ROGERS of Colorado, Mr. ST GERMAIN, Mr. STEED, Mr. STOKES, and Mr. WYATT):

H. Con. Res. 686. Concurrent resolution relating to treatment and exchange of military and civilian prisoners in Vietnam; to the Committee on Foreign Affairs.

By Mr. TEAGUE of Texas (for himself, Mr. FLOOD, Mr. FULTON of Pennsylvania, Mr. HALPERN, Mr. MIKVA, Mr. MINISH, Mr. NEDZI, Mr. PODELL, Mr. PUCINSKI, Mr. RANDALL, Mr. REES, Mr. RODINO, Mr. ROSENTHAL, Mr. ROYBAL, Mr. RYAN, Mr. SCHEUER, Mr. TUNNEY, Mr. VAN DEERLIN, Mr. VANIK, and Mr. YATRON):

H. Con. Res. 687. Concurrent resolution relating to treatment and exchange of military and civilian prisoners in Vietnam; to the Committee on Foreign Affairs.

By Mr. SAYLOR (for himself, Mr. BERRY, Mr. STEIGER of Arizona, Mr. POLLOCK, Mr. WOLD, Mr. CAMP, Mr. LUJAN, and Mr. DON H. CLAUSEN):

H. Con. Res. 688. Concurrent resolution relating to a national Indian policy; to the Committee on Interior and Insular Affairs.

By Mr. EVINS of Tennessee:

H. Res. 1145. Resolution providing funds for the operation of the Select Committee on Small Business; to the Committee on House Administration.

By Mr. SIKES:

H. Res. 1146. 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. FRIEDEL:

H. Res. 1147. Resolution relating to certain allowances of Members, officers, and standing committees of the House of Representatives, and for other purposes; to the Committee on House Administration.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BURTON of California:

H.R. 18512. A bill for the relief of Mrs. Severa Salonga Virag; to the Committee on the Judiciary.

By Mr. OLSEN:

H.R. 18513. A bill for the relief of Col. Paul E. Greiner, U.S. Air Force, retired; to the Committee on the Judiciary.

By Mr. SANDMAN:

H.R. 18514. A bill for the relief of Luella M. Freeman; 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:

544. By the SPEAKER: Petition of the city council, Hometown, Ill., relative to captured American and allied fighting men and those missing in action in the Vietnam conflict; to the Committee on Foreign Affairs.

545. Also, petition of Local No. 1271, International Association of Machinists and Aerospace Workers Union, Lawrence, Mass., relative to the proposed merger of Northwest Orient Airlines and Northeast Airlines; to the Committee on Interstate and Foreign Commerce.

546. Also, petition of John C. Moran, et al., Greenville, N.C., relative to appointments to the U.S. Supreme Court and other Federal benches; to the Committee on the Judiciary.

SENATE—*Thursday, July 16, 1970*

The Senate met at 11 a.m. and was called to order by Hon. MIKE GRAVEL, a Senator from the State of Alaska.

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

Eternal Father, in whose name this Republic was born, and by whose spirit it has been guided, open our minds once more to Thy truth. Preserve us from contentment with things as they are and give us wisdom to strive for life as it ought to be. Create in us the qualities of manhood which fit us to be directors of the Nation's destiny. Qualified by Thy grace, bless this Nation and make it a blessing to the whole world. Hear and answer our prayers, uttered or unexpressed, and grant that our private lives and public actions may be consistent with our prayers.

Through Him whose name is above every name. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., July 16, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. MIKE GRAVEL, a Senator from the State of Alaska, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, July 15, 1970, be dispensed with.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

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

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

IMPLEMENTATION OF THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Mr. MANSFIELD. Mr. President, on behalf of the distinguished Senator from Arkansas (Mr. FULBRIGHT), I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3274.

The ACTING PRESIDENT pro tempore (Mr. GRAVEL) laid before the Senate the amendment of the House of Representatives to the bill (S. 3274) to implement the Convention on the Recognition and Enforcement of Foreign Arbitral Awards which was on page 1, line 4, strike out "of" and insert "on the".

Mr. MANSFIELD. Mr. President, I move that the Senate concure in the amendment of the House.

The motion was agreed to.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair now recognizes the distinguished senior Senator from West Virginia (Mr. RANDOLPH), for a period of not to exceed 1 hour.

PRIVILEGE OF THE FLOOR

Mr. RANDOLPH. Mr. President, before I address myself to the subject matter I shall speak on this morning, I ask unanimous consent that Walter Planet, a congressional fellow, assigned to the Committee on Public Works, have the privilege of the floor.

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

S. 4092—INTRODUCTION OF A BILL TO ESTABLISH A COMMISSION ON FUELS AND ENERGY

FEDERAL FUELS AND ENERGY COMMISSION URGENTLY NEEDED

Mr. RANDOLPH. Mr. President, in these troubled times, we are a nation which seems to move from one crisis to another.

The crisis of which I shall speak today is a real and genuine one. It is not synthetic. It is not one that has been created. It has developed with the growth of our complex society. It is a crisis that faces approximately 205 million men, women, and children in the United States at this time of speaking.

What we do about facing up to the problem will, in some degree at least, cause the crisis to diminish or to continue. If we fail to affirmatively work on the problem we will have a crisis that

will deepen and have a deleterious effect upon the people of the United States—and, in a sense, on all mankind. We must not fail in this session, by congressional action, to create a Federal Fuels and Energy Commission to give guidance in the establishment of a policy or policies that would give to this country and its people solutions for our complex fuels and energy problems, and for the related environmental involvements.

Mr. President, I do not overstate when I say at the outset that we are facing today and will face tomorrow and many more tomorrows a possible shortage of fuel and power to serve the industries and the homes of America.

Mr. President, the energy demands of the United States since World War II have been doubling every decade, and have been doubling since that new form of energy we call nuclear energy came into being 25 years ago today, when the first atomic bomb was detonated experimentally, as we recall, in New Mexico.

This growth has been due to both population increase and the increasing standard of living of the American people. Our ability to meet the demand has clearly resided in the use of fossil fuels for their energy value. Recently, nuclear power has emerged as a competitor in its own right, but lags—and I say that with no feeling of depreciation of nuclear power, of course—in reaching the potential expected of it.

During this period of almost total dependence on fossil fuels, the economy of the United States has developed at a dramatic and, I should say, dynamic rate.

This is of immense importance as a portent for the future of energy development of other nations which we are already witnessing in the industrial resurgence of West Germany and Japan. A brief review of the past reveals the full implication of this situation and the potential attendant resource and environmental effects for the future is in order.

In 1950, one-half of all the energy generated in the United States came from animals. We do not think of this very often, but I have only gone back to about slightly more than two decades when about one-half of the energy generated in the United States came from animals; 90 percent of the remaining energy, or 45 percent of the total expended, came from wood. In effect, the human population lived off the solar energy deposited in the environment from the sun.

Mr. President, as recently as 1945, most bread and milk were delivered by horses rather than gasoline-powered trucks in many sections of the United States. Since 1950, 11 million horses have been replaced by tractors in the United States. This required a fossil fuel energy subsidy to agriculture equivalent to the energy needs of 44 million people, with an associated use of resources and accompanying environmental impacts.

Similar energy subsidies have occurred in many other areas. As a consequence we are able to support 205 million people where it has been estimated that only 100 million people could be supported without a fossil fuel or nuclear energy subsidy.

The future presents a picture of continuing growth with continued reliance on fossil fuels. The world energy production has increased by about 6.9 percent every year since 1890, and this trend is expected to continue. Americans have developed a standard of living which they are not about to relinquish, and the other 95 percent of the world's population—and I think this would not be an overstatement—desires to share in this standard of living.

For example, while our automobile population is only growing by 4 percent a year, the automobile population in other countries is growing by 6 to 29 percent per year. A 6.9-percent world growth rate in energy represents a doubling in energy production every 10 years. This sounds high, but it is realistic.

Crude oil production throughout the world is expected to show an increase from 11 billion barrels in 1965 to 123 billion barrels in the next 30 years. By the year 2000, it is estimated that there will be 6 billion people in the world. Crude production will then amount to 20 barrels per person, only slightly higher than the U.S. per capita consumption rate in 1960.

I am very gratified that, as I bring these matters to the attention of the Senate today, the distinguished Senator from Oklahoma (Mr. BELLMON) is present in the Chamber. He knows, of course, of the development of oil and gas in his own State and throughout America. He knows of the needs that are constantly draining these resources that are in the ground and to be extracted.

Meanwhile it is estimated that the U.S. per capita consumption will have increased. This demand will require that 9 percent of known crude oil reserves be burned annually, and the world energy market will be competing against the United States for these reserves.

Substantial portions of these reserves are in the State of Alaska. Presiding over the Senate at this time is an able Senator from that State (Mr. GRAVEL) who, in recent days, has been "on the ground," as it were, with other Members of the Senate looking into the problems that increasingly come to a State of the pioneering type such as Alaska. Certainly, the fuels of that area can be most helpful in furthering the productivity of the Nation as a whole. And the resources of Alaska must have careful attention.

This Nation, and the world, are embarked on a gigantic gamble that we can maintain this energy subsidy—a subsidy that is dependent on reliable sources of crude oil, natural gas, and coal and some other immense sources of energy, possibly the breeder reactor or fuel cells, to replace fossil fuels when they are depleted. To lose this gamble would mean a catastrophe for the American people and, perhaps, for large portions of the earth.

Concurrently, and partly as a response to the side effects of this energy expansion and the accompanying growth in our economy, a broadening public concern has developed for environmental quality.

I know this concern is very real; and it is a concern not only by older persons but also by the youth of our country. In the Committee on Public Works, and through our Subcommittee on Air and Water Pollution, we have been attempting to keep moving forward with necessary but well-reasoned legislation which will cope with the problems which must be solved in order to bring about an enhancement of the environment and a bettering of the quality of life in America. These are the environmental matters we must consider in legislation and which doubtless will flow also from the findings of such a commission as we are advocating today.

This concern has been expressed in the emergence of what might be termed an "environmental ethic." This ethic is a response to the realization that the United States, and even the world, is faced with a crisis of our own making. No one else made it. It was made by us. It is an acknowledgment that we can no longer allow the continued degradation of our physical environment.

In reaching this awareness, however, we have become uptight environmentally. As a nation we appear to be entering a new era of nature worship. There is talk of returning to a balance of nature. Those who propose this, however, imply, as economists used to consider the policy of laissez faire, that the natural balance is the only one and if man would just effect a hands-off policy, nature would adjust itself by natural processes to everyone's benefit.

This attitude fails to recognize that man is a part of the ecological system and by our presence we affect the balance of nature. Public policies must be tempered to a rational outlook toward environmental problems while at the same time retaining the necessary sense of urgency.

We are the custodians of nature. The environmental confrontations we are experiencing result from our failures to properly exercise this custodianship. We have failed prospectively to consider the effects of our modern technology on the environment, not only detrimentally, but in terms of what can be done to improve our environment.

We live in a world that is considerably of our own making. As custodians of the environment we are faced with new responsibilities if the economic vitality of this Nation and the world are to be assured.

With these considerations in mind, I directed members of the staff of the Committee on Public Works to conduct a preliminary exploration of this Nation's energy demands in relation to a national fuels policy and environmental requirements.

For example, what are the resource and environmental implications of our present, if existent, national fuel policies?

To determine this requires estimates of future energy and power requirements. Yet, a most significant fact is the past energy predictions have consistently underestimated consumption rates. At one point the Atomic Energy Commission underestimated the demand for civilian nuclear power in a 23-year forecast by 53 percent in just 1 year. Current projections of aviation kerosene consumption for the year 1980 are 300 percent higher than the highest projection made 5 years ago.

Useful and meaningful national energy policies are dependent on valid estimates of future energy requirements. A recent Office of Science and Technology compilation of energy forecasts for the United States lists 19 different projections.

These energy projections start from a 1965 energy base of approximately 54,000 trillion Btu's—British thermal units. Estimates for the end of this decade, 1980, however, range from 74,000 to 104,000 trillion B.t.u.'s or a 41-percent variation.

I say to the Senator from Oklahoma (Mr. BELLMON) that these are matters which should come before the Commission, if that Commission is created as urged in legislation which the Senator from Oklahoma has joined in cosponsoring.

Projections for the year 2000 show an even wider variation; namely, from 106 to 209 million Btu's or a 100-percent variation. Yet, our ability to supply reliable energy. whether from fossil or nuclear fuels or other sources depends on our ability to make these projections meaningfully and reliably.

Regional projections of total energy requirements appear nonexistent even though the need for such projections is widely recognized within the context of assuring electric power reliability.

Because of the lack of regional projections, discussions of energy requirements must focus on national projections. For this reason I have relied on the publication of the Department of the Interior, Bureau of Mines, "Energy Model for the United States Featuring Energy Balances for the Years 1947 to 1965 and Projections and Forecasts to the Years 1980 and 2000."

This projection assumes an annual 4-percent growth in gross national product while experiencing annual 1.6-percent growth in population. Under this projection, the 1965 total energy demand of 54,000 trillion of B.t.u.'s rises to 64,300 trillion B.t.u.'s in 1970, and will approach 88,100 trillion B.t.u.'s by 1980, and 168,000 trillion B.t.u.'s in the year 2000.

At this point, Mr. President, I offer an explanatory table and request unanimous consent to have it printed in the RECORD.

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

TABLE I.—PROJECTED U.S. ENERGY REQUIREMENTS, 1965 to 2000

Year	Total energy [1] (trillions of B.t.u.'s)	Per capita energy [2] (millions of B.t.u.'s per person)
1970	64,300	312
1975	75,600	346
1980	88,100	378
1990	122,000	450
2000	168,600	547

[1] Bureau of Mines, Department of the Interior, "An Energy Model for the United States Featuring Energy Balances for the Years 1947 to 1965 and Projections and Forecasts to the Year 1980 and 2000," IC8384 (July 1968). Selected "Case I" for 1980 demand and "Case XIII" for year 2000 demand.

[2] Bureau of the Census, Department of Commerce, "Projections of the Population of the United States, by Age, Sex, and Color to 1990, With Extensions of Total Population to 2015," Current Population Reports, Population Estimates, series P-25 No. 359 (Feb. 20, 1967), selected "Series C."

Mr. RANDOLPH. Mr. President, it is of particular interest to note that while the U.S. total energy demand is predicted to increase by 34 percent between 1970 and 1980, the amount of energy to be used by each individual is forecasted to increase by 20 percent. Should the per capita energy demand forecast remain constant during this period, the total energy demand prediction would increase by only 14 percent.

Anticipated increases in per capita energy consumption can be attributed to two causative factors; namely, increased use to supply basic energy needs to social groups formerly with low-energy demands; and increased use to supply added conveniences to social groups whose basic energy needs were previously supplied.

It cannot be overemphasized, however, that the world per capita energy requirement is increasing at a faster rate than ours and the competition by other nations for fuel resources on which the United States is now dependent may well interfere with our own capability to meet anticipated growth.

Perhaps it is not inappropriate to say at this point that we can spread ourselves too thin in our efforts of one type or another throughout the world and that our present resources are not inexhaustible. A study such as is proposed here is of vital importance to the present and the future of the United States.

I ask the second question:

What does this projected growth in energy requirements mean in terms of total electric power generating capacity?

The answer is that net electric power generation will continue to double each 10 years. In turn, fuel resources, both fossil and nuclear, will be depleted at an ever-increasing rate. Accompanying this will be a greater potential for deleterious environmental effects, and a greater potential for brownouts or blackouts, which were discussed with my colleague from West Virginia earlier today.

Mr. President, I offer as table II another set of figures, with footnotes, showing projected U.S. electric energy. I ask unanimous consent to have this table printed in the RECORD at this point.

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

TABLE II.—PROJECTED U.S. ELECTRIC ENERGY

Year	Installed capacity [1] (thousands of megawatts)	Net generation [1] (billions of kilowatt-hours)	Per capita generation [2] (kilowatt-hours per person)
1970	360	1,493	7,250
1975	420	2,047	9,350
1980	523	2,739	11,600
1990	885	5,000	18,500
2000	1,500	9,036	29,400

[1] Bureau of Mines, Department of the Interior, "An Energy Model for the United States Featuring Energy Balances for the Years 1947 to 1965 and Projections and Forecasts to the Year 1980 and 2000," IC8384 (July 1968). Selected "case I" for 1980 demand and "case XIII" for year 2000 demand.

[2] Bureau of the Census, Department of Commerce, "Projections of the Population of the United States, by Age, Sex, and Color to 1990, with Extensions of Total Population to 2015." Current Population Reports, Population Estimates, Series P-25, No. 359 (Feb. 20, 1967), selected "Series C."

