases dealing with private actions to enforce the proxy rules, in which shareholders have been required to exhaust the administrative remedies provided by the foregoing sections. *Peck v. Greyhound Corp.*, 97 F. Supp. 679 (S.D.N.Y. 1951); cf. *Dyer v. SEC*, 291 F.2d 774, 778 (8th Cir. 1961). However, the Commission urges that the structure of section 14 of the Act gives rise to a doctrinal anomaly if administrative decisions like the present one are held reviewable. This difficulty arises from the fact that even when the Commission moves against recalcitrant management under section 14 of the Act to terminate or prevent violations of the proxy rules, there is never a traditional trial-type hearing followed by a conventional mandatory order. Professor Loss has catalogued the Commission's enforcement alternatives under section 14 as follows:

[W]hen management or a security holder is adamant in refusing to comply with the rules as the Commission construes them, there is no administrative procedure comparable to the stop-order proceeding under the 1933 act. The Commission may investigate. It may use its statutory power to "publish information concerning . . . violations," as it did in two early instances. It may institute appropriate administrative proceedings of a disciplinary nature under the 1934 act when the offender happens to be a registered broker-dealer or an exchange member, as it may when some other statutory provision or Commission rule has been violated. It may even use a violation of section 14(a) as a basis for delisting the security. And it may ask the Attorney General to prosecute willful violations. But the principal sanction—and the only practicable way of forcing compliance—is the statutory action for injunction." (Loss, *The SEC Proxy Rules in the Courts*, 73 Harv. L. Rev. 1041, 1043-44 (1960); see also Aranow & Elmhorn, *Corporate Proxy Contests: Enforcement of SEC Proxy Rules by the Commission and Private Parties*, 31 N.Y.U. L. Rev. 875, 886, 886-87 n.50 (1956).)

We see little force in this anomaly—if, indeed, it is in fact an anomaly. Through section 14 of the Act Congress has invested the Securities and Exchange Commission with sweeping authority to regulate the solicitation of corporate proxies; the few words employed by Congress in subsection (a) of this provision confer upon the Commission much power, but little guidance or limitation:

"It shall be unlawful for any person, by the use of the mails or by any means or in-

strumentality of interstate commerce . . . or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy . . . in respect of any security (other than an exempted security) registered pursuant to . . . this title." (15 U.S.C. § 78n(a) (1964).)

Pursuant to this broad mandate, the Commission has established elaborate procedures which are of unquestioned validity for present purposes and which, as we have indicated above, otherwise possess sufficient attributes of finality and formality to warrant judicial review. Viewing the proxy rules in this light, we see no substantial reason why the absence of formal adjudicatory hearings in the regulatory scheme should render Commission decisions, however capricious or erroneous, utterly immune to direct judicial review or redress. Indeed, it seems doubtful that there is any meaningful distinction between review in this situation and review in the commonly accepted context of judicial assessment of final agency determinations made well in advance of, or in collateral proceedings relating to, a statutorily prescribed trial-type hearing. See, e.g., *Phillips Petroleum Co. v. FPC*, supra, 227 F.2d at 475; *Isbrandtsen Co. v. United States*, supra, 93 U.S.App.D.C. at 297, 211 F.2d at 55.

On the other hand, we do see significant problems and anomalies which would result from accepting the Commission's restrictive interpretation of the jurisdictional statute. There is no doubt that the Medical Committee could obtain a judicial determination of the legitimacy of its claim through a private action against Dow Chemical in the district court; the Supreme Court held that such a remedy is implicit in section 14(a) in *J. I. Case v. Borak*, 377 U.S. 426 (1964). The essential question, then, is whether the district court is a more appropriate forum for adjudication of petitioner's claim than this court. We believe that every substantial consideration in this case leads to precisely the opposite conclusion.

Here the Medical Committee does not seek to contest any matters of fact which would require a trial de novo; rather, petitioner seeks only to have its proposal assessed by the Commission under a proper interpretation of the governing statutes and rules. The petitioner does not seek any relief which is peculiarly within the competence of the district court; instead, it seeks merely to have the cause remanded so that the Commission, in accord with proper standards, can make an enlightened determination of whether enforcement action would be appropriate. Thus we see no practical or theoretical virtues in commanding a course of action which "would result in equal inconvenience" to the petitioner, the Commission, and the overcrowded courts, and "would constitute circuitous routes for the determination of issues easily and directly determinable by review in this court." *American Sumatra Tobacco Corp. v. SEC*, 68 App. D.C. 77, 82, 93 F.2d 236, 241 (1937). See also *Gardner v. Toilet Goods Ass'n, Inc.*, 387 U.S. 167, 191-93 (1967) (Justice Fortas concurring and dissenting); *Environmental Defense Fund, Inc. v. Hardin*, supra, (slip op. at 9); L. Jaffe 358.

There is also, it seems to us, an independent public interest in having the controversy decided in its present posture rather than in the context of a private action against the company. The primary and explicit purpose of section 14(a) is "the protection of investors," and the primary method of implementing this goal is through Commission regulation of proxy statements, not through private actions by individual security holders. For the small investor, personal recourse to the Commission's proxy procedures without benefit of counsel may well be the only practicable method of contesting a management

Footnotes at end of article.

decision to exclude his proxy proposal.¹² In this situation, as our recent decisions make clear, it is particularly important that the Commission look carefully at the merits of the shareholder's proposal, and that it do so pursuant to an accurate perception of the Congressional intent underlying the proxy statute. See generally *Hale v. FCC*, No. 22,751 (D.C. Cir. Feb. 16, 1970) slip op. at 15-17; concurring opinion); *Office of Communication of the United Church of Christ v. FCC*, No. 19,409 (D.C. Cir. June 20, 1969). Direct judicial review of Commission proxy decisions is unquestionably the most logical and efficient means of achieving this objective.

Thus, we hold that the Commission's decision in this case is presently reviewable, and turn our attention to an investigation of the proper scope of this review.

C. Scope of review and administrative discretions

Many of the Commission's most forceful arguments are addressed to the proposition that the action which the Medical Committee now asks us to review falls within the purview of administrative discretion and therefore is protected from judicial inquiry or interference by section 10 of the Administrative Procedure Act, 5 U.S.C. § 701(a)(2) (Supp. V, 1965-69). In large measure, this line of defense reflects the misconception of section 10 that Professor Davis has called an "all or none fallacy" which ignores the language and intent of this provision.¹³ The more accurate interpretation of the statute holds that assertions of discretion inevitably raise questions of degree which must be appraised in the context of the relevant provisions of law and the nature of the particular action sought to be reviewed: "[T]he question is not whether agency action is by law committed to agency discretion but to what extent agency action is so committed." 4 K. Davis, *Administrative Law Treatise* 33 (1958) (emphasis added); see also *Scanwell Laboratories, Inc. v. Thomas*, No. 22,863 (D.C. Cir. Feb. 13, 1970) (slip op. at 28-29). Our decisions also make clear that in analyzing issues of administrative discretion, as in dealing with general questions of reviewability, we must be fully cognizant of the strong presumption in favor of judicial review. *Environmental Defense Fund, Inc. v. Hardin*, No. 23,813 (D.C. Cir. May 28, 1970) (slip op. at 7-8).

The Commission asserts that its enforcement activities pursuant to the proxy rules are entitled to particular deference because they partake of the nature of the prosecutorial functions, which has traditionally been considered immune to judicial review.¹⁴ This contention is meritorious, as will be seen below, but only in a limited sense; and the decisions of this court have never allowed the phrase "prosecutorial discretion" to be treated as a marginal incantation which automatically provides a shield for arbitrariness. Indeed, we have explicitly alluded to the prosecutorial function in compelling an administrative agency to deal openly and fairly with public interest intervenors in licensing proceedings:

"[A] 'Public Intervenor' . . . is, in this context, more nearly like a complaining witness who presents evidence to the police or a prosecutor whose duty it is to conduct an affirmative and objective investigation of all the facts and to pursue his prosecutorial or regulatory function if there is probable cause to believe a violation has occurred.

"It was not the correct role of the Examiner or the Commission to sit back and simply provide a forum for the intervenors; the Commission's duties did not end by allowing Appellants to intervene; its duties began at that stage." (*Office of Communication of the United Church of Christ v. FCC*, No. 19,409 (D.C. Cir. June 20, 1969) (slip op. at 6).)

There is some reason to believe that similar judicial supervision of the administrative process is needed in circumstances like the present one, in order to assure that the investing public can obtain vigorous, efficient, and evenhanded implementation of the concepts of corporate democracy embodied in the proxy rules. One published study has accused the Commission of a variety of procedural sins in its regulation of proxies, most of which could be curtailed or eliminated through judicial review. Specifically, the Commission has been charged with repeatedly violating its own established procedural principles, particularly those relating to management's burden of proof in justifying the omission of proposals; of allowing non-lawyers to decide complex legal problems raised in proxy disputes; and of affording inconsistent treatment to similar factual situations for no apparent reason.¹⁵ Perhaps the most serious charge against the Commission's secretive decision-making, however, is all too clearly illustrated by the record in the present case: the lack of articulated bases for past decisions encourages management to file shotgun objections to a shareholder proposal, urging every mildly plausible legal argument that inventive counsel can contrive, in the hope that the Commission will accept one of them.¹⁶ If the Commission does agree with one of management's arguments, or if it determines not to act against the company for other reasons, the shareholder often has no idea why his proposal was deemed unworthy or what he can do to cure its defects for subsequent proxy solicitations. Viewed in this light, "discretion" can be merely another manifestation of the venerable bureaucratic technique of exclusion by attrition, of disposing of controversies through calculated non-decisions that will eventually cause eager supplicants to give up in frustration and stop "bothering" the agency.

Nevertheless, we recognize that there is a legitimate domain of administrative discretion in the proxy area, albeit not quite so broad as the Commission urges. As the Supreme Court has recognized, the Securities and Exchange Commission must process a formidable number of proxy statements in limited time and with insufficient manpower.¹⁷ Obviously not all proxy proposals can or should be given detailed consideration by the full Commission, and even the boldest advocates of judicial review recognize that the agencies' internal management decisions and allocations of priorities are not a proper subject of inquiry by the courts.¹⁸ However, that is definitely not what is at issue in the present case: here, the full Commission has exercised its discretion to review this controversy, and, as will be seen below, it has ostensibly acted in accord with a very dubious legal theory. The Medical Committee asks us merely to examine this allegedly erroneous legal premise and return the controversy to the Commission so that it may properly exercise its further discretion regarding the propriety and desirability of enforcement activity.¹⁹

Limited and partial review to examine the legal framework within which administrative discretion must be exercised is scarcely a doctrinal innovation; it has been repeatedly sustained by the Supreme Court. See, e.g., *McGrath v. Kristensen*, 340 U.S. 162, 169 (1950); *Perkins v. Elg*, 307 U.S. 325, 349-50 (1939). We think that Justice Frankfurter's incisive observations in *Rochester Telephone Corp. v. United States*, 307 U.S. 125, 136 (1939), are equally appropriate here:

"Judicial relief would be precisely the same as in the recognized instances of review by courts of Commission action; if the legal principles on which the Commission acted were not erroneous, the bill would be ordered dismissed; if the Commission was found to have proceeded on erroneous legal principles, the Commission would be ordered to

proceed within the framework of its own discretionary authority on the indicated correct principles."

We foresee scant possibility that such sharply circumscribed review, which depends upon the Commission's initial determination to review the staff decision, will cause the destruction of informal advisory and supervisory functions which the Commission now fears. The courts, we think, are abundantly capable of distinguishing between situations in which an agency gives informal advice and situations in which it formally decides among conflicting adversary claims premised on detailed legal arguments. Moreover, experience indicates that the grim forebodings which are frequently expressed in this court regarding the possibility that a particular decision will cause irreparable disruption of the administrative process only rarely, if ever, come to pass.²⁰

On the other hand, if we are to foreclose review as the Commission urges, we would surely be condoning a frustration of congressional intent; for here the petitioner asserts that the Commission is failing to correct abuses which Congress sought to end by enacting the statute, and that it is a member of the class which Congress endeavored to protect in the Securities Act. In such situations, as a leading commentator has phrased it, "[i]nterests intended as the beneficiaries of legislative munificence will have cold comfort from embracing the dry, unmovable skeleton of the statute."²¹ Review limited to the task of correcting such legal defects is consistent with the Supreme Court's interpretation of the Securities Act in *J. I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964): "[A]mong [the] chief purposes [of section 14(a)] is 'the protection of investors,' which certainly implies the availability of judicial relief where necessary to achieve that result." Therefore, we conclude that partial review of the merits of this controversy will not project us into an area which is committed by law to agency discretion.

III. THE MERITS OF PETITIONER'S PROPOSAL

The Medical Committee's sole substantive contention in this petition is that its proposed resolution could not, consistently with the Congressional intent underlying section 14(a), be properly deemed a proposal which is either motivated by general political and moral concerns, or related to the conduct of Dow's ordinary business operations. These criteria are two of the established exceptions to the general rule that management must include all properly submitted shareholder proposals in its proxy materials. They are contained in Rule 14a-8(c), 17 C.F.R. § 240.14 a-8(c), (1970), which provides in relevant part:

"[M]anagement may omit a proposal . . . from its proxy statement and form of proxy under any of the following circumstances: . . .

"(2) If it clearly appears that the proposal is submitted by the security holder . . . primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes; or . . .

"(5) If the proposal consists of a recommendation or request that the management take action with respect to a matter relating to the conduct of the ordinary business operations of the issuer."

Despite the fact that our October 13 order in this case deferred resolution of the jurisdictional issue pending full argument on the merits (see part I, *supra*), the Commission has not deigned to address itself to any possible grounds for allowing management to exclude this proposal from its proxy statement. We confess to a similar puzzlement as to how the Commission reached the result which it did, and thus we are forced to remand the controversy for a more illuminating consideration and decision. Cf. *Environmental Defense Fund, Inc. v. Hardin*, *supra*. In aid of this consideration on remand,

we feel constrained to explain our difficulties with the position taken by the company and endorsed by the Commission.

It is obvious to the point of banality to restate the proposition that Congress intended by its enactment of section 14 of the Securities Exchange Act of 1934 to give true vitality to the concept of corporate democracy. The depth of this commitment is reflected in the strong language employed in the legislative history:

"Even those who in former days managed great corporations were by reason of their personal contacts with their shareholders constantly aware of their responsibilities. But as management became divorced from ownership and came under the control of banking groups, men forgot that they were dealing with the savings of men and the making of profits became an impersonal thing. When men do not know the victims of their aggression they are not always conscious of their wrongs. . . ."

"Fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange. Managements of properties owned by the investing public should not be permitted to perpetuate themselves by the misuse of corporate proxies." (H.R. Rep. No. 1383, 73d Cong., 2d Sess. 5, 13 (1934). See also *SEC v. Transamerica Corp.*, 163 F.2d 511, 517, 518 (3d Cir. 1947), cert. denied, 332 U.S. 847 (1948).)

In striving to implement this open-ended mandate, the Commission has gradually evolved its present proxy rules. Early exercises of the rule-making power were directed primarily toward the achievement of full and fair corporate disclosure regarding management proxy materials (see, e.g., 3 Fed. Reg. 1991 (1938); 5 Fed. Reg. 174 (1940)); the rationale underlying this development was the Commission's belief that the corporate practice of circulating proxy materials which failed to make reference to the fact that a shareholder intended to present a proposal at the annual meeting rendered the solicitation inherently misleading. See *Hearings on Security and Exchange Commission Proxy Rules Before the House Comm. on Interstate and Foreign Commerce*, 78th Cong., 1st Sess., pt. 1, at 169-70 (1943) [hereinafter "House Hearings"].