Mr. RANDOLPH. Mr. President, past experience shows that electric power generating equipment installed today may well be in use 30 to 50 years from now. This means that new means of power generation such as nuclear reactors and high voltage transmission cabled which are installed in the decade, 1970 to 1980, may well be used in power systems in 2010 or 2030. Advanced concepts such as central-station magnetohydrodynamics—Mr. President, that is a long word; I will call it MHD from this point on in my discussion—generators, fuel cells, and superconducting transmission cables which may be in service on power systems during the following decade, 1980 to 1990, will be operating in 2020 to 2040.

Each decision made today to build a coal- or oil-fired powerplant represents a 30- to 50-year reliance on coal or oil. Along the Atlantic seaboard there is a current increasing reliance on imported oil. Increased reliance can be anticipated in the Midwest due to barge traffic on the Mississippi River as far north as Chicago. In all instances the availability of this fuel is subject ot the impacts of international energy requirements. In midland America, it also may mean reliance on imported natural gas from Canada or Mexico.

A brief historical review of electric energy production in the United States and some speculation on the future seem to me to be indicated.

The past decade has been characterized by the construction of large generating plants with pooling arrangements and interconnections to achieve economy and improve reliability. During this period, the rising costs of fossil fuel plants, resulting in part from increased fuel costs and the requirements of air and water pollution controls, largely coincided with the falling costs of nuclear power to produce a competitive market.

Nuclear powerplants approached a capacity of 1,000 megawatts. Because of their large size they were built away from cities and close to large supplies of cooling water. And, because of their size and decreased thermal efficiencies, nuclear powerplants have increased the problem of thermal pollution. This was not thought to be a reality a few years ago, but it has come to be just that.

Massive blackouts occurred in 1965 and 1967, forcing a reevaluation of existing concepts regarding interconnections, spinning reserve allocations, systems operations, and standby generation. The effect on the 1970's will probably be a greater reliance on computers to control and optimize power system interconnections.

From 1970 to 1980 we will see a 46-percent increase in installed electric generating capacity. This will entail about a 50-percent increase in the need for the use of coal, and a ninefold increase in installed nuclear generating capacity. More importantly, for economic reasons, utilities will move toward individual nuclear plants which will start to approach 5,000 megawatts, with their attendant higher thermal impacts on the environ-

ment. It appears the breeder reactor will not be available in the 1970's as originally predicted. This increment in generating capacity will be filled partially by fossil fuel plants, most likely coal fired if coal production can be sustained and increased commensurate with demand.

Another table is offered, Mr. President, this one showing projected electric generating capacity. I ask unanimous consent that it be printed in the RECORD at this point as table III.

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

TABLE III.—PROJECTED ELECTRIC GENERATING CAPACITY

[Thousand megawatts]

Year	With breeder reactor					Without breeder reactor				
	Coal	Gas	Oil	Hydro	Nuclear	Coal	Gas	Oil	Hydro	Nuclear
1970	215	45	22	38	11	215	45	22	38	11
1975	265	52	27	40	40	265	52	27	40	40
1980	330	59	33	43	106	327	59	33	43	103
1990	480	75	44	44	350	530	75	53	48	295
2000	690	88	68	52	740	786	88	68	52	645

Reference: Spaite, P. W., and Hangebrauch, R. P., "Sulfur Oxide Pollution: An Environmental Quality Problem Requiring Responsible Resource Management," paper presented at 19th Canadian Chemical Engineering Conference, Canadian Society of Chemical Engineers, Edmonton, Alberta (Oct. 19–22, 1969).

Mr. RANDOLPH. But, Mr. President, this will conflict with the availability of environmentally suitable fossil fuels. In a keynote address before the American Power Conference annual meeting on April 21, 1970, Carl E. Bagge, Commissioner, Federal Power Commission, stated:

The problem posed by the necessity to rely on fossil fuel generation as the backbone of the industry for many years to come is compounded by the fact that low sulfur fossil fuels are simply not presently available in sufficient quantities to clear the air pollution hurdle which now has been imposed upon the industry. Natural gas, the cleanest fossil fuel, accounts for one-quarter of all electric generation by steam plants and for one-sixth of the gas consumed in this country. It appears unlikely, however, that domestic gas supplies will be able to substantially alleviate the problem. While imported LNG and residual fuel oil hold out some promise, neither do their prospects appear sufficient to resolve the problem.

Low-sulfur coal is plagued by problems of supply, location and difficulty of extraction. Unfortunately, the deposits and markets do not coincide and one can only wonder about how feasible it is in the long run for the Chicago market to look to Wyoming and Montana for its fuel supply. Add to this the recent sanction of Commonwealth Edison's proposal to import Venezuelan low-sulfur residual oil, and one can begin to appreciate the agony this industry is presently experiencing in its effort to meet both its environmental and its energy service commitments.

I think those are very important warning words which were spoken by Mr. Bagge.

It has been stated that the 1980's will see modular electric powerplants approaching 10,000 megawatts. This possibility raises serious questions on the optimum plant size compatible with environmental quality and may well result in regulations.

The first new cities in the decade of the 1980's, planned industrial-residential complexes, will have to be built around central power stations. By 1990, peak powerloads will have risen four times over those of 1970. By this time the first breeder reactors should be built, as well as direct fuel-to-electric power conversion, such as MHD and fuel cell generators.

Throughout the period from 1970 to 1990, fuel selection, in part, will be determined by the economics of the time and in part by environmental considerations which I mentioned earlier. Unless we develop a coherent national fuels and energy policy during the next two decades, we will witness decreased power reliability and further degradation of environmental quality in the United States.

The utilities most likely will continue to compete against each other for fuel resources on purely economic ground under the mandate to supply power at the "lowest possible cost."

In the address from which I quoted, Commissioner Bagge discussed the market-oriented philosophy of the American power industry and some of its effects on the energy supply problem. On this point, he said:

Still another outcropping of the market-oriented mentality is reflected in the irrational competition for markets without concern for the superior adaptability of particular energy forms to specify functions. This has contributed to the existing power crisis. The validity of growth for growth's sake is now being questioned by even orthodox thinkers. An objective review of existing competitive marketing policies is now required to determine whether, for example, other energy sources can, in some instances, more rationally serve the space heating market.

Yes, Mr. President, these are words that give warning. And, Mr. President, I noted with interest a recent television special on the electric utility industry which reported that the industry spends less than 1 percent of its gross revenues on research to develop more efficient methods to generate electric energy. That industry continues to rely on equipment suppliers or the Federal Government to conduct the required research, as has been happening with respect to nuclear power.

I believe this is a short-sighted policy. The future of the electric utility industry is dependent, among other technological developments, on MHD, coal gasification, and the fuel cell. In addition, these methods represent a more effective utilization of our existing natural resources, which must be used more effectively in order to satisfy our growing energy demand, and which, in turn, will offer benefits to society as a whole. Again quoting Commissioner Bagge:

The question facing this industry obviously is not one of either pollution or blackout. Except for the radical fringe, no one seriously advocates turning back the calendar. Anyone with a glimmer of real understanding of the nature of the problem realizes that substantial additional electric generating capacity must be constructed in the decades ahead just to keep pace with the essential and basic needs of our expanding population, irrespective of any increase in per capita utilization. Rational minds will also concede that even more substantial increments of additional electric energy must be produced in the future to successfully wage the entire environmental battle on many other relevant fronts such as meeting the growing requirements of the depressed areas of our Nation, the urgent needs of the inner city, urban and mass transportation and the staggering waste disposal problem.

For example, in principle MHD plants can achieve an estimated overall efficiency between 50 and 60 percent, compared to 40 percent for our best fossil fuel plants and 33 percent for current boiling water and pressurized water nuclear powerplants. Although controls must be developed for nitrogen oxides and sulfur oxides emited from MHD, this technology will represent a significant improvement in thermal efficiency and a significant decrease in waste heat discharged to the environment. Yet, commercial application of this technology before the middle or late 1980's is unlikely without Federal support.

A second example is fuel cells. Using pipeline gas and air, fuel cells offer an operating efficiency of 50 percent. The distinct advantage is decreased environmental impact. They do not produce particulates, sulfur oxides, or nitrogen oxides.

I recognize that there is a shortage of natural gas in the United States and will discuss the gas crisis in a subsequent speech in the Senate. Fuel cells, however, can operate on synthetic gas derived from the gasification of coal, as well as from nautral gas. A sulfur-free gas can be created from coal, minimizing the environmental impact of electric power generation while effectively utilizing this Nation's most plentiful fossil fuel resources.

I have many times questioned national priorities in funding nuclear power development, while severely underfunding Federal research in the generation of electric energy from fossil fuels. The consequences are now before us.

I ask the next question:

What are the potential environmental consequences of projected growth in electric power generation?

The immediate potential consequence is increased emissions of waste heat, both to receiving waters and to the atmosphere, as well as increased emissions of particulates, sulfur oxides, nitrogen ox-

ides, and radioactivity from both fossil fuel and nuclear powerplants.

As the size of powerplants becomes larger and larger, the amount of waste heat increases proportionately. The current solution is to rely on cooling towers which often result in increased local humidity and fogs and smogs throughout the United States.

The waste heat from a typical 1,000-megawatt powerplant is enough to evaporate almost 60,000 tons of water per day. Conceivably, this could change the humidity of an area of several hundred square miles. Yet, plants 10 times this size are under discussion for the 1980's. As I have mentioned, there must be a public policy decision regarding the optimum powerplant size compatible with a particular environment.

Already, our cities are somewhat warmer than the surrounding countryside. This is partly the result of waste heat discharges from powerplants, as well as industrial and home consumption of energy. This trend is expected to continue and could conceivably endanger public health and welfare. I must underscore what I have said in this reference. Early signs of the possibility of "heat episodes" analogous to "air pollution episodes" were observed in St. Louis, Mo., in 1966 and recently were reported in the December 1969 issue of the American Journal of Public Health.

Also accompanying increased electric power generation will be increased emissions of atmospheric pollutants. Particulate levels in the ambient air can be expected to increase during the 1970's even though better control equipment is installed.

Mr. President, I have a table of projected annual particulate emissions from fossil fuel combustion. I offer it as table IV, and ask unanimous consent to have it printed in the RECORD at this point.

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

TABLE IV.—PROJECTED ANNUAL PARTICULATE EMISSIONS FROM FOSSIL FUEL COMBUSTION

[In millions of tons per year]

Year	Utility power plants	Nonutility sources	Uncontrollable fine particulate utility combustion
1970	5.2	1.8	0.2
1975	5.4	1.8	.3
1980	5.3	1.6	.4
1990	2.7	.9	.6
2000	.6	.4	1.2

Source: Spaite, P. W. & Hangebrauck, R. P., "Pollution From Combustion of Fossil Fuels," paper presented at National Pollution Control Conference and Exposition, San Francisco, Calif. (Apr. 1–3, 1970).

Mr. RANDOLPH. The difficulty is that improving particulate collection efficiencies form an average of 86 percent to 99 percent will not offset increased growth in generating capacity. We may well be in the mid-1980's before we return to 1970's atmospheric levels of particulates. This is due in large part to inadequate industrial support of the Federal research and development program provided for in the Air Quality Act of 1967.

Recently, a new dimension has been added to particulate control. Fine particulates offer the potential for seriously affecting public health. Although control and collection efficiencies for particulates continue to rise, the fine particulates continue to escape and are discharged into the atmosphere.

These fine particulates are the most hazardous to public health, because they are easily inhaled and are retained in the lungs. They also offer the greatest potential for creating changes in the climate, particularly in urban areas of our country. Yet, it is these smaller, fine particles which are not collected by current control methods and are expected to continue to increase in emissions.

In the case of sulfur oxides, it is estimated that 1970 emissions will be 37 million tons from all sources; however, by 1990 this total, under presently projected technology, is expected to reach 95 million tons per year, with about 65 million from power generation alone.

Beyond 1990, potential emission levels from powerplants will reach five to eight times present levels under the current control program. I will comment extensively on this problem in a subsequent speech.

Mr. President, I offer, as table V, figures on the projected annual uncontrolled sulfur oxide emissions from powerplants, and I ask unanimous consent to have this table printed in the RECORD at this point.

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

TABLE V.—PROJECTED ANNUAL UNCONTROLLED SULFUR OXIDE EMISSIONS FROM POWERPLANTS

[In millions of tons per year]

Year	With breeder reactor	Without breeder reactor
1970	20	20
1975	30	30
1980	40	40
1990	62	68
2000	94	105

Source: Hangebrauck, R. P. and Spaite, P. W., "Pollution from Power Production," paper presented at National Limestone Institute 25th annual convention, Washington, D.C. (Jan. 21–23, 1970).

Mr. RANDOLPH. Immediate short-term regional needs for the control of sulfur oxides may well necessitate the establishment of a priority system based on regional air pollution problems rather than economics. Long-term solutions, however, will require the parallel development of new nonpolluting methods for combusting fuels; methods for producing synthetic low-pollution fuels, and methods for flue gas cleaning.

It is obvious that if air pollution levels that protect public health are to be achieved and maintained, there is an immediate need for short-term as well as long-term planning on how to achieve these objectives, largely with indigenous resources of coal, oil, gas, and fissionable materials. The alternative is to allow electric power reliability—especially along the Atlantic seaboard, as I mentioned earlier, and in the Midwest—to become increasingly dependent on foreign sources of fuels and competitive international economics and the vagaries of foreign governments—the control, the stewardship of those governments.

For the reasons stated—and others which I will discuss in three speeches in the Senate in the near future—I am introducing legislation today to establish a Federal Commission on Fuels and Energy. This Commission would make a detailed investigation and study of the energy requirements and fuel resources and policies of the United States with respect to the different type of fuels and energy, and would report to the President of the United States and to the Congress on, first, the Nation's projected energy needs, broken down into regional areas, for the next two decades with particular reference to electric power; second, the fuel resources available or which must be developed to meet those needs, including, as applicable, the programs for research, development, and demonstration necessary to provide those major technological advances which may greatly enhance the Nation's ability to efficiently and economically utilize its fuel resources; third, the air, water, and other pollution created by energy requirements, including any programs to overcome promptly and efficiently any technological or economic barriers to the elimination of such pollution; and fourth, the existing policies and programs of the Federal Government and of State and local governments, which have any significant impact on the availability or economic utilization of such fuel resources and on the ability to meet the Nation's energy needs and environmental requirements, including proposals, policies, and programs for reconciling the Nation's environmental quality requirements with energy needs.

Mr. President, I send the bill to the desk and ask unanimous consent to have it printed in the RECORD as introduced by me and more than 50 cosponsoring colleagues, including: Messrs. ALLOTT, ALLEN, BAKER, BAYH, BELLMON, BIBLE, BOGGS, BURDICK, BYRD of West Virginia, COOK, COOPER, CRANSTON, CASE, DOLE, DOMINICK, EAGLETON, EASTLAND, FONG, GRAVEL, HANSEN, HARRIS, HART, HATFIELD, HOLLINGS, HUGHES, INOUYE, JACKSON, JAVITS, JORDAN of Idaho, JORDAN of North Carolina, MAGNUSON, MANSFIELD, MATHIAS, MCGEE, MCINTYRE, MONTOYA, MOSS, MUSKIE, NELSON, PACKWOOD, PELL, PROUTY, SAXBE, SCOTT, SCHWEIKER, SPARKMAN, SPONG, STEVENS, SYMINGTON, TOWER, TYDINGS, WILLIAMS of New Jersey, and YARBOROUGH.

This indicates genuine and widespread interest. The sponsors of the legislation come from both parties and all sections of the United States.

The PRESIDING OFFICER (Mr. HUGHES). The bill will be received and, without objection, the bill will be printed in the RECORD.

The text of the bill is as follows:

S. 4092

A bill to establish a Commission on Fuels and Energy to recommend programs and policies intended to insure that United States requirements for low cost energy will be met, and to reconcile environmental quality requirements with future energy needs

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ESTABLISHMENT OF COMMISSION

SECTION 1. (a) There is hereby established a National Commission on Fuels and Energy (hereinafter referred to as the "Commission") which shall be composed of twenty-one members appointed as follows:

(1) three appointed from the membership of the United States Senate by the President of the Senate, two from the majority party and one from the minority party;

(2) three appointed from the membership of the House of Representatives by the Speaker of the House, two from the majority party and one from the minority party;

(3) fifteen appointed by the President, one each to represent the Departments of State, Defense, Interior, Commerce, and Health, Education and Welfare; and the Federal Power Commission, the Atomic Energy Commission, the Office of Emergency Preparedness, and the Office of Science and Technology; and six from among members of the public who have particular knowledge and expertise with respect to fuels and energy.

(b) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(c) The Commission shall elect a Chairman and a Vice Chairman from among its members.

(d) Eleven members of the Commission shall constitute a quorum.

DUTIES OF THE COMMISSION

SEC. 2. (a) The Commission shall make a full and complete investigation and study of the energy demands and of the fuels and energy resources, requirements and policies of the United States. In particular, it shall evaluate all possible alternative methods of energy production and the relative merits of all energy sources, including fossil fuels, synthetic fuels derived from natural fossil fuels, nuclear and any other practical sources. Based on such study, it shall recommend those programs and policies which are most likely to insure, through maximum use of indigenous resources, that the Nation's rapidly expanding requirements for low cost energy will be met, and in a manner consistent with the need to safeguard and improve the quality of the environment.

(b) The Commission shall submit to the President and to the Congress a report with respect to its findings and recommendations not later than one year after the Commission has been fully organized. Such report shall include the Commission's determinations with respect to—

(1) the Nation's projected energy needs, broken down into regional areas, for the next two decades with particular reference to electric power;

(2) the fuel resources available or which must be developed to meet those needs, including, as applicable, the programs for research, development and demonstration necessary to provide those major technological advances which may greatly enhance the Nation's ability to efficiently and economically utilize its fuel resources;

(3) the air, water and other pollution created by energy requirements, including any programs to overcome promptly and efficiently any technological or economic barriers to the elimination of such pollution; and

(4) the existing policies and programs of the Federal Government and of State and local governments, which have any significant impact on the availability or economic utilization of such fuel resources and on the ability to meet the Nation's energy needs and environmental requirements, including proposals, policies and programs for reconciling the Nation's environmental quality requirements with energy needs.

POWERS AND ADMINISTRATIVE PROVISIONS

SEC. 3. (a) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this Act hold such hearings, take such testimony, and sit and act at such times and places as the Commission, subcommittee, or member deems advisable. Any member authorized by the Commission may administer oaths or affirmations to witnesses appearing before the Commission, or any subcommittee or member thereof.

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

(c) Subject to such rules and regulations as may be adopted by the Commission, the Chairman, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, shall have the power—

(1) to appoint and fix the compensation of such staff personnel as he deems necessary, and

(2) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals.

COMPENSATION OF MEMBERS

SEC. 4. (a) Any member of the Commission who is appointed from the executive or legislative branch of the Government shall serve without compensation in addition to that received in his regular employment, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by him in the performance of duties vested in the Commission.

(b) Members of the Commission, other than those referred to in subsection (a), shall receive compensation at the rate of $100 per day for each day they are engaged in the performance of their duties as members of the Commission and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Commission.

EXPENSES OF THE COMMISSION

SEC. 5. There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out this Act.

EXPIRATION OF THE COMMISSION

SEC. 6. The Commission shall cease to exist ninety days after the submission of its report.

Mr. RANDOLPH. Mr. President, I also ask unanimous consent to have printed in the RECORD, the text of FPC Commissioner Bagge's address to the 32d annual meeting of the American Power Conference, and the text of the Office of Science and Technology report, "A Review and Comparison of Selected United States Energy Forecasts."

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

THE ELECTRIC POWER INDUSTRY IN CRISIS AND TRANSITION: THE NEED FOR A NATIONAL ENERGY-ENVIRONMENT POLICY

(Address by Carl E. Bagge, Commissioner, Federal Power Commission)

The privilege of keynoting this year's Annual Meeting of the American Power Conference is a distinct honor and I am grateful for a number of reasons—particularly since this conference comes at a time when the electric power industry apprehensively prepares for the dawn of a critical new decade. The appearance of the chronological milestone traditionally provides an opportunity to reevaluate what has gone before and to redefine the relevant goals for the years that lie ahead. But more importantly, it also comes at a time when this vast industry—the Nation's largest—finds itself uniquely on the defensive as it has never been before. Indeed, it finds that its very right to expand and serve the growing energy needs of the Nation is seriously questioned and has become a national political issue. An earlier political confrontation faced by this industry resulted in broader economic regulation under the Public Utility Holding Company Act. The essential objective of this industry to serve the increasing power needs of the Nation has never before been subject to doubt, however, today it is being severely challenged by even some of our most respected thinkers. Thus, I regard this occasion as a unique opportunity to take advantage of an important forum, at a most critical time, to express the deeply felt concerns of one of the regulators of your industry.

I

In the title to this address, I have characterized that electric power industry as one in transition. I have done so because, upon analyzing the events of the past decade and relating them to the future, the overriding characteristic which manifests itself is the emergence of new industry goals and the shift of emphasis with respect to these objectives.

Does it seem possible that it was but six years ago, in November 1964, that the Federal Power Commission, in cooperation with all the segments of this industry, published the first National Power Survey? This comprehensive nationwide survey was undertaken in order to define and articulate the long range goals of the industry. Some of the finest talent in government and industry studied the past performance of this highly fragmented industry; and as they observed the developing trends in generation and transmission; and as they projected the future supply and demand for electricity, there emerged a concept—a vision, if you will, which was translated into presumably attainable objectives—which were characterized as "guidelines for growth." That goal of the mid-sixties was to provide greater impetus to the trend toward the integration of the Nation's power systems; to move from isolated or segmented operations and from existing pools of limited scope, to participation in fully coordinated power networks embracing entire regions of the country.

In time, when justified economically, all the regional systems in the Nation would be joined in a single interconnected network. From such coordinated regional and interregional planning, in which all ownership segments could participate and build facilities to meet their combined needs, there would inure vast economies of scale in generation and transmission to stimulate demand and afford the Nation continuously more increments of electric power, at lower costs, to the mutual advantage of both producer and consumer. More and even more electric power at lower costs! This, then, was the vision of the National Power Survey. It provided the goal of this industry in the mid-sixties.

Looking back only the few years since its publication, one is struck by what in retrospect was an inexplicable lack of humility on the part of the architects of the National Power Survey. Certainty must have existed even then in the thinking of the utility industry and its regulators. The questioning of the limitations of technology, its direction, and even its values, which was then being focused on other sectors of our society, apparently had not extended to the electric power industry. And if it was, we must have believed that the utility industry would remain immune from these forces.

How did this happen? How could we all have been so positive—so blindly certain—that the only challenge—the only goal—was the one which we conceived—that of continually reducing costs in order to usher in the era of unlimited power—the era of the gigawatt—the electric energy economy—under what we characterized as "guidelines for growth." I submit that it was engendered by a monstrous sense of intellectual and technological arrogance which ignored not only the limitations of technology but even more importantly, the limitation of the vision of its high priests. The arrogance of our high priests is spread across the pages of our technical journals and in the National Power Survey as an irrevocable indictment of our own myopia. Today we stand convicted by our own testimony.

The arrogance manifested in the National power Survey was, however, to be short lived. For within exactly a single year after its release we were made humble. On November 9, 1965, the system fell apart in one awesome moment and, unfortunately, in the area of the Nation which exercises a disproportionate influence upon public opinion. Such an occurrence in any other area probably would not have led to the events which followed. In New York it struck as a national calamity and every American, as a consequence, was made insecure about the reliability of his power supply. Those of us on the Federal Power Commission at that time were summoned before Congressional committees to give an accounting of our stewardship of the public trust and to defend the then severely questioned articles of faith underlying the Power Survey—the value of regional interconnection and coordination. Although these objectives survived the testing of the legislative crucible, the goal of this industry was significantly altered in the process.

I make no apology for having joined my colleagues in endorsing what became a highly controversial legislative proposal—the FPC sponsored Electric Power Reliability Act of 1968. Its very existence, and the reaction which it generated within the industry, in my opinion, constructively accelerated the evolution of regional and national reliability planning. This proposed legislation served a vital function simply by its introduction. Its enactment, in that or in any one of a variety of its existing forms, would now be a tragic mistake. The goal of this industry was broadened to embrace reliability. It is today being pursued in a meaningful way.

But even as the industry was striving to evolve the institutional framework necessary to cope with the problems of technological reliability and at the same time waging a defensive struggle in the halls of Congress, a new issue began to take shape on the horizon. At first it appeared docile enough to be manageable. You even coined a new term to deal with it. "Beautility" was this industry's response to its critics.

New designs for transmission towers and low silhouette transformers were introduced. Residential distribution facilities went increasingly underground. However, as the issue began to take on form and substance, much like a storm cloud it quickly mushroomed and soon enveloped not only aesthetics but also all aspects of the electric power industry. As a consequence, soon after it was coined, "beautility" was erased from the lexicon of the industry as a far too superficial characterization of its response to the issue.

The newly emergent environmental ethic with which this industry sought to deal constructively in its Report of the Electric Utility Industry Task Force on the Environment suddenly became radicalized. And, because its principal thrust was aimed directly at the heart of the industry—the right to expand—it has transcended all other goals and raised critical questions with respect to the adequacy of electric power to meet the existing and projected levels of demand and with respect to the level and configuration of future demand.

Thus, in the few years since the release of the National Power Survey, the goals of this industry have been radically altered. The emphasis has shifted from an unquestioned commitment to constantly lower costs, first, to greater reliability and quality of service; and now to an adequate power supply without degradation of environmental values. Today, these goals are but different facets of a broader national objective—one which President Nixon in his State of the Union Address characterized as a concern for the quality of life. Surely both a reliable and adequate supply of electric power are just as vital to the achievement of that objective in contemporary society as is the urgent need to halt the destruction of our environment. And to the extent that these concerns are interrelated, all of us today, regulators, consumers, and utility managers alike, must be prepared to accept a posture which would have been unthinkable for all of us only a few years ago.

II

Today, the forces of transition are just as powerful and just as pervasive as those which led to the changing goals of the past decade. They are now at work shaping the goals of this decade. So it is with an awareness of change that an attempt must be made to come to grips with the future. None of us consciously seek the mantle of the doomsday prophet. But neither can we responsibly look to the future with blithe complacency. Already there are numerous signs which manifest a growing apprehension concerning the ability of this industry to meet even its most recent goal of achieving adequate electric power without environmental degradation.

The approach of summer, for example, arouses an uneasy feeling within many of us. It is caused by more than the dread of personal discomfort brought about by thoughts of heat and humidity. It is the result of an awareness that the turn of a page on the calendar may be accompanied by regional power shortages. Already there have been early forebodings of what may, in a few months, develop into the recurring annual drama which has become symptomatic of the electric power industry in some areas of the Nation. The signs are clear to even casual observers of this industry: newspaper advertisements alerting the public to possible power reductions, expressions of concern from many sectors of industry and government, critical manufacturers' strikes, threatened transportation strikes, fuel shortages, an abnormal number of production delays and equipment failures and a new militancy on the part of the public regarding the location of utility facilities.

Incredible as it may seem, there are those who scoff at the idea that the electric power industry could again suffer some agonizing moments. Even more remarkable is the fact that some of your industry leaders maintain that it is "sheer nonsense" to suggest, as many of us have, that there presently exists a power crisis of national significance. Yet, that is precisely what Mr. A. H. Aymond, President of the Edison Electric Institute, recently stated in a speech delivered to the security analysts in New York City. I sincerely wish that I could share his optimism regarding the present state of this industry. Faced, however, with the hard reality of the acute problems besetting electric manufacturing, generation and transmission, and recognizing further that these problems are likely to increase rather than decrease in the immediate future, I would be less than responsible as a regulator of this industry if I continued to permit this comment to go unchallenged. I am obliged to make use of this forum to take issue with Mr. Aymond and to describe the situation confronting the electric industry today as one which constitutes a "national crisis." Minimizing this fact will only make its eventual realization that much more devastatng. Inducing the public to ignore it would be catastrophic.

To those of us willing to acknowledge the existence of the crisis there is raised the question of how it came about. What were the forces that created it, for obviously it did not just "happen". It evolved out of a series of unrelated events—the cumulative effect of which gave shape to its existing form. The underlying factors must be understood if similar situations are to be avoided in the future and if the existing crisis is to be intelligently resolved.

Obviously, one of the most significant factors has been the sudden emergence of an almost religious fervor about the quality of our environment which has provided, within the political dynamics of this industry, a substitute for the old orthodoxy—the public's relentless demand for cheap power. Few issues have so captured the public's imagination. The speed with which it was transformed from a benign environmental ethic into a zealous ecologic faith has been nothing lees than meteoric. Its sudden emergence as a national religion has profound implications to our theologians—and to the electric power industry. The environmental awakening will achieve even greater impetus throughout the Nation tomorrow when, to the accompaniment of teach-ins, marches and demonstrations, hundreds of thousands of converts rivaling the crusades of Billy Graham will make commitments to the new religion of ecology.

The growing national awareness of environmental quality has only now begun to make its presence felt on your industry. Yesterday, you were confronted only by groups of angry citizens. Today, counties and municipalities are expressing their concern by directing your choice of fuels for the generation of electric power. Tomorrow the Department of Justice may be opposing the generation of electric power by waging the battle of Turkey Point in every courtroom to prevent the boiling of plankton in the Nation's waters. The issue is incredibly comprehensive and defies easy resolution. It is crucial both to the reliability and the adequacy of the nation's electric power. It must be faced and it must be resolved.

Of equal importance to an understanding of the existing crisis are the explosive population growth patterns of the Nation and their consequential effect upon the demand for electric power. Volumes have been devoted to studies of population expansion. Page after page of statistics point to an incredible population picture which at times defies comprehension. Some predict that this Nation's population will double by the end of this century. The impact on demand is obvious. Past experience indicates that demand has been doubling every ten years and our latest studies predict an increase of nearly four times by 1990. Contributing to this is the fact that per capita consumption is expected to nearly triple during this period. Of profound importance, however, is the fact that since our population will increase absolutely, a tremendous surge in electric power demand will occur regardless of the rise in per capita utilization.

The commitment by this industry to nuclear power generation also lies at the root of the crisis. Stimulated by government policy, utility planners envisioned nuclear power as the answer to future expansion of their generating capacity and placed an inordinate amount of their eggs in the nuclear basket. And now the chickens have hatched and come home to roost. Although these vast nuclear generating complexes were welcome additions in the fight against air pollution, they created a new problem of thermal pollution which this industry for a while, insisted on characterizing as "thermal enrichment." Economy had also been one of the virtues of

this mode of power generation. Now, however, the statistics from recently installed units were knocking earlier cost predictions out of the hat. The cost of skilled labor, quality control and stricter safety measures—all acted to skew investment curves beyond acceptable limits. New units did not become operational on schedule and suddenly the manufacturers were reporting that orders for new nuclear facilities had dropped to the level of the 1950's. The hard facts had to be faced—nuclear power generation was not the great panacea we had envisioned.

But there were more than merely economic factors which led to this crisis. Technology, which had so brilliantly brought forth nuclear generation, was at an impasse in developing the acclaimed salvation for the future power needs of this country—the fast breeder reactor. After the inauspicious record and nearly catastrophic disappointment of the Enrico Fermi facility, the AEC and the industry found that their ambitious endeavor had fallen far short of its projected goals. It would be at least 1985 before the fast breeder, even with a sufficient commitment of funds at the earliest possible date, would have an impact on the Nation's power generation.

Faced with these pessimistic developments in the nuclear field, it has become evident that the need for fossil fuel generation will appreciably increase. Even if nuclear generation should emerge as originally envisioned, fossil fuel generation will nearly double in the next twenty years. To many, especially those who had counted so heavily on nuclear generation, this realization has been slow and difficult. It even caught some segments of the industry unprepared. After all, who wanted to consider the environmental ugly duckling—when the promise of nuclear generation was ultimately to redeem this industry.

The problem posed by the necessity to rely on fossil fuel generation as the backbone of the industry for many years to come is compounded by the fact that low sulfur fossil fuels are simply not presently available in sufficient quantities to clear the air pollution hurdle which now has been imposed upon the industry. Natural gas, the cleanest fossil fuel, accounts for one-quarter of all electric generation by steam plants and for one-sixth of the gas consumed in this country. It appears unlikely, however, that domestic gas supplies will be able to substantially alleviate the problem. While imported LNG and residual fuel oil hold out some promise, neither do their prospects appear sufficient to resolve the problem. Low-sulfur coal is plagued by problems of supply, location and difficulty of extraction. Unfortunately, the deposits and markets do not coincide and one can only wonder about how feasible it is in the long run for the Chicago market to look to Wyoming and Montana for its fuel supply. Add to this the recent sanction of Commonwealth Edison's proposal to import Venezuelan low-sulfur residual oil, and one can begin to appreciate the agony this industry is presently experiencing in its effort to meet both its environmental and its energy service commitments.

Another factor contributing to today's crisis can be traced to the nature and scope of the industry's research and development program. Technology plays a unique role in the electric power industry—one need only glance at this conference program to appreciate this. As engineers, you have devoted your careers to this discipline. But despite the achievements of the past, the result is still far short of the goal. The delegation by this industry of its basic responsibility for research to its equipment manufacturers has proven insufficient. And to the extent to which you have discharged this responsibility yourselves, it has been largely in the form of market-oriented programs geared to a fast return on investment. It has not dealt meaningfully with equally vital concerns illustrated, most notably, by the existing environmental crisis. Moreover, the cash flow objective of your own research and the profitability criteria of your equipment manufacturers' research simply do not coincide completely with the needs of your industry and the public. The solution to such pressing problems as sulfur removal from the fuel or from the stack emissions to make all eastern coal useable, better methods of cooling generating facilities—especially "dry" cooling, and more economic underground transmission—cable insulation, d-c converters and super conductors have not received adequate attention.