From this position, it was only a short step to a formal rule requiring management to include in its proxy statement any shareholder proposal which was "a proper subject for action by the security holders." 7 Fed. Reg. 10,659 (1942). It eventually became clear that the question of what constituted a "proper subject" for shareholder action was to be resolved by recourse to the law of the state in which the company had been incorporated; however, the paucity of applicable state law giving content to the concept of "proper subject" led the Commission to seek guidance from precedent existing in jurisdictions which had a highly developed commercial and corporate law, and to develop its own "common law" relating to proper subjects for shareholder action. See generally *II L. Loss, Securities Regulation* 905-06 (1961); *Hearings on SEC Enforcement Problems Before a Subcom. of the Senate Comm. on Banking and Currency*, 85th Cong., 1st Sess., pt. 1, at 118 (1957) [hereinafter "Senate Hearings"].

Further areas of difficulty became apparent as experience was gained in administering the "proper subject" test, and these conflicts provided the Commission with opportunities to put a detailed gloss upon the general phraseology of its rules. Thus, in 1945 the Commission issued a release containing an opinion of the Director of the Division of Corporation Finance that was rendered in response to a management request to omit

shareholder resolutions which bore little or no relationship to the company's affairs; for example, these shareholder resolutions included proposals "that the anti-trust laws and the enforcement thereof be revised," and "that all Federal legislation hereafter enacted providing for workers and farmers to be represented should be made to apply to investors."²² The Commission's release endorsed the Director's conclusion that "proposals which deal with general political, social or economic matters are not, within the meaning of the rule, 'proper subjects for action by security holders.'"²³ The reason for this conclusion was summarized as follows in the Director's opinion:

"Speaking generally, it is the purpose of Rule X-14A-7 to place stockholders in a position to bring before their fellow stockholders matters of concern to them as stockholders in such corporation; that is, such matters relating to the affairs of the company concerned as are proper subjects for stockholders' action under the laws of the state under which it was organized. It was not the intent of Rule X-14A-7 to permit stockholders to obtain the consensus of other stockholders with respect to matters which are of a general political, social or economic nature. Other forums exist for the presentation of such views."²⁴

Several years after the Commission issued this release, it was confronted with the same kind of problem when the management of a national bus company sought to omit a shareholder proposal phrased as "A Recommendation that Management Consider the Advisability of Abolishing the Segregated Seating System in the South"—a proposal which, on its face, was ambiguous with respect to whether it was limited solely to company policy rather than attacking all segregated seating, and which quite likely would have brought the company into violation of state laws then assumed to be valid.²⁵ The Commission staff approved management's decision to omit the proposal, and the shareholder then sought a temporary injunction against the company's solicitation in a federal district court. The injunction was denied because the plaintiff had failed to exhaust his administrative remedies or to show that he would be irreparably harmed by refusal to grant the requested relief. *Peck v. Greyhound Corp.*, 97 F. Supp. 679 (S.D.N.Y. 1951). The Commission amended its rules the following year to encompass the above-quoted exception for situations in which "it clearly appears that the proposal is submitted by the security holder . . . primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes." 17 Fed. Reg. 11,433 (1952); see also *id.* at 11, 431. So far as we have been able to determine, the Commission's interpretation or application of this rule has not been considered by the courts.

The origins and genesis of the exception for proposals "relating to the conduct of the ordinary business operations of the issuer" are somewhat more obscure. This provision was introduced into the proxy rules in 1954, as part of amendments which were made to clarify the general proposition that the primary source of authority for determining whether a proposal is a proper subject for shareholder action in state law. See 19 Fed. Reg. 246 (1954). Shortly after the rule was adopted, the Commission explained its purpose to Congress in the following terms:

"The policy motivating the Commission in adopting the rule . . . is basically the same as the underlying policy of most State corporation laws to confine the solution of ordinary business problems to the board of directors and place such problems beyond the competence and direction of the shareholders. The basic reason for this policy is that it is manifestly impracticable in most cases for stockholders to decide management problems at corporate meetings. . . ."

"While rule X-14A-S does not require that the ordinary business operations be determined on the basis of State law, the premise of Rule X-14A-S is that the propriety of . . . proposals for inclusion in the proxy statement is to be determined in general by the law of the State of incorporation. . . . Consistency with this premise requires that the phrase 'ordinary business operations' in rule X-14A-S have the meaning attributed to it under applicable State law. To hold otherwise would be to introduce into the rule the possibility of endless and narrow interpretations based on no ascertainable standards." (Senate Hearings at 118.)

It also appears that no administrative interpretation of this exception has yet been scrutinized by the courts.

These two exceptions are, on their face, consistent with the legislative purpose underlying section 14; for it seems fair to infer that Congress desired to make proxy solicitations a vehicle for corporate democracy rather than an all-purpose forum for malcontented shareholders to vent their spleen about irrelevant matters,²⁶ and also realized that management cannot exercise its specialized talents effectively if corporate investors assert the power to dictate the minutiae of daily business decisions. However, it is also apparent that the two exceptions which these rules carve out of the general requirement of inclusion can be construed so as to permit the exclusion of practically any shareholder proposal on the grounds that it is either "too general" or "too specific." Indeed, in the present case Dow Chemical Company attempted to impale the Medical Committee's proposal on both horns of this dilemma: in its memorandum of counsel, it argued that the Medical Committee's proposal was a matter of ordinary business operations properly within the sphere of management expertise and, at the same time, that the proposal clearly had been submitted primarily for the purpose of promoting general political or social causes. (App. 9a-10a; see also *id.* at 19a). As noted above, the Division of Corporation Finance made no attempt to choose between these potentially conflicting arguments, but rather merely accepted Dow Chemical's decision to omit the proposal "[f]or reasons stated in [the company's] letter and the accompanying opinion of counsel, both dated January 17, 1969;" this determination was then adopted by the full Commission. Close examination of the company's arguments only increases doubt as to the reasoning processes which led the Commission to this result.

In contending that the Medical Committee's proposal was properly excludable under Rule 14a-8(c)(5), Dow's counsel asserted:

"It is my opinion that the determination of the products which the company shall manufacture, the customers to which it shall sell the products, and the conditions under which it shall make such sales are related to the conduct of the ordinary business operations of the Company and that any attempt to amend the Certificate of Incorporation to define the circumstances under which the management of the Company shall make such determinations is contrary to the concept of corporate management, which is inherent in the Delaware General Corporation Act under which the Company is organized."²⁸

In the first place, it seems extremely dubious that this superficial analysis complies with the Commission's longstanding requirements that management must sustain the burden of proof when asserting that a shareholder proposal may properly be omitted from the proxy statement, and that "[w]here management contends that a proposal may be omitted because it is not proper under State law, it will be incumbent upon management to refer to the applicable statute or case law." 19 Fed. Reg. 246 (1954). As noted above, the Commission has formally

Footnotes at end of article.

represented to Congress that Rule 14a-8(c) (5) is intended to make state law the governing authority in determining what matters are ordinary business operations immune from shareholder control; yet, the Delaware General Corporation law provides that a company's Certificate of Incorporation may be amended to "change, substitute, enlarge or diminish the nature of [the company's] business."²⁹ If there are valid reasons why the Medical Committee's proposal does not fit within the language and spirit of this provision, they certainly do not appear in the record.

The possibility that the Medical Committee's proposal could properly be omitted under Rule 14a-8(c) (2) appears somewhat more substantial in the circumstances of the instant case, although once again it may fairly be asked how Dow Chemical's arguments on this point could be deemed a rational basis for such a result: the paragraph in the company's memorandum of counsel purporting to deal with this issue, which is set forth in the margin,³⁰ consists entirely of a fundamentally irrelevant recitation of some of the political protests which had been directed at the company because of its manufacture of napalm, followed by the abrupt conclusion that management is therefore entitled to exclude the Medical Committee's proposal from its proxy statement. Our own examination of the issue raises substantial questions as to whether an interpretation of Rule 14a-8(c) (2) which permitted omission of this proposal as one motivated primarily by general political or social concerns would conflict with the congressional intent underlying section 14(a) of the Act.