The market-oriented philosophy reflected in your research effort has another outcropping in the form of promotional practices and promotional rates. While the industry has waged a campaign for an increasing share of the energy market, the success of these skirmishes has accelerated the already spiraling load forecasts and has created a level of demand which, in some cases, cannot now be met. It is paradoxical that the industry persisted in this objective at the very time there existed warning signs of forced load curtailments, through brownouts, voltage reductions and interruptions of service. In its quest for promoting greater electric use, this industry is now obliged to expend its resources to meet a market demand—which it has itself, in part, created while experiencing difficulties in meeting normal market demand.

Still another outcropping of the market-oriented mentality is reflected in the irrational competition for markets without concern for the superior adaptability of particular energy forms to specific functions. This has contributed to the existing power crisis. The validity of growth for growth's sake is now being questioned by even orthodox thinkers. An objective review of existing competitive marketing policies is now required to determine whether, for example, other energy sources can, in some instances, more rationally serve the space heating market.

III

The existing power crisis and each of the several forces which have created it must be met head on if this industry is to successfully bridge the period of transition which will run as a span across this decade and the decades to come. Because the environmental concern exists as the most pervasive factor in the present situation, I should like to deal with it here by recommending a fundamental step that I believe is essential to any meaningful solution of the crisis.

There is a tendency in all of us to refuse to come to grips with problems and formulate answers which necessitate a change in our thinking, attitudes and objectives. This is particularly evident on both sides with respect to the emotional issues raised by the concern for our environment on the one hand and the continuing growth of our needs on the other. The allegation that every environmentalist seeks to curtail all future growth is obviously an oversimplified rallying cry that has served only to polarize positions and encourage meaningless denunciations. The question facing this industry obviously is not one of either pollution or blackout. Except for the radical fringe, no one seriously advocates turning back the calendar. Anyone with a glimmer of real understanding of the nature of the problem realizes that substantial additional electric generating capacity must be constructed in the decades ahead just to keep pace with the essential and basic needs of our expanding population, irrespective of any increase in per capita utilization. Rational minds will also concede that even more substantial increments of additional electric energy must be produced in the future to successfully wage the entire environmental battle on many other relevant fronts such as meeting the growing requirements of the depressed areas of our Nation, the urgent needs of the inner city, urban and mass transportation and the staggering waste disposal problem.

In the past, all of us have paid the price for the devastation inflicted upon the household of mankind by an industrial society. But it was assessed as a social cost which could be measured only to the extent that the benefits of our natural environment were denied to us. The damage was not reflected in the prices paid by us. Thus, the true cost of goods and services were understated to their competitive advantage. Today, we acknowledge that industry and consumers must bear the cost required to put an end to environmental degradation. This social cost must as a matter of national policy be recognized as a cost of doing business just as the cost of preventive maintenance reflects the price paid by the consumer for safety and reliability.

I take profound issue with those observers of the industry who advocate the rationing of electric power as the answer to this dilemma. I do so because I am convinced that the economic impact of the transformation of the social cost of environmental degradation into the cost of service of the utility industry, channelled by means of a realistic rate design, and the elimination of certain attendant promotional practices, can provide this industry and its regulators with sufficient leverage to moderate and shape effective demand.

Overly emotional reaction to this issue necessitated that more time and effort be expended to create an awareness of the devastating impact on our lives and the urgent need to bring the abuse to an immediate halt. Unfortunately, there has been a tendency to become too preoccupied with the creation of the institutional structure and the forum necessary to consider the environmental issues and not enough attention has been devoted to fundamental solutions. More than enough rhetoric, and gratefully even some constructive dialogue, has been brought to bear upon the institutional questions which have already been identified and are, it appears to me, headed toward a constructive solution. State legislative action is beginning to provide the needed governmental forums for the resolution of the siting problems of both generation and transmission and the evolution by the federal government of minimum standards for thermal and air pollution are being created to determine the operational characteristics of these electric utility facilities. Furthermore, the acceptance of open and long-range planning by this industry and its eventual coordination into comprehensive regional planning will culminate the urgently needed institutional response. This much of the problem will soon be behind us.

Therefore, an urgent need now exists for a commitment to a course of action which focuses on a more fundamental solution. The question of whether we can meet our growing need for electricity without environmental degradation must be answered decisively and definitively by the leaders of this industry by a total commitment to providing for the essential growth consistent with our environmental goal.

In order to gain the confidence and the trust of a concerned public, this commitment, however, must be shared by both government and the industry. It must be total and it must extend beyond merely providing an institutional apparatus for the siting of facilities and establishing operational standards. It is essential that we direct our attention to the more fundamental policy considerations which must set the parameters for the achievement of that goal and which are determinative of whether the goal can, in fact, be achieved at all. For reality requires that we recognize that this objective

can only be achieved within the limitations of the available fuels and the existing fuel technology. Our commitment to this goal, therefore, involves nothing less than the dedication of National Energy Policy to its attainment.

IV

Energy resources are critical to the security and economic welfare of our Nation. So it follows that an objective of government policy is to develop and maintain adequate supplies of low-cost energy. In the United States, unlike some other countries, this does not burden the energy industry with centralized production plans and allocation directives. The government instead is called upon to establish an atmosphere conducive to the growth of the energy industry. Government is the economic climatologist charged to forecast only sunny days. But, unlike the weatherman, an error in prognosticating the practical effect of a particular government fuels policy means more than just a foot in a puddle.

The collective impact of the numerous specific national fuels policies can be regarded as our National Energy Policy. This policy has evolved from the interaction of the response of both government and industry to specific energy needs based upon two overriding national objectives: national security and economy or, perhaps more accurately stated, national security or economy because a single fuel policy cannot always accommodate both objectives.

National Energy Policy is wide ranging and includes programs to fund and encourage scientific energy research in order to increase supply, enhance utilization and decrease costs; to control the well head price of natural gas; to limit petroleum imports to encourage development of nuclear generation; to offer tax and other incentives to promote the exploration and development of various fuels; and to encourage the long distance transmission and regional coordination of electricity. It embraces conservation laws to prevent the waste of valued resources. Inter-fuel competition is favored and when the muscle of competition does not flex, government regulation and antitrust policy, which must be regarded as essential parts of National Energy Policy, is no ninety-seven pound weakling.

Since the evolution of our existing National Energy Policy there has emerged and risen to the very highest position on our scale of national priorities a number of specific national environmental goals. Although it may have been too early for us to recognize all of the ramifications, their collective effect must now be regarded as our National Environment Policy. It is, of course, still in the process of evolution. Indeed, bits and pieces of that policy are being forged almost daily in legislative halls throughout the Nation. However we must now recognize the significant impact that the evolving environmental policy and our National Energy Policy have upon one another.

Obviously, National Energy Policy significantly affects what fuels are available to alleviate environmental concerns. On the other hand, clearly discernible now are the profound implications of that evolving National Environment Policy, as it has already been shaped, upon our existing National Energy Policy. For example, environmental goals have not only entered into the decision-making process whether it relates to coal, gas, oil or any other fuel—they have, in many cases, provided the decisive determinant. Indeed, in a constantly increasing proportion in the electric utility industry, these decisions have been wrested from the hands of management, and have been made a matter of government fiat either by restrictions on the quality of fuel or absolute prohibitions on its utilization. And the pressure continues to mount.

Fuels which existing National Energy Policy has ordained to compete are thus removed from the market place by the new national goal. Fuels which, on the other hand, could serve these new goals are effectively foreclosed from the market by existing energy policy. And even when environmental goals have overriden existing energy policy, such as in the importation of Venezuelan oil to a generating plant in Chicago, it has been done in an atmosphere of crisis, as an ad hoc determination, and without the benefit of guidelines sensitive to the implications of the decision.

It is now clear that our National Energy Policy must consciously be directed to the attainment of the emerging national environmental goals. It must be transformed into an instrument of National Environment Policy. The rationale for our National Energy Policy should now therefore be expressly extended beyond considerations of national defense and economy in order to encompass this equally paramount national objective. And, just as a new test of environmental feasibility has now been added to the long-standing prerequisites of engineering and economic feasibility in the construction of utility facilities, so must our national environmental goals now be added to the long-standing objectives of national security and economics in the formulation of National Energy Policy. I believe that this objective can best be achieved by the formulation of a coordinated National Energy-Environment Policy.

What has the recognition of this fact to do with the electric utility industry as it faces a new decade and attempts to contribute to the quality of life? The coordination of our National Energy Policy and its goals with national environmental goals, in the final analysis, and in the most fundamental sense, provides the real hope for this industry if it is to continue to serve the Nation and its growth without degradation of the environment.

The development, articulation and implementation of such a National Energy-Environment Policy provides the only cornerstone of such hope. We can no longer engage in the whole sale elimination of fuels, such as high-sulfur coal, without providing both for short term substitutes and for the technology which will inevitably redeem them again for the market place. We can no longer, for example, prevent the economic transportation of gas in liquid form from Alaska to the West Coast markets where it is urgently needed to provide a short term substitute fuel. But this is precisely what we are doing by administering an energy policy which was designed to achieve other goals.

All aspects of our energy policy must, therefore, be reappraised. This includes tax incentives, oil import restrictions, gas producer regulation, regulatory policies, the Jones Act and a score of other fuels policies which will determine whether we can achieve our goal of growth in the energy industry without environmental degradation. The most immediate need, however, is for a basic reappraisal of our R&D objectives.

National Energy Policy presently includes the expenditure of enormous sums for energy R&D. A recent study by the Energy Policy Staff of the Office of Science and Technology reported that $368 million will be spent in Fiscal Year 1970 on civilian energy research and development through programs supported by federal funds. About 90 percent of the federal R&D expenses are addressed to the problems and opportunities of the electric power industry. The research and development effort for atomic energy received over 84 percent of all the federal funds for energy R&D. It has also received approximately three billion dollars of government expenditures in the past twenty years. Compared with this ambitious federal commitment to atomic energy, the amounts of money which have and are being allocated for the improvement of fossil fuel generation and for other fossil fuel energy research are ridiculously small. It should be made clear that I am not advocating a reduction in the dollar allocation to nuclear energy research. Rather, I am suggesting that more money be appropriated for non-nuclear energy R&D, so that we may strike a balance between the lure of unlimited energy through atomic power and the continued development of our other primary energy resources.

I believe that energy policy must drastically expand non-nuclear energy R&D for two essential reasons:

1. Fossil fuel will continue to be a major source of primary energy for electric power generation. In the Federal Power Commission's updating of the National Power Survey there appears to be ample evidence that even with the optimistic forecasts of nuclear growth in the next two decades there will be a continually expanding demand for fossil fuels for electric power generation. If the electric utilities are permitted to expand at their projected rates of growth, fossil-fueled, steam-electric generating capacity will increase from 261 gigawatts in 1970, to 559 gigawatts in 1990. Correspondingly, the electric power industry's annual demand for fossil fuels will nearly double in the next twenty years. By 1990 we will require coal, gas and oil for electric power generation in quantities equivalent to nearly a billion tons of coal annually, in addition to nuclear fuels equivalent of about 1.1 billion tons of coal. There can be no question that the need for fossil fueled generation will continue well into the twenty-first century.

2. Because of their own unique characteristics, fossil fuels can make invaluable contributions to the quality of life in the decades ahead. I think it is much too early for government energy policy to write off fossil fuels. As long as nuclear energy research is concentrated in a single agency while fossil fuel production, transportation, utilization, conversion, and other research is divided among a dozen agencies, fossil fuels will inevitably be disadvantaged in the competition for the energy R&D dollar unless energy policy responds to this environmental need.

Except for the nuclear power field, most energy R&D programs exist on minimum subsistence budgets reflecting little or no relationship to our new environmental goals. For example, in the electric power industry alone every one percent improvement in fossil fuel utilization efficiency would lead to a saving of ten million tons of coal annually by 1990. Correspondingly, there would be a reduction, however small, in the environmental problems.

Government policy must also stimulate through a variety of means, including tax incentives, an equivalent commitment in the private sector to R&D programs relevant to this goal. The market oriented research of the past by the electric utility industry and its manufacturers must give way to programs which are addressed to the primary challenge of this decade of the 70's. Regulatory policy, both state and federal must also accommodate this goal. Corporate budgets must also be reexamined to reevaluate the relative significance at this time of promotional advertising and the commitment, measured by research dollars, to the achievement of this goal.

How well we respond to the need to limit emissions of air pollutants from fossil fueled plants is to considerable measure a function of our research policies. A technology for the removal of particulate matter from power plant flue gases is already available. This is not the case with oxides of sulfur. Although several technologies currently under investigation hold out promise of removing varying proportions of the sulfur oxides from the flue gases, none have been

sufficiently developed to make them generally acceptable on a commercial scale. Keeping in mind that power plants contribute about one-half of the sulfur oxide emissions in this country, it is crucial that research efforts be expedited toward the resolution of this problem in view of the significant role of fossil fuels in the future.

In this sense natural gas is the most desirable power plant fuel. But, it is evident that we could not possibly replace all the uses of coal and oil in this country with natural gas as a preventive measure against air pollution.

The technology is presently available to substantially reduce the sulfur content of residual oil prior to combustion and, as a result, the electric utility demand for this fuel has increased rapidly in the past several years. Domestic production of residual oil, however, is continuing to decline and electric utilities are depending on foreign supplies for an ever-increasing share of their residual oil requirements.

Until recently this demand was largely limited to the East Coast and, to a much lesser extent, the West Coast. But the pressure for using low-sulfur fuels in electric power generation is so great, and the economically available domestic supply of these fuels so limited, that utilities as far inland as Chicago now find it necessary to import low-sulfur-oil from abroad. Who here would have believed five years ago, that 4.5 million barrels of oil will be barged 1000 miles up the Mississippi River to replace coal in Illinois? As a Chicagoan I would have been the first to question the rationality of such a decision only a year ago. I still feel very uneasy about it.

But can we expect a solution from the coal industry? Some relief—yes, but a solution—no—not without stack devices. The United States has large reserves of low-sulfur coal—coal containing about one percent sulfur or slightly less. However, the bulk of these reserves are located in a continuing belt that stretches from North Dakota, west through Wyoming, Utah and Colorado, and down into New Mexico and Arizona. Much of the coal production capacity in the East, however, is in high-sulfur coal. To the extent that low-sulfur coal is found in the East, a major portion of these reserves is dedicated to the steel industry and to export markets where it sells at substantially higher prices.

In time production of low-sulfur coal could be greatly increased. But the use of this fuel, with its one percent sulfur content, will not solve the air pollution problem, but merely keep it from becoming much worse. A major effort to redeem high-sulfur coal for the market must therefore be an essential element of a National Energy-Environment Policy.

A national program should now be instituted to achieve this objective and at the same time, the importation of low-sulfur fuels including oil and LNG must be encouraged to meet our present needs for clean fuel during the interim. It may be necessary to channel the available low sulfur fuels to those markets where sulfur oxide emissions are a critical problem. Substantial efforts must also be brought to bear upon the transportation problems relating to the cost of moving western low sulfur coal and our policy with respect to the shipment of Alaskan oil and LNG so that these fuels can be made available to more markets in the continental United States.

The development of desulfurization programs will require capital investment as will the construction of equipment to provide for delivery and use of low sulfur fuels. The lead time required before facilities become operational and the long life of these installations call for a realistic evaluation of the conditions and future trends in both the power and fuel industries. Mistakes in judgment can be costly. Hence it is necessary to make plans as flexible as possible to be able to take advantage of new technology that is developed earlier than predicted, and to be able to avoid a crisis situation when the hoped for developments are delayed.

While all aspects of our National Energy Policy must now be reevaluated, I believe that the most significant area is that of energy R&D. It is fashionable today to attack technology. The electric utility industry is presently experiencing the pressure of the critics of its technology. But technology is not the evil which it is portrayed. It is our failure to direct it—to channel it into the areas that are critical to contemporary needs—that is the real shortcoming of our existing technology. The success of this industry's effort to continue to meet essential power needs without environmental degradation hinges, in the final analysis, upon the success of its technology and this, in turn, rests in your hands—the engineers and the technicians of this industry who, with a sense of purpose and vision can direct technology, stimulated by a relevant National Energy-Environment Policy, to the achievement of this goal in this new decade.

A Review and Comparison of Selected U.S. Energy Forecasts

(Prepared for the Executive Office of the President, Office of Science and Technology, Energy Policy Staff, by Pacific Northwest Laboratories of Battelle Memorial Institute, December 1969)

FOREWORD

The formulation of energy policy inevitably depends upon expectations regarding energy supply and demand and this dependence is growing. Correct assessment of energy prospects is important for planning future regulatory, tax, environmental protection and other policies. It is perhaps most critical in providing for an efficient allocation of limited government funds for energy research and development where the time from initial commitment to major commercial utilization may be decades. We are therefore interested in the adequacy of existing forecasts for public policy purposes.

This report does not constitute an independent projection of the magnitude of future demand for energy by the Energy Policy Staff of the Office of Science and Technology or by Battelle Northwest. Rather, the report is an attempt to pull together on a comparable basis a number of projections which have been made in recent years.

This study had two main purposes. One was to collect and compare energy projections of a number of energy forecasts. As the text of the report makes clear, there are terminological and conceptual differences between forecasts which cloud comparisons and for which simple adjustment is not always possible. Furthermore, differences in assumptions and data bases introduce additional complications. Nevertheless, comparative tables are valuable in identifying areas of agreement and disagreement between various forecasts and often the reasons for such differences. Such tables also provide a convenient reference.

The second purpose of the report was to assess the methodology used by various forecasters. While sound methodology does not insure a better forecast any more than good form in sport assures a winning team, good form and sound methodology increase the probability of superior performance.

Most of the forecasts studied provided only limited information about their methodology and practically none provided quantitative statements of the actual forecasting relationships. Very few forecasts provided standard errors of estimate or other measures of uncertainty. Some forecasts gave ranges but no information on the probability that future values would be within the range.

THE PAST

In considering the projections in the report, the dynamic nature of the energy economy should be kept in mind. If the future is similar to the past, new energy sources will crowd into the market place before existing sources are depleted. A century ago, fuel wood provided about 75 per cent of the nation's inanimate energy supply. By 1900 fuel wood supplied only 21 per cent; coal was dominant, with 71 per cent of the market. By the late 1930s the fluid fuels (oil and gas) were challenging coal's position and shortly after World War II fluid fuels were supplying more energy than coal.

The post-war period witnessed another shift in market shares within the fluid fuels, with natural gas growing faster than crude oil. In 1968 natural gas production (on a wet gas basis; i.e., including natural gas liquids) supplied 34.7 per cent of the nation's energy. Domestic crude oil production supplied 35.3 per cent. Inclusion of oil import raises oil's share to 40.1 per cent. The higher rate of gas consumption, combined with increased demands for environmental quality control purposes, could result in natural gas becoming the nation's largest energy source within a few years if adequate supplies are available—a matter of considerable uncertainty at present.

Given the dynamic pattern of supply, along with a comparable dynamism on the consumption side (e.g., increasing use of electricity), it is easy to understand the divergent opinions about future market shares shown by various forecasts. It would not be inconsistent with history for uranium (nuclear power) to be the largest single source of energy for the nation by the year 2000, although its present contribution is negligible. However, given large resources of coal and oil shale, and the prospects for converting them to fluid fuels, petroleum's dominance is likely to continue for the remainder of this century. Moreover, a potential challenger to the dominance of nuclear fission in the next century is already on the horizon—namely, nuclear fusion. And in the distant future the possibility of economical solar energy possibly collected in space by satellite stations, cannot be altogether dismissed.

The future as projected by the forecasts

According to the forecasts examined in this report, energy consumption in the year 2000, including non-fuel uses, is expected to be about 170,000 trillion British thermal units if real gross national product grows at about 4 per cent per year. Consumption in 1968 was slightly over 62,000 trillion Btu. The average annual indicated growth rate is about 3.2 per cent.

Although a figure of 170,000 trillion Btu in the year 2000 is certainly reasonable, on the basis of extrapolating current trends, it does not reflect an analysis of new factors which are already emerging, the most important of which is the growing concern for protecting the environment. It is also by no means clear that it adequately reflects possible changes in efficiency of energy conversion and changes in the structure of consumption, especially the larger share going into electric power production.

All of the existing projections that we have analyzed estimate that oil (including natural gas liquids) will continue to be the nation's largest source of energy through the year 2000. Natural gas (dry) is expected to continue to be the second largest source of energy. Of the three projections providing figures for both nuclear power and coal at the end of the century, one estimates that coal will provide slightly more energy than nuclear, another estimates just the opposite, and one foresees a large margin for nuclear.

Hydroelectric power is expected to continue to grow but to be of decreasing relative importance and to supply the smallest amount of any of the commercial energy sources in

the year 2000. Nuclear generation is expected to exceed hydroelectric generation some time in the 1975–1980 period.

A consistent rate of growth of energy consumption toward the expected 170,000 trillion (170×10^{15}) Btu figure for the year 2000 would require 3.4 quintillion (3.4×10^{18}) Btu in the 32 years from 1968 to 2000. Converting to more meaningful terms, this is equivalent to the amount of energy in 590 billion barrels of crude oil or 170 billion tons of average grade U.S. coal resources (20 million Btu per ton).

Relative to past consumption, expected consumption in the 32-year period from 1968 to 2000 will be almost three (2.8) times consumption in the prior 32-year period from 1936 to 1968. Providing such quantities of energy will pose a substantial problem for the energy industries and for government policy, since the nation has been consuming its higher grade, more accessible resources first and since even the much smaller energy consumption of the last three decades has already created serious environmental problems.

Questions for the future

Review of the forecasts herein—which formed the basis of the previous discussion—reveals that many relevant questions are not answered or in many cases even addressed. Before it is possible to gain a high degree of confidence in even the range within which future energy consumption is likely to fall, many of these questions must be considered and answered.

On the level of total energy consumption, there has been a definite relationship between total energy consumption and real gross national product in the past. Over the last 50 years the relationship shows that a decreasing amount of energy has been required for each unit of GNP.[1] The increased technical efficiency of energy use has tended to more than offset the more intense use of energy in our economy. However, the trend appears to be changing. In the future it is possible that a constant or even increasing amount of energy per unit of GNP may be required if present policies of encouraging energy use are continued.[2] One reason for the changing trend is that the technical efficiency of new electric power plants and many other energy conversion devices is no longer increasing and may even decrease over the next several decades.[3] This factor, coupled with the increasing share of end uses being supplied by electricity, is at least an important item working in the direction of changing the historical relationship. It is thus possible that most projections have understated future growth in the overall energy consumption if present trends continue.

The forecasts reviewed in this report were prepared before the recent surge of concern about the environment. They contain little information about the effects of environmental quality control on energy consumption even though the production, transportation, and utilization of energy is deeply involved with environmental quality and conservation considerations. It is possible that in the future government policy in regard to environmental quality and conservation matters will lead to a lower level of total energy consumption than would otherwise occur. In fact, if environmental quality control considerations and other factors increase the cost of energy over what would otherwise prevail, that fact alone will to some extent decrease consumption, the extent of the decrease depending, of course, on the magnitude of cost increases and the elasticity of energy demand.

It is even possible to envision Federal policies designed to slow the growth of energy consumption due to adverse environmental effects through rate-making policies and emphasis on increased efficiency.

Footnotes at end of article.

Widespread use of fuel cells or heat pumps could tend to increase technical efficiency. Similarly, various structural changes in the economy, such as the widespread displacement of private automotive travel by mass transportation, might act in the direction of decreasing energy consumption per unit of GNP.

In the case of individual fuels, most of the forecasts made several convenient but questionable assumptions. A major assumption is that overall and relative prices for energy will be such that price need not be explicitly considered in the forecasts. A second and related assumption is that there will be no limit on the availability of any fuel or energy form. The assumption of unlimited availability at no change in relative prices is of questionable validity for even the next decade, let alone the remainder of the century. It is, of course, very difficult to consider price and resource availability in energy forecasts, but it appears to be increasingly necessary to do so.

In view of the new impact of environmental concerns and differences and uncertainties identified in existing energy forecasts, we are considering undertaking a forecasting effort oriented toward public uses of energy forecasts. Its purpose would be to provide a consistent framework for the more detailed forecasts made by agencies having specific energy responsibilities. (Energy Policy Staff, Office of Science and Technology)

STATEMENT OF ATTRIBUTION AND DISCLAIMER

This report was prepared under a contract with the Office of Science and Technology, Executive Office of the President, by Pacific Northwest Laboratories, a Division of Battelle Memorial Institute. The authors were W. A. Reardon, J. A. Merrill, L. D. Jacobson and W. L. Bathke.

The forecasts to be analyzed were selected by the Office of Science and Technology as a sample of the forecasts available in the public domain. For the most part, better known publicly available forecasts were selected. However, a few less widely known forecasts with characteristics of special interest were included. No attempt was made to judge the validity of the forecasts in making the selection.

Basic responsibility for the numbers in the report, for the text, and particularly for the comments on individual forecast effort, is Battelle Northwest's. The judgments expressed in the report are those of the authors and do not necessarily reflect the views of the Office of Science and Technology or any other department or agency of the United States Government. Any report of this nature will almost certainly contain errors and misinterpretations of individual works, some of which are the result of ambiguity in the individual forecasts and reports reviewed. The original reports are the authoritative source of information on the specific forecasts.

Introduction

A review of a segment of the energy requirements forecasting literature was made by the Systems and Electronics Division of Battelle-Northwest under contract to the Energy Policy Staff, Office of Science and Technology. The objective of this particular study was to examine a group of reports and books for the purpose of comparing the methods employed, the assumptions used and the energy forecast values obtained by the different investigators, hence the report does not readily lend itself to summarization in the usual sense. We have tried to condense the information and present its trends in such a way as to give the reader a useful summary, so that he may be able to select such parts of the contents as he wishes for detailed reading.

The studies reported herein were generated for many different purposes and thus can be expected to differ considerably in approach and detail and somewhat less in results. Examples range from the very detailed and comprehensive 1000 page book (not all concerned with energy) to the 8 page summary of natural gas requirements. The length of a report however is not necessarily an indicator of quality since some of the reports are more in the nature of summaries and much of the detail is omitted.

Several cautions should preface surveys of existing forecasts, since it is virtually impossible to detect all implied assumptions behind the projections. Many projections do not set out separately their underlying assumptions nor do all projections consider the same factors in the construction of their projection. Included in this review was an attention to the following particular items:

1. Source of data used in each analysis.
2. Historical period covered by the data.
3. Methods of analysis used:

a. Projection of total energy which was broken down into end-use and source of supply categories (Subdivision Approach) versus projection of individual end-use requirements which were aggregated to provide a total energy prediction (Building Block Approach).

b. Projection based on historical trends in energy requirements versus projections using intermediate variables such as population growth, growth in GNP, and changing patterns in per capita energy use.

c. Statistical regression analysis, judgment, or combination.

4. Degree of completeness or coverage.
5. Assumptions made.
6. Equivalence of terminology used.

Terminology relationships

For any comparison study, an important early step is an inquiry into the equivalence of the terminology used by the different investigators. Therefore, this possible source of misinterpretation of results is discussed early in this report.

An examination of historical data for the total energy consumption (requirement or demand) in the United States tabulated in the reports included in this study revealed some sizeable differences in the recorded values. Some differences were too large to be explained by variations in data rounding techniques or other minor differences in the handling of the source data. Therefore, it became apparent that variations in definitions for such terms as energy consumption, energy requirement, and energy demand must exist. Examples of some of these variations in definitions are presented below. For these examples, it has been assumed that all fuels have been converted to a common base, BTU's and that stockpiles of fuels remain at a constant level.

The basic relationship for energy fuels for a geographic entity is:

Production:
+ Imports
— Exports
+ Inventory Change
—
= Fuels Disappearance

The energy balance may be made for total energy or for any component as long as consistent units of measurement are used. However, as attention is focused more and more on detail, the definitional problems tend to increase. This overview is of projected values at a fairly aggregative level, and the main definitional problems appear to be in connection with such terms as consumption, demand and requirements.

Part of the terminological difficulty results from a different orientation of the forecasters. Producers of energy materials and resource-oriented forecasters tend to regard production plus imports minus exports as consumption. (Inventory changes are important in short-run forecasts but are normally neglected in long-run forecasts.) Sellers of fuel and customer-oriented forecasters tend

to exclude non-energy uses of fuel (e.g., asphalt for highway use) from energy consumption. Projections of non-energy uses may run as high as 10 percent of total fuel used. Similarly, losses in production or transmission of fuel and energy may be excluded from consumption by various forecasters.

Table I compares the definitions used by a number of forecasts, although there is not always complete consistency within a given forecast as to treatment and terminology, particularly with regard to minor components.

In the CGAEM report, the term "consumption of fuels and waterpower" is used. Their use of the word "consumption" in this context appears to be more in line with a literal interpretation of a concept such as "total fuels disappearance." For the "consumption of fuels and waterpower" usage, it would appear that CGAEM includes all fossil fuel losses and non-energy uses as well as electricity conversion and line losses.

An examination of Table 1 reveals that differing definitions for "consumption" do exist and that "requirement" is not necessarily synonymous with "consumption." In some reports, the word "demand" is used rather loosely, e.g., Pages 5 and 93 of the CGAEM report. Many of the differences in the above definitions would be expected to be quite small when compared with the total amount of fuel actually consumed. For example, coal losses and natural gas transmission losses should be small when expressed as a percentage of total fuel consumed in the United States. However, some of the items are reasonably large and may become considerably larger in the future. For example, conversion losses in electricity production and some of the non-energy uses of the fossil fuels are items in this category.

TABLE 1.—COMPARISON OF TERMINOLOGY [1]

Item	A	B	C	C	D	E	F	F	G	H	I	J
Production	+	+	+	+	+	+	+	+	+	+	+	+
Imports	+	+	+	+	+	+	+	+	+	+	+	+
Exports	−	−	−	−	−	−	−	−	−	−	−	−
Nonconversion losses	−		−									
Nonenergy uses	−				−		−					
										Adjusted for changes in stockpiles.		
	End-use energy requirements.	Consumption of fuels and waterpower.	End-use consumption.	Projected consumption of energy.	Energy consumption.	Energy use (oil equivalent).	Excludes nonfuel use.	Energy demand consumption.	Gross energy consumption.	Energy consumption (calculated disappearance figures).		
	CGAEM	CGAEM	RAF	RAF	EUS	OEUS	EMUS	EMUS	PEC	ERDNP	PCCP	FFF.

[1] Many reports did not provide the detail necessary to determine what items were included and excluded in forecasting of energy consumption.

With these considerations in mind, it is evident that direct comparisons among energy forecasts by various investigators can be misleading. Direct comparisons are strictly valid only for those studies using equivalent definitions. Theoretically, one could "correct" the forecast values by the various investigators to some desirable common definition. However, in most cases this is almost impossible to accomplish since the reports do not present the necessary information, data, and references which would allow such a correction to be made.

General trend and order of magnitude comparisons can be informative even for two studies based on slightly different definitions—especially so if the definition differences are kept in mind while making the comparison.

Energy items forecast

Energy forecasts vary greatly in the amount of detail on prospective energy use and supply which they provide. While a more detailed forecast is not necessarily more accurate, it is generally more useful. For example, a forecast which provides detail on expected production and consumption by fuel types is of more value to coal producers than a total energy projection from which coal's share must be estimated.

A detailed projection indicates how the forecaster expects conflicting trends within the components of the total to be resolved. It also provides a basis for critical review by other energy experts and, therefore, a mechanism for judging the reasonableness of the assumptions and projections. In general, it is also somewhat easier to determine, by comparison of the detailed projections with accumulating actual data, when a detailed forecast is going astray.

Table 2 indicates the main items of detail covered by the projections reviewed here.

TABLE 2.—ENERGY ITEMS FORECAST

Forecast	Total energy	Primary sources: Coal	Petroleum liquid	Natural gas	Shale oil	Uranium	Hydro	Secondary Sources: Synthetic	Electrical	Nuclear	Energy consumption: Residential	Commercial	Industrial	Transportation	Electric utility	Regional detail	Other energy items
CGAEM	×	×	×	×			×		×	×	×	×	×	×		×	×
EMUS	×	×	×	×		×	×			×	×	×	×	×	×		
ERDNP [1]	×	×	×	×	×	×		×	×	×							×
ESDNR									×	×							
EUS	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×	×
FFF	×	×	×	×	×		×			×							×
FGNP						×			×	×						×	
FNGR				×							×	×	×	(2)			
GUPID											×	×	×[2]				
NFES	×	×	×	×			×			×					×		
NPS						×			×	×	×	×	×	×	×	×	×
OEUS	×	×	×	×			×			×	×	×	×	×	×	×	
PCCP	×	×	×	×		×	×		×	×	×	×	×	×			
PEC	×										×	×	×	×	×		
RAF	×	×	×	×	×	×	×		×	×	×	×	×	×	×	×	×
USP	×		×	×													

[1] Presents consensus of 10 agencies of the Federal Government.
[2] Other.
[3] Entitled "Industrial and Other."