As our earlier discussion indicates, the clear import of the language, legislative history, and record of administration of section 14(a) is that its overriding purpose is to assure to corporate shareholders the ability to exercise their right—some would say their duty³¹—to control the important decisions which affect them in their capacity as stockholders and owners of the corporation. Thus, the Third Circuit has cogently summarized the philosophy of section 14(a) in the statement that "[a] corporation is run for the benefit of its stockholders and not for that of its managers." *SEC v. Transamerica Corp.*, 163 F. 2d 511, 517 (3d Cir. 1947), cert. denied, 332 U.S. 847 (1948).

Here, in contrast to the situations detailed above which led to the promulgation of Rule 14a-8(c) (2), the proposal relates solely to a matter that is completely within the accepted sphere of corporate activity and control. No reason has been advanced in the present proceedings which leads to the conclusion that management may properly place obstacles in the path of shareholders who wish to present to their co-owners, in accord with applicable state law, the question of whether they wish to have their assets used in a manner which they believe to be more socially responsible but possibly less profitable than that which is dictated by present company policy. Thus, even accepting Dow's characterization of the purpose and intent of the Medical Committee's proposal, there is a strong argument that permitting the company to exclude it would contravene the purpose of section 14(a).

However, the record in this case contains indications that we are confronted with quite a different situation. The management of Dow Chemical Company is repeatedly quoted in sources which include the company's own publications as proclaiming that the decision to continue manufacturing and marketing napalm was made not because of business considerations, but in spite of them; that management in essence decided to pursue a course of activity which generated little profit for the shareholders and actively impaired the company's public relations and recruitment activities because management considered this action morally and politically

desirable. (App. 40a-43a; see also *id.* at 33.) The proper political and social role of modern corporations is, of course, a matter of philosophical argument extending far beyond the scope of our present concern; the substantive wisdom or propriety of particular corporate political decisions is also completely irrelevant to the resolution of the present controversy. What is of immediate concern, however, is the question of whether the corporate proxy rules can be employed as a shield to isolate such managerial decisions from shareholder control.³² After all, it must be remembered that "[t]he control of great corporations by a very few persons was the abuse at which Congress struck in enacting Section 14(a)." *SEC v. Transamerica Corp.*, supra, 163 F.2d at 518.

We think that there is a clear and compelling distinction between management's legitimate need for freedom to apply its expertise in matters of day-to-day business judgment, and management's patently illegitimate claim of power to treat modern corporations with their vast resources as personal satrapies implementing personal political or moral predilections. It could scarcely be argued that management is more qualified or more entitled to make these kinds of decisions than the shareholders who are the true beneficial owners of the corporation; and it seems equally implausible that an application of the proxy rules which permitted such a result could be harmonized with the philosophy of corporate democracy which Congress embodied in section 14(a) of the Securities Exchange Act of 1934.

In light of these considerations, therefore, the cause must be remanded to the Commission so that it may reconsider petitioner's claim within the proper limits of its discretionary authority as set forth above, and so that "the basis for [its] decision [may] appear clearly on the record, not in conclusory terms but in sufficient detail to permit prompt and effective review."³³

Remanded for further proceedings consistent with this opinion.

FOOTNOTES

¹ Napalm is described as follows in 15 Encyclopaedia Britannica 1170 (1968):

"[T]he aluminum soap of naphthenic and palmic acids which, when mixed with gasoline, forms a sticky sirup used in chemical warfare.

"In World War I both Germany and the Allies used raw gasoline in flame throwers . . . but it burned too quickly to be fully effective. What was needed was a thickener that would slow down the rate of burning and increase the range of the weapon. Napalm did this, and it also greatly raised the temperature at which the fuel burned. Harvard university scientists, in cooperation with the U.S. army chemical warfare service, developed the substance in 1942."

² Memorandum in Support of Respondent's Motion to Dismiss Petition for Review at 5 n.2:

"This court may, alternatively, be without jurisdiction based upon the Medical Committee's failure to file its May 29 petition to review 'within sixty days after the entry of' the alleged order. . . . We do not urge the point, however, since the Commission's staff did not advise the Medical Committee of the Commission's March 24 decision . . . until April 2. . . ." [Emphasis added.]

³ *Lile v. SEC*, 324 F.2d 772 (9th Cir. 1963), which seems most directly apposite to the facts of the instant case, was decided prior to the adoption of the present version of Rule 22(k). See 29 Fed. Reg. 3424 (1964). Moreover, the discussion of the timeliness problem in *Lile* appears to be dictum, since the case was decided on the ground of exhaustion of administrative remedies. However, to the extent that the discussion in *Lile* is useful to elucidate the present inquiry, it militates against the Commission's

argument: the text of that opinion clearly reflects the court's concern that orders which assertedly had the effect of starting the running of the 60-day review period were not readily available for public inspection. See 324 F.2d at 773.

M. G. Davis & Co. v. Cohen, 256 F.Supp. 128 (S.D.N.Y.), aff'd, 369 F.2d 360 (2d Cir. 1966), which the Commission relies upon, is distinguishable in that it involved a different provision of the Rules of Practice which governed the issuance of orders initiating administrative proceedings and which did not include language comparable to that contained in Rule 22(k) relating to the parties' immediate right to inspect orders affecting them.

⁴ For a discussion of an analogous problem of computation arising under the Federal Rules of Civil Procedure, see 4 C. Wright & A. Miller, Federal Practice and Procedure 632-42 (1969).

⁵ Dicta in a few cases and remarks by some scholarly commentators tend to indicate that it has generally been assumed that proxy decisions like the present one are not reviewable by the courts. See, e.g., *Klasterin v. Roth*, 353 F.2d 182, 183 n.2 2d Cir. (1965); *Clusserath, The Amended Stockholder Proposal Rule: A Decade Later*, 40 N.D. Lawyer 13, 17 (1964). However, we have found no holding that proxy decisions like the present one are unreviewable, and no adequate analysis of the myriad arguments bearing on the jurisdictional question.

⁶ The absence of any indication in the legislative history that Congress intended to preclude review serves to distinguish the instant controversy from *Schilling v. Rogers*, 363 U.S. 666 (1960), which the Commission heavily relies upon. See, e.g., 363 U.S. at 671:

"The only express provision in the Trading with the Enemy Act for recourse to the courts by those claiming the return of property vested during World War II is that contained in § 9(a). That section, however, is applicable only to persons not enemies or allies of enemies as defined in the relevant statutes, and hence is not available to this petitioner, an enemy national. . . .

"The question then is whether a right to such relief can fairly be implied. . . . The terms of § 32 and its legislative history speak strongly against any such implication."

Cf. Helkkila v. Barber, 345 U.S. 229, 233 (1953): "Each statute in question must be examined individually; its purpose and history as well as its text are to be considered in deciding whether the courts were intended to provide relief for those aggrieved by administrative action. Mere failure to provide for judicial intervention is not conclusive; neither is the presence of language which appears to bar it."

The *Schilling* case is further distinguishable because the administrative action there in issue was found to be wholly within the province of administrative discretion; see 363 U.S. at 674. As will be developed more fully below, we do not find the discretionary aspects of the Commission's action preclusive of review in the present controversy. Finally, it must be noted that the subject matter of the regulatory scheme in *Schilling* was permeated with overtones of foreign affairs and national defense policy—considerations which have always made the courts reluctant to review administrative action, and which obviously are totally lacking here. See e.g., *Curran v. Laird*, U.S. App. D.C., 420 F.2d 122 (1969) (*en banc*).

⁷ See part II C, *infra*. *Schilling v. Rogers*, 363 U.S. 666 (1960), which is discussed in the preceding footnote, clearly indicates that the issue of whether particular administrative action is rendered unreviewable by implication of a statute or by pragmatic concerns should be considered a different inquiry from the question of whether agency discretion precludes review.

⁸ Frequently these considerations are

analyzed under one or more of the related doctrines of ripeness, finality, and exhaustion of administrative remedies; however, it is not uncommon to find these factors treated under the more general rubric of reviewability.

⁹ See *Peck v. Greyhound Corp.*, 97 F.Supp. 679 (S.D.N.Y. 1951).

¹⁰ 307 U.S. 125 (1939). See generally 4 K. Davis, *Administrative Law Treatise* 87-93 (1958).