Assumptions

Energy consumption depends to a large extent upon the assumptions and conditions under which the projections are made. Authors of energy projections must either explicitly or implicitly envision the future performance of key aspects of the energy environment.

BNW found in this review that a basic set of rather broad assumptions could be assembled. In most cases, the exact degree of influence any one assumption had upon the resulting forecast is unknown. Also, it is not known if all stated assumptions were actually utilized in all instances.

The assumption made in the forecasts reviewed generally fell within seven categories.

1. Gross national product—the assumptions usually refer to a rate of growth, generally about 4 percent per year.

2. Population which usually referred to a Bureau of Census projection, (Series II–B) generally about 1.6 percent per year.

3. Pricing of fuels—these assumptions usually refer to the fuel price in relation to other fuels or to the general price level and it was generally assumed that the relative prices would remain at competitive levels.

4. Availability of fuels—the usual assump-

tion is that there will be no limitation in availability.

5. Assumptions regarding changes in technology that permit displacement of fossil fuels generally foresee a substantial increase in nuclear generating capacity.

6. Business cycle swings are assumed to be minor.

7. National defense assmptions were generally that of ("cold war" with no significant change in defense spending levels. (All preceed the Vietnam Escalation.)

In Table 3 we have listed the reports and their assumptions. As can be seen from the table, not all the forecasts reviewed gave consideration to all of the seven general categories of assumptions.

TABLE 3. ENERGY FORECAST ASSUMPTIONS

	Annual GNP growth rate (percent)	Population	Price of fuels	Availability of fuels	Technology
CGAEM	5 percent (1965–85)	250,000,000 by 1985	Continue trends evolved since 1960.	Adequate	No extraordinary change.
EUS	Continue 1960–65	(3)	(3)	(3)	Introduction of electric cars.
NF&ES	3½–4 percent	250,000,000 by 1980	Correspond to general price increase.	No restrictions	Nothing revolutionary.
RAF [2]	Low, 3.0 percent; medium, 3.8 percent; high, 4.8 percent.	1.55 percent annual growth (base year 1960, 180×10⁶).	(3)	(3)	No major changes.
PEC	(4)	1.6 percent annual growth	Relative to other fuels	Adequate	Evolutionary.
PCCP	Same as RAF, with some adjustment.				⅓ electric generation nuclear by 1980 and ½ from 1980 to 2000.
OEUS	Not given				No electric autos by 1980.
USP	(4)	1.3 percent annual growth	Relative to other fuels	(3)	Gradual evolutionary.
EMUS	2.5 to 5.5 percent annual growth.	1.0 to 2.2 percent annual growth.	Stability of relative costs	Adequate/some restriction	Evolutionary.
FNGR	(1)	(1)	Same relationship as now	Adequate	(1).
GUPIP	(4)	(3)	Competitive price relationship	do	Major changes not accounted for.
FGNP	(4)	(3)	(3)	(3)	(3).
NPS	(4)	250,000,000 by 1980	(4)	(4)	(4).

[1] Mentions these categories were considered but does not indicate what the assumption was.
[2] This work is heavily dependent upon the book "Energy in the American Economy, 1850–1975," by Schurr, Netchert, etc.
[3] No assumption stated for this category.
[4] Mention was made that other pertinent data was considered.

Characterization of methods

Forecasting methods may be characterized in many different terms. We believe there is no all encompassing term that can be utilized. Normally, a forecast will employ several techniques to create the forecast. This may be done to provide a system of checks and balances or it may be that the various components of the forecast do not lend themselves to application of identical methods.

We have chosen three basic categories by which to characterize the methods employed by the authors of the forecasts reviewed. No attempt has been made to read into the text of the forecasts reviewed any implications of method. In most cases, the more comprehensive forecasts stated the methods that were employed.

The first category is *derivation*. By this, we mean whether the forecast was derived by some means of statistical fitting of historical trends or whether it appears to rely heavily on judgment. The two techniques are not entirely exclusive. All statistical work involves some judgment. The general criteria for classification here is whether the forecast clearly indicates that statistical methods were important in the derivation or not. Our review indicates that a majority of the forecasts were derived using statistical fits to historical trends.

The forecast *scope* is the second category of characterization. The scope may be either complete (forecast for all major energy sources) or incomplete (not all major energy sources forecasted). The scope may also be defined relative to consuming sectors but we have not done so here.

The third category pertains to the forecast *construction*. If forecasts of each major energy source or use was made, and added together for the total energy projection, the forecast would be classified as utilizing the building block approach. Where the total energy forecast constrains the various components the forecast is classified as having used a subdivision approach.

By using the foregoing criteria, Table 4 was compiled to present in tabular form the classification of the forecasts by the methods employed.

TABLE 4.—CLASSIFICATION OF FORECAST METHODOLOGY

Source document	Derivation	Scope	Construction
CGAEM	Extension of present trends.	Complete	Building block.
EUS	Extension of trends and judgment.	do	Do.
N.F. & E.S.	Judgment	do	Do.
RAF	Extension of trends and judgment.	do	Building block—energy use subdivision sources.
PEC	Projections of least square trends.	do	Subdivision.
OEUS	Extension of trends and judgment.	do	Apparently subdivision.
USP	Extension of present trends.	Incomplete domestic	(1)
FNGR	Judgment	Natural gas only	(1)
GUPID	Extrapolation of past trends.	do	Building block.
FGNP	Statistical fit	Incomplete	(1)
NPS	Extension of present trends.	Electric only	Building block.
PCCP	Extension of trends and judgment.	Complete	Building block—energy use subdivision sources.
EMUS	Projection by least square treads and judgment.	do	Subdivision.

[1] Means not available.

Total energy

The projections of the future use of energy, when examined in relation to one another, indicate a range within which the actual usage is likely to occur and a magnitude of the change in the demand for energy. Because we do not know the degree of influence that the various assumptions had upon the derivation of each forecast, a completely detailed comparison is not feasible.

There is confusion in the literature which results from the lack of a clear definition of fuels requirement and energy requirement. Most reports are internally consistent in usage but comparison with others is difficult without a very detailed examination of each. Perhaps it would be more satisfying if a standard terminology were adopted; production could be characterized by *fuels requirement* for all uses and consumption characterized by *energy requirement* for all fuels. This would be consistent with the thought that fuels are not energy until burned and it is energy which is used. It would also be consistent with some of the common uses as is seen in some of the forecasts. Table 5 incorporates this usage.

Of the forecasts considered, projections of total fuel requirements (converted to energy units) were found to range from 74,542 trillion BTU to 97,000 trillion BTU for the year 1980. Table 5 presents the forecasts of total fuel requirements. Some forecasts stated the average annual growth rate of total energy and in most cases it was approximately 3.2 percent annual growth rate. The publication entitled "United States Petroleum Through 1980" observed that the rate of increase in energy consumption tended to be less than that of gross national product. Further, that since 1940 the growth of energy use has been slightly more than 80 percent of the annual growth rate of GNP. They assumed an annual growth of 4 percent for GNP and an energy annual growth of approximately 80 percent of GNP or in other words, 3.3 percent per year for total energy use.

Table 6 is a representation of the derived growth rates as deducted from the values in

Table 5. Since the base years cover a wide range and in some cases are a range of years whose trend is being extended the left side limit of the arrow should be interpreted as extending to the base year given in Table 5.

TABLE 5.—FORECASTS OF TOTAL ENERGY REQUIREMENTS

[Trillions of B.t.u.'s]

Source document	Date of publication	Base years	Base value	1970	1975	1980	1985	2000
CGAEM [1]	1968	1947–65	30,838 52,350	64,444	79,611	97,825	119,597	
EUS [1 2]	September 1967	1960–65	41,453 50,314	60,827	79,944	93,374	118,126	
N.F. & E.S.	September 1962	1961	44,064			[3] 82,000		
RAF	do	1960	45,250	60,190		79,200		135,200
PEC	December 1968	1947–62	33,168 47,897			85,934		
ER	December 1962	1907–60	14,600 44,900			[4] 61,000		
OEUS	October 1968	1950–65				[5] 97,000		
USP	July 1968	1965	54,000			88,100		
EMUS	do	1947–65	33,168 53,791	64,276	75,605	88,075 [3] 83,900		168,600 [3] 158,951
PCCP [2]	May 1968	1948–65	54,000			91,000		155,000
FFF	October 1960	1953	41,000		73,000	86,200		170,000
TCUSEC [6]	1968	1960	43,200			90,300 (99,700)		174,000 (213,000)

[1] Hydro accounted for at kilowatt-hour energy equivalent.
[2] Excludes nonfuel uses.
[3] Consensus of 11 forecasts.
[4] Minimum.
[5] Converting their 17,000,000,000 barrels of oil equivalent to B.t.u., 5,800,000 B.t.u. per barrel
[6] GNP growth rate at 3.5 percent per year and (4 percent per year).

TABLE 6.—FORECASTS OF TOTAL ENERGY ANNUAL GROWTH RATES

	To base year(s)	1970–75	1975–80	1980–85	1985–90	1990–2000
CGAEM			.037			
EUS		.042	.044	.047		
RAF		.027		.025		
EMUS					.032	
PCCP					.031	
FFF		.034			.035	
PEC		.032				
OEUS		.038				
ER				.0204		
USP		.031			(Petroleum only)	
		.029			(Natural gas only)	
N.F. & E.S.		.032				

Note: Growth rates generally indicate the compound annual rate of growth from the average value for 1 period to the average of another period.

Energy sources

In addition to total fuel forecasts there are many report forecasts for individual fuels. These are summarized in Tables 7–11. The tables include also the fractional use of each fuel as given by the forecast or deduced from the numbers given in the reports. It is apparent also from the sparcity of entries in some of the tables that not all forecasts were given in the detail required to complete the tables. Unless otherwise stated the mineral fuels requirements include nonfuel uses and losses.

Coal

The use of coal as an energy source is expected to decline by all forecasts reveiwed. Coal, in general, will show an ever decreasing annual rate of growth. The reason advanced most often is that of consumer preference, transportation costs and changes in technology. Natural gas, for example, is much cleaner and more convenient than coal when used for home heating. Increases in industrial and electrical utility cosumption are not enough to offset the declines in the remaining use categories. Sartorius & Company in their publication "Energy in the United States 1960–1985" predict that the annual rate of increase in coal consumption will decline from 3.0 percent annually in the 5-year period 1965–1970 to below 1.0 percent annually in 1980 to 1985.

Table 7 presents the forecasted coal requirements for the United States. Amounts are listed only if forecast in the source document.

Petroleum

Those forecasts that include petroleum forecasts predict that consumption of petroleum for fuel will continue to increase, but the rate of increase will slow to approximately 2 percent per year by mid 1980's.

Texas Eastern Transmission Corporation in its document entitled "Competition and Growth in American Energy Markets 1947–1985" (CGAEM) states that non-energy use of petroleum was 84.6 percent of total non-energy use of fuels and would increase to 94.1 percent in 1985, although the non-energy use of petroleum amounts to approximately 10 percent of total petroleum usage.

TABLE 7.—FORECASTS OF U.S. COAL FOR ENERGY REQUIREMENTS—WITH PERCENT OF TOTAL

[Trillions of B.t.u.'s]

Source	1970	1975	1980	1985	2000
N.F. & E.S.			21,000 (25.6)		
PEC			16,342 (19.1)		
EUS [1]	14,214 (23.4)	15,013 (20.0)	16,024 (17.1)	16,703 (14.1)	
CGEAM	13,945 (21.6)	16,638 (20.8)	19,880 (20.3)	23,121 (19.3)	
FFF			[2] 25,000 (29.7)		[2] 62,000 (36.5)

Source	1970	1975	1980	1985	2000
RAF	13,030 (21.6)		15,770 (19.9)		17,960 (13.3)
PCCP			18,400 (20.7)		27,200 (18.0)
EMUS	14,251	16,865	[3] 19,298 (21.8)		22,400 (13.3)
Do			[4] 17,685 (20.1)		

[1] Excludes nonfuel uses.
[2] Includes nuclear energy.
[3] Based on 70,000 megawatts of nuclear power in 1980.
[4] Based on 110,000 megawatts of nuclear power in 1980.

TABLE 8.—FORECASTS OF U.S. PETROLEUM AND NGL REQUIREMENTS—WITH PERCENT OF TOTAL

[Trillions of B.t.u.'s]

Source	1970	1975	1980	1985	2000
CGAEM	28,127 (43.6)	33,764 (42.4)	40,174 (41.1)	47,625 (39.8)	
EUS [1]	24,275 (39.9)	27,069 (36.1)	29,943 (32.1)	32,762 (27.7)	
N.F. & E.S.			33,000 (40.2)		
RAF	25,140 (41.8)		32,910 (41.6)		61,670 (45.6)
PEC			36,042 (41.9)		
OEUS			[2] 39,927 (41.2)		
USP			36,000 (40.9)		
FFF			38,000 (44.1)		71,000 (41.8)
PCCP [2, 3]			30,300 (34.7)		52,800 (35.0)
EMUS	27,275 (42.4)	31,875 (42.2)	35,578 (40.8)		57,600 (34.2)

[1] Specifically excludes nonenergy fuel use.
[2] Converting the forecasted barrels of oil to B.t.u.'s at 5,800,000 B.t.u.'s per barrel.
[3] Medium projection, includes agriculture, asphalt and road oil, liquid refinery gas, miscellaneous uses and exports.

Natural Gas

The use of natural gas as an energy source is expected to grow, but the overall rate of increase is expected to decline.

The changing nature of projections is exhibited in "Future Natural Gas Requirements of the United States" (FNGR) Vol. 1 and 2. Volume 1 was published in December 1964 and projected the natural gas requirement for 1970 as 18.4 trillion cubic feet while Volume 2, published 2½ years later, forecasts 21.5 trillion cubic feet for 1970. In 2½ years the gas industry had increased their projection by over 16 percent. This variance is even more distinct when comparing forecasts by different authors. For example, the "Report of the National Fuels & Energy Study Group" (NF&ES) forecasts 22,770 trillion BTU for 1980 which is only slightly more than the 22,252 trillion BTU forecasted for 1970 in Volume 2 of FNGR.

As stated before, the forecasts indicate a range within which actual usage is likely to occur. (Table 9)

Nuclear Energy

The extent that nuclear energy will penetrate the electricity generation market is apparently very much in doubt. Table 10 presents the forecasts from nine different sources. In 1980, the forecasts are from a low of 2,000 trillion BTU equivalent to a high of 13,330 trillion BTU equivalent. In general, the forecasts made in the early 1960's are the lower forecasts when compared to forecasts made around 1966 to 1968. (Table 10)

"Energy in the United States" (EUS) published in September 1967 indicates that nuclear energy in 1985 will be 21.9 percent of the total energy requirements while "Competition and Growth in American Energy Markets" (CGAEM) published in 1968 forecasts that nuclear energy in 1985 will furnish 7.4 percent of total energy requirements. There is wide variance even among relatively recent projections. This variance probably results from the small amount of past history and the fact that nuclear energy for peaceful uses is relatively new. The "growing pains" of industry were not well understood. The intrusion of competition of nuclear plants has stimulated more economical fossil fuel systems. Bottlenecks have developed which delayed some nuclear plants and in some cases caused buyers to go to fossil plants for earlier delivery.