¹¹ 17 C.F.R. § 202.1 (1970) provides:

"The statutes administered by the Commission provide generally (1) for the filing with it of certain statements, such as . . . proxy solicitation material . . . ; (2) for Commission determination through formal procedures of matters initiated by private parties or by the Commission; (3) for investigation and examination of persons and records where necessary to carry out the purposes of the statutes . . .

"(c) The statutes and the published rules, regulations and forms thereunder prescribe the course and method of formal procedures to be followed in Commission proceedings. These are supplemented where feasible by certain informal procedures designed to aid the public and facilitate the execution of the Commission's functions. . . .

"(d) The informal procedures of the Commission are largely concerned with the rendering of advice and assistance by the Commission's staff to members of the public dealing with the Commission." [Emphasis added.]

Informal negotiation also plays a large role in Commission hearings which are inordinately formal in nature; see, e.g., 17 C.F.R. § 202.4 (1970):

"(a) Applications, declarations, and other requests involving formal Commission action after opportunity for hearing are scrutinized by the appropriate division for conformance with applicable statutory standards and Commission rules and generally the filing party is advised of deficiencies. . . .

"(b) After the staff has had an opportunity to study an application or declaration, interested persons may informally discuss the problems therein raised to the extent that time and the nature of the case permit. . . .

"(c) During the course of the hearings, the staff is generally available for informal discussions to reconcile bona fide divergent views not only between itself and other persons interested in the proceedings, but [also] among all interested persons; and, when circumstances permit, an attempt is made to narrow, if possible, the issues to be considered at the formal hearing."

¹² This contention was recently presented to the Commission in a proxy contest involving the General Motors Corporation. See CONGRESSIONAL RECORD, p. 7770, (March 17, 1970):

It must be recognized that Management's proxy statement is the only effective vehicle through which all of the shareholders can have an opportunity to express themselves, and even to hear any arguments on the questions involved. . . . [T]he cost [of conducting a competing solicitation] is virtually prohibitive except to extremely well heeled shareholders. . . . This is no ordinary dispute with Management; it is not an effort by insurgent shareholders to seize control of the corporation. If it were so, one could justify large expenditures because the individual rewards are great and because, if successful, the insurgents could obtain reimbursement of their expenses from the company. The issues here lack that personal pecuniary bias. Denial of access to the shareholders through management's proxy solicitation, practically speaking, is total denial."

¹³ 4 K. Davis, *Administrative Law Treatise* 33 (1958). We note that Professor Davis espouses a more restrictive role for the courts in reviewing the discretionary acts of administrative agencies than that which is urged

by other scholarly commentators. See, e.g., Berger, *Administrative Arbitrariness: A Synthesis*, 78 Yale L.J. 965 (1969), and authorities cited *id.* at 966 n.9.

¹⁴ *But cf.* K. DAVIS, *DISCRETIONARY JUSTICE* 225-26, 229 (1969):

"In the regulatory agencies, abuse of the power to prosecute or not to prosecute may be ten times as frequent as abuse of the power of formal adjudication and therefore may be ten times as damaging to justice. . . .

"The prosecuting power everywhere, whether exercised by police, by prosecutors, by regulatory agencies, or by other administrators, can and should be highly structured by both rules and precedents. . . .

"The American assumption that prosecutors' discretion should not be judicially reviewable developed when executive functions were generally unreviewable. The assumption is in need of reexamination in light of the twentieth-century discovery that courts can review executive action to protect against abuses while at the same time avoiding judicial assumption of the executive power."

¹⁵ Clusserath, *The Amended Stockholder Proposal Rule: A Decade Later*, 40 N.D. Lawyer 13 (1964).

¹⁶ See *id.* at 43.

¹⁷ *Cf.* J. I. Case Co. v. Borak, 377 U.S. 426, 432 (1964):

"The Commission advises that it examines over 2,000 proxy statements annually and each of them must necessarily be expedited. Time does not permit an independent examination of the facts set out in the proxy material and this results in the Commission's acceptance of the representations contained therein at their face value, unless contrary to other material on file with it."

¹⁸ *Cf.* Environmental Defense Fund, Inc. v. Hardin, *supra*, slip. op. at 10; Goldman, *Administrative Delay and Judicial Relief*, 66 MICH.L.REV. 1423, 1426-31 (1968).

¹⁹ Were we to compel the Commission either to entertain administrative review of a staff decision in the first instance, or to undertake particular enforcement activity upon remand, our decision might well conflict with the precedents which the Commission has cited involving petitioners' attempts to have courts order the Commission to initiate investigations pursuant to different sections of the Act. See *Dyer v. SEC*, 291 F.2d 774 (8th Cir. 1961); *Leighton v. SEC*, 95 U.S.App.D.C. 217, 221 F.2d 91, *cert. denied*, 350 U.S. 825 (1955). We note, however, that other circuits in dealing with action by other agencies have occasionally circumscribed administrative discretion to undertake investigatory activities. See e.g., *Trailways of New England, Inc. v. CAB*, 412 F.2d 926, 931-33 (1st Cir. 1969).

²⁰ *Cf.* *Goodman v. United States*, No. 22,521 (D.C. Cir. Jan. 30, 1970) (slip op. at 9): "Words like 'chaos' and 'impossible situation' fall readily from bureaucratic lips when confronted with the prospect of doing something not absolutely required by the book." See also *Scanwell Laboratories, Inc. v. Thomas*, No. 22,863 (D.C. Cir. Feb. 13, 1970) (slip op. at 25-26).

²¹ Jaffe, *The Individual Right to Initiate Administrative Process*, 25 Iowa L. Rev. 485 (1940).

²² Securities Exchange Act Release No. 3638 (Jan. 3, 1945), Brief for Petitioner at Addendum p. 2-3.

²³ *Id.* at Addendum p. 2.

²⁴ *Id.* at Addendum p. 3 (emphasis added).

²⁵ See Emerson & Latham, *The SEC Proxy Proposal Rule: The Corporate Gadfly*, 19 U. Chi. L. Rev. 807, 833 (1952); CONGRESSIONAL RECORD, p. 7771 (March 17, 1970).

²⁶ See, e.g., the following colloquy, which appears in House Hearings at 162-63:

"Mr. BOREN. So one man, if he owned one share in A.T. & T. . . . and another share in

R.C.A. . . . if he decided deliberately . . . to become a professional stockholder in each one of the companies—he could have a hundred-word propaganda statement prepared and he could put it in every one of these proxy statements. Suppose he were a Communist.

"Commissioner PURCELL. That is possible. We have never seen such a case.

"Mr. BOREN. Suppose a man were a Communist and he wanted to send to all of the stockholders of all of these firms, a philosophic statement of 100 words in length, or a propaganda statement. . . . He could by the mere device of buying one share of stock . . . have available to him the mailing list of all the stockholders in the Radio Corporation of America. . . .

"Commissioner PURCELL. Of course, we have never seen such a case; and if such a case came before us, then we would have to deal with it and make such appropriate changes as might seem necessary."

²⁷ App. 20a. The letter referred to by the Division merely contains a citation to the proxy rules and a reference to the opinion of counsel (see App. 12a); thus, for present purposes the only relevant argument is that contained in the memorandum of counsel.

²⁸ App. 9a (emphasis added). The remainder of the company's argument under Rule 14a-8(c) (5) reads as follows, in its entirety: "Moreover, there is considerable doubt as to the efficacy of the proposed limitation in the context of the ability of the Government of the United States to issue a directive that the Company manufacture napalm. Therefore, the proposed limitation could conceivably be contrary to the requirements of the Defense Production Act of 1950." (App. 9a-10a.)

In response to this contention, the Medical Committee pointed out that "any such amendment would, of course, be subject to the requirements of the 'Defense Production Act of 1950' as are the corporate charters and management decisions of all United States Corporations." (App. 16a.) No rebuttal by Dow was forthcoming.