TABLE 9.—FORECASTS OF U.S. NATURAL GAS REQUIREMENTS—WITH PERCENT OF TOTAL

[Trillions of B.t.u.'s]

Source	1970	1975	1980	1985	2000
CGAEM	20,883 (32.4)	26,123 (32.8)	31,894 (32.6)	38,711 (32.4)	
EUS [1]	20,834 (34.3)	26,054 (34.8)	33,030 (35.4)	41,515 (35.1)	
N.F. & E.S.			[2] 22,770 (27.8)		
RAF	19,200 (31.8)		24,150 (30.5)		33,810 (25.0)
PEC			25,516 (29.7)		
OEUS			[3] 24,345 (25.1)		
GUPIP [4]	16,111	21,139	27,663	35,599	
FNGR [5]	22,252	26,392	29,601	33,120	
USP			[6] 25,456 (28.9)		
FFF			20,000 (23.2)		34,000 (20.0)
PCCP			28,000 (31.5)		43,600 (28.9)
EMUS	19,374 (30.1)	22,360 (29.6)	25,455 (28.9)		41,698 (24.7)

[1] Specifically excludes nonenergy use of fuels.
[2] 22,000 billion ft.[3] converted to B.t.u.'s at 1,035 B.t.u.'s per ft.[3]
[3] Forecast in barrels of oil equivalent converted to B.t.u.'s at 5,800,000 per barrel.
[4] Projections of sales not requirements.
[5] Forecast numbers converted to B.t.u.'s at 1,035 B.t.u.'s per ft.[3] of natural gas.
[6] Includes 660 billion ft.[3] imports. Total 24,595 billion ft.[3] converted to B.t.u.'s at 1,035 B.t.u.'s per ft.[3]

TABLE 10.—FORECASTS OF U.S. NUCLEAR ENERGY REQUIREMENTS—WITH PERCENT OF TOTAL

[Trillions of B.t.u.'s]

Source	Date of publication	1970	1975	1980	1985	2000
EUS [1]	September 1967	737 (1.2)	5,964 (8.0)	13,300 (14.3)	25,913 (21.9)	
RAF	September 1962	360 (0.6)		3,700 (4.7)		19,000 (14.1)
EMUS	July 1968	874 (1.4)	1,803 (2.4)	[2] 4,076 (4.6)		43,526 (25.8)
Do				[3] 5,681 (6.4)		
N.F. & E.S.	September 1962			2,000 (2.4)		
USP [4]	July 1968				7,560 (8.6)	
FGNP [5]	December 1967	640	4,010	10,000		
PEC	December 1968				4,361 (5.1)	
CGAEM	1968	728 (1.1)	2,143 (2.7)	4,757 (4.9)	8,809 (7.4)	
NPS [6]	October 1964				4,810	
PCCP	May 1968				8,323 (9.4)	24,044 (15.9)
CNP [7]	1962		393		2,620	33,012
	1967				6,500	33,012

[1] 13.6, 80.6, 184.9, and 378.9 gigawatts installed in 1970, 1975, 1980 and 1985 respectively.
[2] Based on 70,000 megawatts of nuclear generating capacity in 1980.
[3] Based on 110,000 megawatts of nuclear generating capacity in 1980.
[4] 110 gigawatts installed at 80-percent load and 10,200 B.t.u's per kw.-hr.
[5] 9.8, 61.2, and 145.5 gigawatts installed in 1970, 1975, 1980 respectively; 80-percent load with 10,700 B.t.u.'s per kw.-hr. in 1970 and 1975; 80-precent load with 10,200 B.t.u.'s per kw.-hr. in 1980. Rounded to nearest 10.
[6] 70 gigawatts forecast. Converted to B.t.u.'s—80-percent load with 10,200 B.t.u's per kw.-hr.
[7] Target nuclear power production.

HYDROPOWER

Hydro electricity may continue to play a dominating role in certain regions but is bound to become a factor of decreasing significance due to the lack of availability of suitable sites.

There seems to be a consensus that hydropower will continue to share in the total energy consumed at its present share of 1.2 to 1.1 percent when measured at 3,412 BTU per kW hour. If hydropower is computed in terms of the amount of energy which steam-electric stations would require to generate the same number of kilowatts, these percentages would be about three times as large.

It is worthwhile to comment here on the two ways that hydropower is handled. In Table 11 as in most (but not all) forecasts the hydropower is represented by its thermal station equivalent, e.g., the actual energy generated is converted to BTU at some assumed plant heat rate. The actual energy consumed is then approximately one-third the number in the tables. While there may be some virtue to this representation it is not consistent with reality and its virtue does not outweigh the confusion which results from its use. The usage is continued here only because the majority of the reports carried it

that way. Most reports actually forecast electricity demand in kWhr's and properly made the conversion to an equivalent thermal plant but the hydropower fraction was similarly treated. Since hydropower is a small fraction of the total requirements the problem is largely academic and is not likely to expand in the near future.

Uses by consuming sector

The industrial sector represents the largest end use of energy in the United States. Most reports expect that industrial usage of energy will continue to be the dominant consuming sector, but will gradually be replaced by the electric utility sector by 1980 to 1985. "Energy in the United States 1960–1985" (EUS) discusses the reasons for this shift in the acceleration of the growth rate of electrical demand between 1970 and 1985. Approximately one-third of the energy consumed in power plants actually reaches the ultimate electrical user. This magnifies the fuel requirement by approximately three times.

TABLE 11.—FORECASTS OF U.S. HYDROPOWER REQUIREMENTS—WITH PERCENT OF TOTAL

[Trillions of B.t.u.'s]

Source	1970	1975	1980	1985	2000
EUS	2,400 (3.9)	2,550 (3.4)	3,000 (3.2)	3,370 (2.9)	
CGAEM [1]	2,270 (3.5)	2,690 (3.4)	3,060 (3.1)	3,490 (2.9)	
RAF	2,520 (4.2)		2,640 (3.33)		2,820 (2.1)
EMUS	2,193 (3.4)	2,422 (3.2)	3,027 (3.4)		5,056 (3.0)
N.F. & E.S			2,000 (2.4)		
PEC			2,674 (3.1)		
OEUS			3,895 (4.0)		
FFF			2,580 (3.0)		2,550 (1.5)

[1] B.t.u.'s per kw. equals hr. rate: 1960 equals 11,010; 1970 equals 10,175; 1980 equals 9,320; 1990 equals 8,565; 2000 equals 7,860; includes hydro. See RAF p. 855.

In forming the tables "Uses by Consuming Sector" a problem arises in identification of the components of the consuming sectors, particularly the industrial sector. In some reports the composition is given in general terms such as "mills, mines and factories" and in others it is not specified. The electric utilities are specifically excluded in some forecasts and are treated separately in most. The industrial sector therefore generally includes the activities of gas utilities but excludes the electric utilities. The usage again reflects the differing purposes of the various forecasts. Perhaps some standard of usage should be developed and promoted.

Industrial use growth rates are generally expected to increase slightly. The rate will increase approximately 0.4 percent to an annual growth rate of about 3.8 to 3.9 percent in 1985.

Table 12 gives the details of the Industrial Sectors projected demands.

Tables 13 and 14 give the details for the Household and Commercial and Transportation Sectors. While the Household and Commercial usage was in some projections given separately, it was not always, and the values in Table 13 represent either a combined projection or the sum of two separate projections.

Table 15 gives the projections for the electric utility sector. All values include losses and in some cases represent an arbitrary conversion of kilowatt-hours to British thermal units (BTU's at 33 percent efficiency. Some "ironing out" of differences in projections is achieved when losses are added to projected consumption (at an assumed loss rate of 10 percent; see Patterns of Energy Consumption in U.S., PEC) in order to achieve a uniform set for comparison. Some quite sizeable differences still remain however, but these very likely stem from more basic differences in assumptions and data.

Specific energy relationship

Not all of the projections were directed to the same end and they did not use the same independent variables. Some of the specific variables, however, could be extracted from the data given in the reports. These are collected in the following five tables (Table 16, 17, 18, 19, and 20). No attempt to distinguish between those reports which used the variables as primary variables and those for which they were incidental have been made.

TABLE 12.—FORECASTS OF U.S. INDUSTRIAL ENERGY REQUIREMENT

[Trillions of B.t.u.'s]

Source	1970	1975	1980	1985	2000
EUS [1]	22,093	26,303	31,576	38,016	
RAF	21,810		29,100		55,620
OEUS [2]			30,000		
EMUS	20,370	22,446	24,633		32,594
PEC			22,231		
CGAEM	21,649	26,216	31,591	37,954	

[1] Excludes nonenergy uses of fuels.

[2] Includes commercial usage.

TABLE 13.—FORECASTS OF U.S. HOUSEHOLD AND COMMERCIAL ENERGY REQUIREMENTS

[Trillions of b.t.u.'s]

Source	1970	1975	1980	1985	2000
EMUS	13,837	15,451	17,265		21,066
CGAEM	14,246	17,224	20,983	25,701	
EUS	14,737	17,559	21,269	26,028	
RAF	16,430		21,110		27,600
OEUS [1]			11,000		
PEC			17,979		

[1] Excludes commercial use of energy.

TABLE 14.—FORECASTS OF U.S. TRANSPORTATION ENERGY REQUIREMENTS

[Trillions of B.t.u.'s]

Source	1970	1975	1980	1985	2000
EMUS	15,548	18,733	21,481		42,749
CGAEM	15,501	18,376	21,968	25,836	
EUS	14,303	16,935	20,002	23,662	
RAF	12,960		18,530		37,190
OEUS			24,000		
PEC			21,000		

TABLE 15.—FORECASTS OF U.S. ELECTRIC UTILITIES FUEL REQUIREMENTS

[Trillions of B.t.u.'s]

	1970	1975	1980	1985	1990	2000
EMS	14,547	19,011	24,258			72,291
CGAEM	13,473	18,198	24,024	31,251		
NPS	15,190		27,566			
EUS	14,207	20,590	29,890	44,253		
RAF	13,060		19,380			35,040
OEUS			31,000			
PEC			25,489			

TABLE 16.—PER CAPITA GROSS NATIONAL PRODUCT

[Constant 1958 dollars]

[Utility electric power generation [1] in billions of kilowatt hours]

	1970	1975	1980	1985	1990	2000
NPS	1,484	2,024	2,693			
RAF	1,287		2,084		3,044	4,467
N.F. & E.S.			2,700			
CNP			2,700			
CGAEM	1,448	1,995	2,581	3,363		
PEC			2,739			
EUS			3,086			
EMUS			2,739			
PCCP			2,641			5,874

[1] Does not include industrial self-generation. NPS estimated this at 127 in 1980 for total generation of 2,820.

	1960	1965	1970	1975	1980	1985	2000
CGAEM [1]	2,708	3,168	3,917	4,682	5,611	6,553	
GUPIP		3,307	3,673	4,138	4,630	5,144	
PCCP		3,119			5,000		8,457
RAF [2]	2,705		3,468		4,183		6,424
TCUSEC [3]	2,433				3,532		5,227
	(2,253)				(3,270)		(4,840)

[1] Adjusted to 1958 dollars.
[2] Median projection adjusted to 1958 dollars.
[3] Adjusted to 1958 dollars and (as given in 1954 dollars); GNP growth at 3.5 percent per annum.

TABLE 17.—PER CAPITA ENERGY USE

[Millions of B.t.u.'s]

	1960	1965	1970	1975	1980	1985	2000
CGAEM		220	251	284	320	357	
EUS [1]		230	260	295	337	386	
FFF			291		332		439
PCCP			288		336		474

	1960	1965	1970	1975	1980	1985	2000
PEC		278			358		499
TCUSEC [2]	268				366		524
					(403)		(642)

[1] 5-year averages, 1960-65, 1965-70, etc.

[2] GNP growth at 3.5 percent per annum and (4 percent per annum).

TABLE 18.—ENERGY PER UNIT GROSS NATIONAL PRODUCT [1]

[Thousands of B.t.u.'s per dollar and kilowatt-hours per dollar]

	1965	1970	1975	1980	1985	2000
CGAEM	85.9	80.8	78.5	75.1	73.0	
	1.71	1.79	1.91	1.96	2.04	
PEC	87.6			78.5		68.5
	1.72			2.44		3.67

	1965	1970	1975	1980	1985	2000
USP	87.4	85.3	82.4	80.1		
PCCP [2]	87.5			77.3		58.8
	1.88			2.36		2.34
RAF [2]		83.4		77.2		63.5
		1.94		2.17		2.21

[1] In 1958 constant dollars. Electricity figures are for generation and thus include losses.

[2] Includes industrial self-generation of electricity.

TABLE 19.—PER CAPITA ELECTRICITY USAGE [1]

[Kilowatt-hours]

	1965	1970	1975	1980	1985	2000
CGAEM	5,440	7,070	8,985	11,080	13,430	
PCCP [2]	5,900			11,800		19,800

	1965	1970	1975	1980	1985	2000
PEC	5,440			11,130		26,700
RAF [2]		6,730		9,100		14,230

[1] Electricity is electricity generated; thus it includes losses.
[2] Includes industrial self-generation.

TABLE 20.—ENERGY PER UNIT OF MANUFACTURING

[Thousands of B.t.u.'s per dollar]

	1965	1980	2000
PCCP	112	74.4	69.9

The specific variables summarized in this section include: per capita energy use, per capita GNP, energy use per unit GNP, electricity used per unit GNP, and per capita electricity.

In only one case is it possible to compute from the data the energy per unit of industrial output. That projection is presented separately in Table 20. The numbers are derived from the data by using the projected manufacturing index, the base dollar value of manufacturing and the projected energy use.

The methods used in the projections have been discussed previously and the differences noted in the definitions will account for some of the differences in the specific variables. An important difference in the forecasts involving electricity is the inclusion of industrial self generation in some forecasts and not in others.

DISCUSSION OF INDIVIDUAL FORECASTS: REPORT OF THE NATIONAL FUELS AND ENERGY STUDY GROUP ON AN ASSESSMENT OF AVAILABLE INFORMATION ON ENERGY IN THE UNITED STATES, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, U.S. SENATE, SEPTEMBER, 1962

General

Purpose of study was to compile and assess an existing body of information.

The nation's resource base, in terms of fuel, is adequate to meet projected requirements to 1980. *Implicit* is an assumption about the ability of continued technological progress to hold costs within limits.

Consumption of fossil fuels is a function of 1. End-use energy needs, 2. form in which needs are supplied, 3. fuel consumed for non-energy purposes.

Method

Analyze needs and then measure them against the supply of energy available.

Assumptions

"One's assumptions as to the future must be couched in terms of probability."

"*We have to be careful* in comparing because many forecasts do not set out separately their underlying assumptions and the weight given certain assumptions is not known and the same assumptions are not always considered. *However,* we can make some broad statements."

This forecast used:

1. GNP—3½ to 4 percent annual growth constant dollars 1960–1980.
2. Population—250 million by 1980.
3. Defense—"Cold War".
4. Minor cyclical business swings, but with no major depression or inflation.
5. No restriction on availability of fuels.
6. Technology—slow advances in efficiency of energy use. No revolutionary advances that would displace fuels.
7. Public policy—no basic change.
8. Price—costs of producing fuels and price at which fuels will be sold will rise in rough correspondence to the overall price level.
9. General deviations from preceding 8 assumptions may very well balance out in their net effect.

Conclusions

Of 11 reports 6 have a close range around 82,000 trillion BTU in year 1980. Three have a common area of between 84,000 and 88,000 trillion BTU. *This report* projects *82,000 trillion* in 1980.

Electricity—5 of 7 forecasts have a common area of agreement around 2,700 billion Kwh—about 3½ times that of 1960.

Coal—general level of consumption in 1980 will be about double 1960.

Gas—range between 20 and 23 trillion cu. ft. use of gas in 1980 will be somewhat less than double the 1960 usage. The highest forecast was double the lowest.

Oil—Allowing for a margin of error 6 forecasts are between 5.8 and 5.9 billion barrels, and 6 others are between 5.3 and 5.4 billion barrels. The first is just under 1¾ times 1960 and the second is just over 1½ times 1960. Forecast then is 1⅔ times 1960 level.

Hydropower—270 billion Kwh in 1980.

Nuclear Energy—estimates range from 1 to 8 percent of total energy. For this study consider it the same as Hydro—270 billion Kwh in 1980.

Study presents some hypotheses on the happening of various stages of international relations.

TABLE 21.—FUEL CONSUMPTION BY SECTOR AND SOURCE

Trillions of B.t.u.

	1955
Industry	11,815
Commercial	2,262
Households	5,726
Transportation	8,017
Government	1,114
Agriculture	616
Miscellaneous	2,848
Electric generation	6,256

	1980	1980 percent	1960 percent
Coal	21,000	26.0	23.1
Gas	22,000	28.0	31.4
Oil	33,000	41.0	41.4
Hydro	2,000	2.5	4.1
Nuclear	2,000	2.5	None
Total	80,000	(1)	(1)

[1] Independently deducted by the study group.

FINAL PROJECTION

Total energy (trillion B.t.u.)	82,000
Total electric energy (billion kw.-hr.)	2,700
Coal (double 1960) (million tons)	800
Gas (less than double 1960) (trillion cu. ft. or a little more)	20
Oil (⅔ as much as 1960) (billion barrels)	5.7

ENERGY R. & D. AND NATIONAL PROGRESS INTERDEPARTMENTAL ENERGY STUDY, ENERGY STUDY GROUP, ALI BULENT CAMBEL, JUNE 1964

General

Four requirements deemed fundamental for government initiative in energy R&D:

1. Must be scientifically sound and technologically practicable.
2. Should have socioeconomic benefits
3. Benefits from R&D (Public and private) should exceed the costs (public and private)
4. Cost exceeds what private sector is willing to outlay.

Energy contribution to national income is about 3 percent. As much as 95 percent of total U.S. energy is consumed for purposes in which several or all of the primary energy sources are potential substitutes (directly or through conversion).

Adequacy of resources under extreme demand levels

1. Coal—sufficient, no significant cost increase.
2. Liquid hydrocarbons—cost increase necessary unless present technological pace continues.
3. Natural gas—Total estimated resource insufficient by year 2000.
4. Nuclear fuels—depends on extent nuclear power plants are installed, efficiency of fuel utilization, and price of uranium ore.