²⁹ Chapter 1, Title 8 Delaware Code §§ 242 (a) (2), 242(d) (19—). *Cf.* II L. Loss, *Securities Regulation* 906 (1961): "Inevitably the Commission, while purporting to find and apply a generally nonexistent state law, has been building up a 'common law' of its own as to what constitutes a 'proper subject' for shareholder action. It is a 'common law' which undoubtedly would yield, as it should, to a contrary decision of the particular state court."

³⁰ App. 10a:

"It is a well-known fact that the Company has been the target of protests and demonstrations for the past few years at its office and plant locations, and on the occasion of recruiting on college and university campuses, as well as at its annual meeting of stockholders held May 8, 1968. The various protests and demonstrations are a reflection of opposition on the part of certain segments of the population against the policy of the United States Government in waging the war in Viet Nam. Although The Dow Chemical Company was not among the 100 largest prime contractors with the Department of Defense during the 1967-68 Government fiscal year and was only 75th on the list in the 1966-67 fiscal year, it appears to have been singled out symbolically by the protesters. Under all of these circumstances it is my opinion that it clearly appears that the proposal is primarily for the purpose of promoting a general political, social or similar cause."

³¹ See Bayne, *The Basic Rationale of Proper Subject*, 34 U. DET. L.J. 575, 579 (1957):

"In so far as the shareholder has contributed an asset of value to the corporate venture, in so far as he has handed over his goods and property and money for use and increase, he has not only the clear right, but

more to the point, perhaps, he has the stringent duty to exercise control over that asset for which he must keep care, guard, guide, and in general be held seriously responsible. . . .

"As much as one may surrender the immediate disposition of [his] goods, he can never shirk a supervisory and secondary duty (not just a right) to make sure these goods are used justly, morally and beneficially.

²² Cf. Note, *Corporate Political Affairs Programs*, 70 YALE L.J. 821, 846-47 (1961).

²³ *Environmental Defense Fund, Inc. v. Hardin*, No. 23,813 (D.C. Cir. May 28, 1970) (slip op. at 11).

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. WRIGHT, for the period extending from August 3 through August 11, on account of public business.

Mr. PEPPER (at the request of Mr. BENNETT), for the balance of the week, on account of official business.

Mr. MATSUNAGA (at the request of Mr. Boggs), for today, on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MILLER of Ohio) to revise and extend their remarks and include extraneous matter:)

Mr. GUBSER for 30 minutes today.

Mr. HALPERN for 5 minutes today.

Mr. WILLIAMS for 25 minutes July 16.

(The following Members (at the request of Mr. PREYER of North Carolina) to revise and extend their remarks and include extraneous material:)

Mr. MINISH for 5 minutes today.

Mr. KEE for 30 minutes today.

Mr. REUSS for 30 minutes today.

Mr. TIERNAN for 15 minutes today.

Mr. ROSTENKOWSKI for 60 minutes July 22.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. MADDEN and to include extraneous matter.

Mr. MAHON in two instances and to include extraneous matter.

Mr. RANDALL and to include extraneous matter in two instances.

Mr. HOGAN to include following his colloquy with Mr. ADAMS the text of the decision of the U.S. Circuit Court for the District of Columbia in Bosley against the United States April 9, 1970.

Mr. McCORMACK (at the request of Mr. Flood) immediately following the remarks of Mr. FLOOD on his special order today.

(The following Members (at the request of Mr. MILLER of Ohio) and to include extraneous matter:)

Mr. HORTON in two instances.

Mr. STEIGER of Wisconsin.

Mr. CUNNINGHAM in five instances.

Mr. KLEPPE.

Mr. COWGER.

Mr. McCLOSKEY.

Mr. HUNT.
Mr. HOSMER in two instances.
Mr. WYMAN in two instances.
Mr. LUJAN in two instances.
Mr. NELSEN in four instances.

Mr. WOLD.
Mr. BOB WILSON.
Mr. FISH.
Mr. SMITH of New York.
Mr. ERLBORN.
Mrs. MAY.

Mr. FULTON of Pennsylvania in 10 instances.

Mr. GOODLING.
Mr. SCHMITZ.
Mr. DUNCAN in two instances.
Mr. GOLDWATER in two instances.
Mr. WYDLER.

Mr. DERWINSKI in two instances.
Mr. RUPPE.
Mr. BURKE of Florida.
Mr. LANDGREBE in two instances.
Mr. DEVINE.
Mr. BUSH.
Mr. SCHWENGLER.

(The following Members (at the request of Mr. PREYER of North Carolina) and to include extraneous material:)

Mr. BRASCO.
Mr. GRAIMO in 10 instances.
Mr. FRASER.
Mr. BOLLING in two instances.
Mr. BURKE of Massachusetts in two instances.

Mr. DADDARIO in five instances.
Mr. WALDIE.
Mrs. GRIFFITHS in two instances.
Mr. ANDERSON of California in two instances.

Mr. BURTON of California.
Mr. VANIK in two instances.
Mr. WHITE in two instances.
Mr. PATTEN in two instances.
Mr. RODINO in two instances.
Mr. BINGHAM in eight instances.

Mr. FRIEDEL in two instances.
Mr. EILBERG.
Mr. GARMATZ.
Mr. FOUNTAIN in three instances.
Mr. KLUCZYNSKI in two instances.
Mr. SYMINGTON in two instances.
Mr. DORN in two instances.
Mr. DINGELL.
Mr. WHITTEN.
Mr. ICHORD in two instances.
Mr. WAGGONNER.
Mr. HECHLER of West Virginia.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 2108. An act to promote public health and welfare by expanding, improving, and better coordinating the family planning services and population research activities of the Federal Government, and for other purposes; to the Committee on Interstate and Foreign Commerce.

S. 2455. An act to authorize appropriations for the Civil Rights Commission, and for other purposes; to the Committee on the Judiciary.

S. 3586. An act to amend title VII of the Public Health Service Act to establish eligibility of new schools of medicine, dentistry, osteopathy, pharmacy, optometry, veterinary medicine, and podiatry for institutional grants under section 771 thereof, to extend and improve the program relating to training of personnel in the allied health profes-

sions, and for other purposes; to the Committee on Interstate and Foreign Commerce.

ENROLLED BILLS SIGNED

Mr. FRIEDEL, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 12758. An act to authorize the Secretary of the Interior to establish a volunteers in the park program, and for other purposes.

H.R. 16595. An act to authorize appropriations for activities of the National Science Foundation, and for other purposes.

SENATE ENROLLED BILL SIGNED

The Speaker announced his signature to an enrolled bill of the Senate of the following title:

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.

BILL PRESENTED TO THE PRESIDENT

Mr. FRIEDEL, from the Committee on House Administration, reported that that committee did on July 14, 1970 present to the President, for his approval, a bill of the House of the following title:

H.R. 7618. To provide for the conveyance of certain real property of the Federal Government to the Board of Public Instruction, Okaloosa County, Fla.

ADJOURNMENT

Mr. PREYER of North Carolina. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 40 minutes p.m.), the House adjourned until tomorrow, Thursday, July 16, 1970, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2216. A letter from the Secretary of Labor, transmitting the first annual report on the work incentive program, pursuant to the Social Security Act; to the Committee on Ways and Means.

2217. A letter from the General Counsel of the Treasury, transmitting copies of the letter of the Acting Secretary of the Treasury transmitting a draft of proposed legislation to amend the act of June 10, 1938, relating to the participation of the United States in the International Criminal Police Organization, dated June 25, 1970; to the Committee on the Judiciary.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of the rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. MILLER of California: Committee on Science and Astronautics. Report on H.R. 16538. A bill to authorize appropriations to carry out the Fire Research and Safety Act of 1968; without amendment (Rept. No. 91-1304). Ordered to be printed.

Mr. THOMPSON of New Jersey: Committee on House Administration. Report on H.R. 15351. A bill to authorize additional funds for the operation of the Franklin Delano Roosevelt Memorial Commission; with an amendment (Rept. No. 91-1305). Ordered to be printed.

Mr. FLOOD: Committee of conference. Conference report on H.R. 16916 (Rept. No. 91-1306). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BUTTON:

H.R. 18468. A bill to amend the Social Security Act concerning psychiatric benefits available under title XVIII and XIX; to the Committee on Ways and Means.

By Mr. DADDARIO (for himself, Mr. MILLER of California, Mr. FULTON of Pennsylvania, Mr. DAVIS of Georgia, Mr. BELL of California, Mr. WAGGONER, Mr. MOSHER, Mr. BROWN of California, Mr. LUKENS, Mr. CABELL, Mr. WINN, Mr. PODELL, and Mr. SYMINGTON):

H.R. 18469. 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 Science and Astronautics.

By Mr. HALPERN:

H.R. 18470. A bill to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. HOSMER:

H.R. 18471. A bill to aid in the control of drug abuse by establishing a code for the identification of prescription drugs, to be printed on individual tablets or capsules; to the Committee on Interstate and Foreign Commerce.

By Mr. LENNON:

H.R. 18472. A bill to amend the Agricultural Adjustment Act of 1938 to authorize the sale of tobacco acreage allotments under certain conditions; to the Committee on Agriculture.

By Mr. LUJAN:

H.R. 18473. A bill to assist in meeting the housing goals of the American people by creating the Federal Home Mortgage Loan Corporation; to the Committee on Banking and Currency.

By Mr. MURPHY of New York (for himself, Mr. ASHLEY, Mr. BLATNIK, Mr. BOGGS, Mr. BYRNE of Pennsylvania, Mr. CULVER, Mr. DENT, Mr. GALLAGHER, Mr. GAYDOS, Mr. GIAMMO, Mr. HALPERN, Mr. KARTH, Mr. MILLER of California, Mr. MURPHY of Illinois, Mr. NIX, Mr. PUCINSKI, Mr. ROSTENKOWSKI, Mr. THOMPSON of New Jersey, Mr. TIERNAN, and Mr. VANIK):

H.R. 18474. A bill requiring that each Member of Congress be notified of the intended disposition of federally owned real property in the district he represents; to the Committee on Government Operations.

By Mr. RIVERS:

H.R. 18475. A bill to authorize the long-term chartering of ships by the Secretary of the Navy, and for other purposes; to the Committee on Armed Services.

By Mr. RODINO:

H.R. 18476. A bill to amend title 18 of the

United States Code to provide for better control of interstate traffic in explosives; to the Committee on the Judiciary.

By Mr. BOW:

H.R. 18477. A bill to amend sections 4261 and 7275 of the Internal Revenue Code of 1954 (as added by the Airport and Airway Revenue Act of 1970) with respect to the Federal tax on transportation of persons by air; to the Committee on Ways and Means.

By Mr. FEIGHAN:

H.R. 18478. A bill to amend the Older Americans Act of 1965 to provide grants to States for the establishment, maintenance, operation, and expansion of low-cost meal programs, nutrition training and education programs, opportunity for social contact, and for other purposes; to the Committee on Education and Labor.

By Mr. GREEN of Pennsylvania:

H.R. 18479. A bill to authorize the Secretary of the Interior to establish the Thaddeus Kosciuszko Home National Historic Site in the State of Pennsylvania, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. LOWENSTEIN:

H.R. 18480. A bill to amend the Older Americans Act of 1965 to provide grants to States for the establishment, maintenance, operation, and expansion of low-cost meal programs, nutrition training and education programs, opportunity for social contacts, and for other purposes; to the Committee on Education and Labor.

H.R. 18481. A bill to authorize the establishment of an older worker community service program; to the Committee on Education and Labor.

By Mr. MEEDS:

H.R. 18482. A bill to provide for the disposition of funds appropriated to pay judgments in favor of the Snohomish Tribe in Indian Claims Commission docket No. 125, the Upper Skagit Tribe in Indian Claims Commission docket No. 92, and the Snoqualmie and Skykomish Tribes in Indian Claims Commission docket No. 93, and for other purposes; to the Committee on Interior and Insular Affairs.

H.R. 18483. A bill to provide for the disposition of funds appropriated to pay the judgment of the Indian Claims Commission in favor of the Snohomish Tribe in docket No. 125; to the Committee on Interior and Insular Affairs.

By Mr. MINISH:

H.R. 18484. A bill to amend title 38 of the United States Code to provide improved medical care to veterans; to provide hospital and medical care to certain dependents and survivors of veterans; to improve recruitment and retention of career personnel in the Department of Medicine and Surgery; and for other purposes; to the Committee on Veterans' Affairs.

By Mr. SISK (for himself, Mr. GUBSER, Mr. ABBITT, Mr. BROYHILL of Virginia, Mr. DON H. CLAUSEN, Mr. COLLIER, Mr. CONABLE, Mr. EDWARDS of California, Mr. LEGGETT, Mr. MATHIAS, Mr. McFALL, Mr. MATSUNAGA, Mrs. MAY, Mr. NELSEN, Mr. SCOTT, Mr. STEIGER of Wisconsin, Mr. TEAGUE of California, Mr. WALDIE, Mr. ULLMAN, Mr. DAVIS of Wisconsin, and Mr. VANDER JAGT):

H.R. 18485. A bill to provide for the payment of losses incurred by growers, manufacturers, packers, and distributors as a result of the barring of the use of cyclamates in food after extensive inventories of foods containing such substances had been prepared or packed or packaging, labeling and other materials had been prepared in good faith reliance on the confirmed official listing of cyclamates as generally recognized as safe for use in food under the Federal Food, Drug, and Cosmetic Act, and for other purposes; to the Committee on the Judiciary.

By Mr. TIERNAN (for himself, Mr. BUCHANAN, Mr. PODELL, Mr. BURKE of Massachusetts, Mr. OLSEN, Mr. BURKE of Florida, Mr. FULTON of Pennsylvania, Mr. ADAMS, Mr. BUTTON, Mr. SISK, Mr. O'NEILL of Massachusetts, Mr. ST GERMAIN, Mr. MAILLIARD, Mr. BRASCO, Mr. HATHAWAY, Mr. KYROS, Mr. MOSS, and Mr. ROONEY of Pennsylvania):

H.R. 18486. A bill to amend the International Travel Act of 1961 to provide for Federal regulation of the travel agency industry; to the Committee on Interstate and Foreign Commerce.

By Mr. TIERNAN (for himself, Mr. HECHLER of West Virginia, Mr. GARMATZ, Mr. BLANTON, Mr. LUKENS, Mr. MURPHY of New York, Mr. GILBERT, Mr. ADDABBO, Mr. HASTINGS, Mr. CORDOVA, Mr. DENT, Mr. DON H. CLAUSEN, Mr. McKNEALLY, Mr. HARRINGTON, Mr. WHITEHURST, Mr. REES, Mr. DONOHUE, Mr. TEAGUE of California, Mr. STANTON, Mr. FRASER, and Mrs. GREEN of Oregon):

H.R. 18487. A bill to amend the International Travel Act of 1961 to provide for Federal regulation of the travel agency industry; to the Committee on Interstate and Foreign Commerce.

By Mr. UDALL (for himself and Mr. REED of New York):

H.R. 18488. A bill to promote and protect the free flow of interstate commerce without unreasonable damage to the environment; to assure that activities which affect interstate commerce will not unreasonably injure environmental rights; to provide a right of action for relief for protection of the environment from unreasonable infringement by activities which affect interstate commerce and to establish the right of all citizens to the protection, preservation, and enhancement of the environment; to the Committee on the Judiciary.

By Mr. WOLFF:

H.R. 18489. A bill to provide that the United States shall reimburse the States and their political subdivisions for real property taxes not collected on certain real property owned by foreign governments; to the Committee on Foreign Affairs.

By Mr. BURTON of Utah:

H.R. 18490. A bill to amend the Small Business Act to encourage the development and utilization of new and improved methods of waste disposal and pollution control; to assist small business concerns to effect conversions required to meet Federal or State pollution control standards; and for other purposes; to the Committee on Banking and Currency.

By Mr. KUYKENDALL (for himself, Mr. ADAIR, Mr. BUCHANAN, Mr. BURTON of Utah, Mr. BUTTON, Mr. DEVINE, Mr. DELLENBACK, Mr. DENT, Mr. DORN, Mr. ERLNBORN, Mr. ESCH, Mr. FISH, Mr. FULTON of Pennsylvania, Mr. FRIEDEL, Mr. HUNT, Mr. OLSEN, Mr. PATMAN, Mr. PETTIS, Mr. STEIGER of Wisconsin, and Mr. SYMINGTON):

H.R. 18491. A bill to amend the National Environmental Policy Act of 1969 to provide a program for honoring industry and other private efforts to contribute to the maintenance and enhancement of environmental quality; to the Committee on Merchant Marine and Fisheries.

By Mr. KUYKENDALL (for himself, Mr. BIESTER, Mr. BROWN of Michigan, Mr. DADDARIO, Mr. CORBETT, Mr. DERWINSKI, Mr. FISHER, Mr. FULTON of Tennessee, Mr. HALPERN, Mr. HANSEN of Idaho, Mrs. HECKLER of Massachusetts, Mr. KYROS, Mr. LUKENS, Mr. McCLOSKEY, Mr. MCDADE, Mr. McKNEALLY, Mr. MORSE, Mr. MOORHEAD, Mr. PELLY, Mr.

SCOTT, Mr. TEAGUE of California, Mr. WHITEHURST, and Mr. WYMAN):

H.R. 18492. A bill to amend the National Environmental Policy Act of 1969 to provide a program for honoring industry and other private efforts to contribute to the maintenance and enhancement of environmental quality; to the Committee on Merchant Marine and Fisheries.

By Mr. PURCELL:

H.R. 18493. A bill to amend the National Environmental Policy Act of 1969 to provide a program for honoring industry and other private efforts to contribute to the maintenance and enhancement of environmental quality; to the Committee on Merchant Marine and Fisheries.

By Mr. BINGHAM:

H.J. Res. 1303. Joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women; to the Committee on the Judiciary.

By Mr. MILLER of Ohio:

H.J. Res. 1304. Joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women; to the Committee on the Judiciary.

By Mr. KLEPPE:

H. Con. Res. 681. Concurrent resolution

to establish a joint congressional committee to carry out a study and investigation of the Federal Meat Inspection Act; to the Committee on Rules.

By Mr. ROYBAL:

H. Con. Res. 682. Concurrent resolution relating to treatment and exchange of military and civilian prisoners in Vietnam; to the Committee on Foreign Affairs.

By Mr. BARING:

H. Res. 1143. Resolution to express the sense of the House of Representatives that the United States maintain its sovereignty and jurisdiction over the Panama Canal Zone; to the Committee on Foreign Affairs.

By Mr. BURKE of Florida:

H. Res. 1144. Resolution to express the sense of the House of Representatives that the United States maintain its sovereignty and jurisdiction over the Panama Canal Zone; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BROYHILL of Virginia:

H.R. 18494. A bill for the relief of Mrs.

Anna R. Bacon; to the Committee on the Judiciary.

By Mr. MOLLOHAN:

H.R. 18495. A bill for the relief of Chien Danh Florio; to the Committee on the Judiciary.

By Mr. UDALL:

H.R. 18496. A bill for the relief of 1st Lt. John P. Dunn, U.S. Army, retired; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

541. Mr. HUNT: Petition of Wilbur F. Foster, Haddon Heights, N.J., relative to Southeast Asia; to the Committee on Foreign Affairs.

542. By the SPEAKER: Petition of the Inter-Tribal Council of the Eight Tribes of Northeastern Okla., relative to repeal of the Choctaw Termination Act; to the Committee on Interior and Insular Affairs.

543. Also, petition of the U.S. section, Women's International League for Peace and Freedom, Washington, D.C., relative to domestic repression; to the Committee on the Judiciary.

EXTENSIONS OF REMARKS

A SUMMARY OF SENATOR SCOTT'S RECORD ON URBAN AFFAIRS

HON. JOHN G. TOWER

OF TEXAS

IN THE SENATE OF THE UNITED STATES

Wednesday, July 15, 1970

Mr. TOWER. Mr. President, as a member of the Subcommittee on Housing and Urban Affairs, I am concerned about the state of our urban areas and about solutions for the problems of our Nation's cities. Many Senators have expressed similar concerns and have acted to meet urban difficulties. The Honorable HUGH SCOTT, our Republican leader, is among those Senators. I ask unanimous consent that a summary of his record on urban affairs be include in the Extensions of Remarks.

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

SENATOR HUGH SCOTT'S RECORD, HOUSING AND URBAN AFFAIRS LEGISLATION

Although there has been much talk recently about our crumbling cities, Senator Hugh Scott is a man who has done something to halt the trend. One of his first votes as a senator was to retain a certain number of public housing units and to keep a higher level of Federal funds for slum clearance. Clearly, Senator Scott, a resident of our Nation's fourth largest city, Philadelphia, is a man who is no stranger to urban problems.

In addition to Philadelphia, the Commonwealth has four other cities ranged among the most populated in the Nation. They are Pittsburgh, Erie, Scranton and Allentown. Senator Scott feels that our urban problems cannot be continually neglected, since nearly three out of every four Pennsylvanians now lives in an urban area.

The following summary of Senator Scott's record on urban affairs shows how he has worked to improve our cities:

THE 91ST CONGRESS

Legislation

S.J. Res. 113—To direct the Federal Trade Commission to conduct comprehensive investigation of unfair methods of competition and unfair or deceptive acts or practices in the home improvement industry; to expand enforcement activities in these areas.

S. 2940—To provide for acquisition of property for Independence National Historical Park in Philadelphia.

S. 3025—Urban Land Improvement and Housing Assistance Act—To authorize Federal incentive grants to State and local governments to strengthen their capacity to utilize land more productively.

Votes

Voted to provide an additional \$587.5 million for the urban renewal program.

THE 90TH CONGRESS

Legislation

S. 1592—National Home Ownership Foundation Act—To create a private nonprofit National Home Foundation with authority to make loans and to offer technical assistance to aid local organizations in conducting home ownership programs.

S. 2219—To provide Federal financial assistance to help cities and communities of U.S. develop and carry out intensive local programs of rat control and extermination.

S. 2573—To charter an Economic Opportunity Corporation to encourage private enterprise participation in the effort to rebuild urban slums and eliminate poverty in the U.S.

Votes

Voted to increase funds for grants to neighborhood facilities by \$15 million.

Voted to increase funds for the model cities program by \$300 million.

Voted not to limit contract authorization for rent supplement program to \$20 million.

Voted to restore \$40 million in 1968 contract authorization for the rent supplement program.

Voted to restore \$46 million in funds for the National Science Foundation.

Voted not to limit eligibility for the home-

ownership program to families whose income was 70 percent or less of the prescribed limits for low- and moderate-income programs.

Voted to retain a guarantee program for financing new community land development.

Voted to give those whose homes were destroyed in riots and civil disorders priority in relocating in urban renewal areas.

Voted to create the National Insurance Development Corporation to provide reinsurance for insurance companies for losses resulting from riots and civil disorders.

Voted for the Housing and Urban Development Act of 1968.

THE 89TH CONGRESS

Legislation

S. 3451—To assist in provision of adequate housing in areas in which there is a shortage of housing credit as a result of the occurrence of riots and other civil disorders.

Votes

Voted to retain the rent supplement program for disadvantaged persons.

Voted for the Housing and Urban Development Act of 1965.

Voted to establish a Department of Housing and Community Development.

Voted not to eliminate funds for the rent supplement program for FY 1966.

Voted not to reduce from 90 to 50 percent the Federal contribution of funds to pay the salary of any teacher in the National Teacher Corps.

Voted to stimulate mortgage credit for Federal Housing Administration—and Veterans Administration-assisted residential construction.

THE 87TH CONGRESS

Legislation

S. 2982—To assure decent, safe and sanitary housing to families displaced by construction of highways forming a part of the Interstate System.

S. 3516—To establish an Office of Urban Affairs in the Executive Office of the President in order to coordinate Federal programs and to serve as a source of information to state and local officials.