Coal represents over 80 percent of known U.S. recoverable reserves of fossil fuels. Transportation of coal places it at a disadvantage, relative to oil and gas. Consumer preference for the more easily handled fuels, oil and gas, may offset any gains in transportation costs.

Energy consumption per dollar of GNP has been declining in recent decades, 110,000 BTU/$GNP in 1940 to 90,000 BTU/$GNP in 1960 (1960 dollars).

This report provides a comparison of 15 different projections. They also make some assumptions for an all coal economy, all oil, and all gas economies.

U.S. PETROLEUM THROUGH 1980, U.S. DEPARTMENT OF INTERIOR, OFFICE OF OIL AND GAS, JULY, 1968

General

Outlook for domestic oil and gas over a 15-year period—1965 to 1980. Investigation conducted by a working task force. All people on task force were Department of Interior employees.

Petroleum resources are adequate to support consumption for many years in the future. The real question is whether they can be located and produced at costs which permit them to compete with other energy sources.

The crude oil discovery rate since 1957 will not be sufficient to offset withdrawals from proved reserves between 1965 and 1980 on the basis of anticipated recovery rates.

Natural gas proved reserves will increase 2.2 percent annually between 1965 and 1980 would provide 383 trillion cubic feet of reserve additions. This is a net addition to reserves of 81 trillion cubic feet after use of 302 trillion cubic feet.

Technological improvements have failed to offset the rising costs of drilling wells.

In 1967, the United States consumed approximately 30 percent of all energy consumed by the world in that year; yet U.S. population is only about 7 percent of the world's.

Study is principally concerned with supply factors.

Method

"Fairly straight forward extension of present trends, policies and relationships."

Assumptions

1. No large-scale war (World War II or greater).
2. No major depression.
3. Population to increase 1.3 percent annual. Series C, Bureau of Census Current Population Reports. Series P–25, No. 388—March 14, 1968.
4. Real GNP to grow 4 percent annually.
5. No major price changes—relative to other fuels.
6. Technological advances will be gradual and evolutionary.
7. Pollution control regulations will have no major impact on consumption of fossil fuels.

The assumed 110,000 Mwe of Nuclear-powered electrical generating capacity in 1980.

Gross energy requirements

The amount of energy a nation uses is largely determined by its people—their numbers, the state of their technology, and the pace of their economic activity as reflected in the figure obtained for GNP.

The rate of increase in energy consumption tends to be less than that of GNP. Since 1940 energy use has been observed to grow slightly over 80 percent of the rate of increase in GNP.

Therefore, using the annual growth assumed for GNP of 4 percent annual we see that energy use will grow at 3.3 percent annual. Apply this against a consumption base in 1965 of 54 quadrillion BTU the result is an estimate energy consumption of 88.1 quadrillion BTU in 1980.

Consumption of oil and gas

Growth rates of oil and gas consumption, analyzed by 5-year intervals since 1945, show both to have diminished greatly to a point where they currently approach the average rate of increase for all energy sources. With the record of the immediate past and with the assumptions stated, it appears that oil and gas will have in 1980 about 40.9 percent and 28.9 percent respectively of the total energy market:

Oil in 1980: 36 quadrillion BTU, 40.9 percent; 6.66 billion barrels; 18.2 million barrels/day.

Gas in 1980: 24.6 trillion cubic feet.

Integral amount to be used from 1965 to 1980:

Petroleum: 1859–1965, 91 billion barrels; 1966–1980, 80 billion barrels.

Gas: 1859–1965, 263 trillion cu. ft.: 1966–1980, 310 trillion cu. ft.

The 1966–1980 petroleum and gas together will furnish an energy equivalent of 785,000 quadrillion BTU.

Petroleum

Used in this document includes all forms of fluid hydrocarbons obtained from wells. It includes crude oil and products refined from it, natural gas, and the liquids occurring with natural gas. It does not include oil or gas derived from other sources such as oil shale, coal or tar sands.

Natural Gas

Almost all domestic, in 1965; imports amounted to 430 billion cubic feet or 2.7 percent of total marketed production.

The projections are summarized in Table 22.

TABLE 22.—PROJECTIONS OF PETROLEUM AND NATURAL GAS CONSUMPTION

	Actual, 1965	1980
Petroleum (billions barrels):		
Domestic crude oil	2.701	4.150
NGL and condensate	.584	1.040
Imports	.833	1.335
Total	4.118	6,535
Natural gas (billion cubic foot)	15,610	23,935
Imports	430	660
Total	16,040	24,595

Note: Imports remain constant approximately 20 percent.

FORECAST OF GROWTH OF NUCLEAR POWER, WASH–1084, U.S. ATOMIC ENERGY COMMISSION, DIVISION OF OPERATIONS ANALYSIS AND FORECASTING, DECEMBER, 1967

General

Sources used included FPC, AEC, Department of the Interior, Corps of Engineers, REA, EEI, National Coal Association, Electrical World and Power Journals, and Moody's Public Utility Manual and Municipal and Government Manual.

Average percent increase was 6.3 percent per year. Lists forecasts for basically each power supply area.

Method

The method adopted for forecasting the growth of nuclear power in the United States through 1980 is to use data on electrical generating capacity, conventional and nuclear, installed during the past 7 years and planned to be installed during the next 7 years as a basis for *extrapolating* for a further 7 years.

Specific exclusions:

1. Plants under 100 MW.
2. Peaking Plants.

Assumptions

Installation of new capacity will cover both increasing demands and replacement of retired facilities. Six-month delay in new plants scheduled for 1970 and 1971. Twelve-month delay in new plants scheduled for 1972 and 1973. The forecast for 1974–1980 is based on the assumption that the percent increase per year for each area will be the same as the average for that area during 1960–1973.

TABLE 23. *Forecast of installed nuclear power capacity*

Capacity installed by end of:	*MWe*
1966	1.8
1970	9.8
1975	61.2
1980	145.5

PATTERNS OF ENERGY CONSUMPTION IN THE UNITED STATES

(By William A. Vogely, Division of Economic Analysis, Bureau of Mines, U.S. Department of the Interior, 1962)

General

This report presents two views of the energy economy: 1) Energy resource consumption by source (fuel) and by sector (industrial, etc.); and 2) by consuming sector and by function (space heat, motive, nonenergy use, etc.)

The report emphasizes that forecasts made in the context of a total energy balance and based upon general indicators, are not necessarily the best for any particular fuel. Specific fuel forecasts contain the highest degree of expected variability (± 30 percent).

Assumptions

1. No major change in our international relations.
2. An annual growth in GNP of 4 percent.
3. Annual growth in population of 1.6 percent.
4. Stability of the real cost of primary energy sources relative to each other and general level of commodity cost.
5. Continuation of evolutionary technology rather than revolutionary.
6. Adequate supplies either foreign or domestic.
7. FPC and AEC forecast of 70,000 megawatts nuclear installed by 1980.
8. *Explicit* assumption—no major new technological breakthrough except nuclear energy.

Method

Projection of least squares trends of historical data and correlation between these data and other indicators. An initial estimate was made of the rate of growth of total energy consumption by sector by correlating the various sectors with general economic indicators. The indicators were:

1. GNP—for total energy.
2. Population—for household and commercial.
3. Composite of new construction, producer, durable and personal consumption expenditures—for industrial.
4. GNP—for transportation.
5. Advisory Committee Report (No. 21) National Power Survey—for electric utilities.

From this analysis, estimates of total consumption and of consumption by consuming sector were determined. These markets were then allocated to energy sources by subjecting the least squares projections of each source to analysis and judgment based on knowledge of the energy industries and markets, consensus of outside experts, and examination of other functional energy forecasts.

CONCLUSION

[In percent]

	1947–62 historical trend	1962–80
Total energy	2.5	3.2
Industrial	1.0	2.0
Transportation	1.75	3.5
Electricity	5.0	5.5
Household and commercial	3.3	2.8

ANNUAL GROWTH RATE CHANGES

Bituminous coal	[1] −2.5	[2] 2.5
Petroleum	[1] 4.25	[3] 3.0
Natural gas	[1] +8.0	[3] 3.5
Hydropower	[1] 2.0	[4] 2.0
Anthracite	[1] −7.5	[3] 2.0
Nuclear		[2] 34.0

[1] Per year.
[2] Increase.
[3] Decline.
[4] Growth.

Major shifts have occurred among the sources of energy in the United States economy and the shifts have been of much greater magnitude than shifts in the total energy consumption by sector.

What are the determinants of the energy source shift? The author offers that it is explained by the changing production functions in the consuming sectors—by technological changes in the consuming sectors. For example, development in technology of gas transmission and development of automatic furnace forced coal out of the market. The space saving, cleanliness, and convenience features were and are overwhelming.

TABLE 24.—GROSS ENERGY BY CONSUMING SECTORS [1]

[Trillions of B.t.u.'s]

	1947	1955	1962	1980
Household and commercial	6,774.2	8,642.9	10,996.0	17,979.0
Industrial	12,662.7	13,853.0	14,983.5	22,231.2
Transportation [2]	8,790.6	9,836.8	11,416.2	21,342.7
Electric utilities:				
Fuel-burning	2,938.0	5 189.4	7,251.6	17,346.0
Hydro [3]	1,459.0	1,497.0	1,943.0	2,674.5
Nuclear [3]			25.9	4,361.0
Miscellaneous and unaccounted for	543.8	955.3	1,281.2	
Total gross energy	33,168.3	39,956.4	47,897.4	85,934.4

[1] Gross energy is that contained in all types of commercial energy at the time it is incorporated in the economy whether the energy is produced domestically or imported. Gross energy comprises inputs of primary fuels (or their derivatives) and outputs of hydropower and nuclear power converted to theoretical energy inputs. Gross energy includes the energy used for the production, processing, and transportation of energy proper.
[2] Includes bunkers and military transportation.
[3] Represents outputs of hydropower and nuclear power converted to theoretical energy inputs at the prevailing rate of pounds of coal per kilowatt-hour at central electric stations. Excludes inputs for power generated by nonutility plants, which are included within the other consuming sectors.

Sources: Compiled by Bureau of Mines, U.S. Department of the Interior, supplemented by data on hydropower and nuclear power from the Federal Power Commission and the Atomic Energy Commission.

TABLE 25.—GROSS CONSUMPTION BY MAJOR SOURCES

[Trillions of B.t.u.'s]

	1947	1955	1962	1980
Coal:				
Anthracite	1,224.2	599.4	381.0	250.0
Bituminous and lignite	14,599.7	11,104.0	10,159.7	16,091.8
Natural gas, dry [1]	4,518.4	9,232.0	14,120.8	26,515.6
Petroleum [2]	11,367.0	17,524.0	21,267.0	36,041.5
Hydropower	1,459.0	1,497.0	1,943.0	2,674.5
Nuclear			25.9	4,361.0
Total gross energy	33,168.3	39,956.4	47,897.4	85,934.4

[1] Excludes natural gas liquids.
[2] Petroleum products including still gas, liquefied refinery gas, and natural gas liquids.

Note: Footnotes on table 24 apply.

GAS UTILITY AND PIPELINE INDUSTRY PROJECTIONS, 1968–72, 1975, 1980, AND 1985

(Department of Statistics, American Gas Association Inc., 605 Third Avenue, New York, N.Y. 10016)

Overall

The data are projections prepared by A.G.A. Department of Statistics, rather than a compilation of forecasts made by individual gas utilities. For the most part, these data are *extrapolations of past trends* modified to reflect the influence of probable changes in the economic characteristics of the gas industry. Future effects of possible major *technological* breakthroughs in fuel utilization are not accounted for. No attempt was made to project impact of air pollution where measures are not already in effect.

This *does not include* field use, exchange gas and direct sales from producer to ultimate customer, company use, inter-departmental transfers, transmission losses, and unaccounted for.

The report projects number of gas customers, total gas sales, new plant construction, pipeline construction, sales by class of service, sales to customers by region. Population projection was from Bureau of the Census 1975, 1980, 1985; No. 375, October 3, 1967, page 18 (Series II–B).

Assumptions

Assumptions used for development of projections:

1. Continuation of long-term economic growth in the nation.

2. Availability of natural gas, synthetic gas or imports in the form of liquefied natural gas to meet customer demands.

3. Continuation of competitive price relationships with alternate fuels.

Other

1. Four percent growth rate (constant dollars) in GNP was adopted for development of industrial gas sales projections.

TABLE 26.—PROJECTIONS OF POPULATION, GNP AND NATURAL GAS USE 1968–85

	1967	1970	1975	1980	1985
Population (millions)	197.9	206.3	222.8	242.3	263.6
GNP (billions 1958 dollars)	669.3	752.9	916.0	114.4	1,355.9
Billions of B.t.u.:					
Residential heating and cooling	2.9	3.3	4.0	5.1	6.4
Other residential [1]	1.5	1.6	1.9	2.3	2.7
Commercial	1.6	2.0	3.0	4.6	6.9
Industrial and other	7.5	9.1	12.1	15.7	19.6
Total (rounded)	13.5	16.1	21.1	27.7	35.6

[1] All residential, including those using gas for heating.

FUTURE NATURAL GAS REQUIREMENTS OF THE UNITED STATES

(Future Requirements Agency, Denver Research Institute, University of Denver, Denver, Colo., Vol. 2, June 1967.)

Method

A survey questionnaire was sent in May, 1966 to all appropriate public and private companies in the U.S. Each company was asked to submit data on natural gas requirements in its marketing area, classified into residential, commercial, firm industrial, interruptible and "other" categories. "Other" includes pipeline fuel, company use, unaccounted for, transmission loss, and any other sale or actual use not otherwise specified. Only volumes for actual sale to the ultimate customer or quantities used or lost by a company were to be reported. No sales for resale are included.

Eleven regional work committees reviewed and coordinated information received from questionnaires. They also made estimates of requirements for nonreporting companies. Ninety-four percent overall replied with no less than 85% reply within any region. Region 11—Alaska—did not participate.

Each company was asked to submit "actual" volumes for 1961–1965, "estimated" for 1966–1970 and 1975, "projected" for 1980, 1985, and 1990. The data were standardized at 14.73 psia and 60° F.

Assumptions

1. There will be an adequate supply for all estimated requirements in its market area for all periods covered by the survey.

2. Present-day relationship of the cost of gas to the competing fuels will remain the same in the future.

Each company was allowed to use its own operations, policies and local conditions when preparing the forecast. Other factors, such as air pollution, were considered to be clouded with uncertainty; therefore, they are not covered in the guidelines for the study.

Factors considered

The following list gives an indication of the factors that were variously considered by individual companies.

1. National and regional economic growth.
2. Population.
3. Household formations.
4. New construction.
5. Industry size and composition.
6. Normal U.S. Weather Bureau degree days.
7. Number, age, and replacement trends for appliances with customer fuel preference.
8. Gas usage per customer and heating saturations.
9. Trends in demand for recently developed gas applications such as air conditioning, total energy installations, and other technological advances in gas consuming equipment.

TABLE 27.—PROJECTED NATURAL GAS REQUIREMENTS

ANNUAL REQUIREMENTS

Year	Trillion cubic feet		Year	B.t.u. (trillion)	Requirements index, 1965=100
1965 (actual)	16.2		1965	16,797	100.0
1966	17.8	Average annual growth rate 4.1 percent compounded annually.	1966	18,423	109.9
1967	18.8		1967	19,458	116.0
1968	19.7		1968	20,390	121.6
1969	20.7		1969	21,631	127.8
1970	21.5	Average annual growth rate 3 percent compounded annually.	1970	22,253	132.7
1975	25.5		1975	26,393	157.4
1980	28.6		1980	29,601	176.5
1985	32.0	Average annual growth rate 2.3 percent compounded annually.	1985	33,120	197.5
1990	36.0		1990	37,260	222.2

Use class, 10^{12} cu. ft.	1961 actual	1966	1970	1975	1980	1985	199
Residential	3.3	4.2	4.9	5.7	6.5	7.4	8.3
Commercial	1.0	1.3	1.6	1.9	2.2	2.6	2.9
Firm Industrial	3.7	4.6	5.9	7.6	8.4	9.2	10.3
Interruptible	2.8	3.8	4.4	4.9	5.3	5.9	6.4
Field Use [1]	1.9	2.4	2.7	3.1	3.6	4.0	4.7
Other	1.1	1.5	2.0	2.3	2.6	2.9	3.4
Total	13.8	17.8	21.5	25.5	28.6	32.0	36.0

[1] Lease pumping, drilling, plant extraction loss and fuel.

Note: Gas volumes converted to B.t.u. at .035 B.t.u./cu. ft. (dry).

COMPETITION AND GROWTH IN AMERICAN ENERGY MARKETS, 1947–85

(Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Tex., 1968.)

General

Consumption or requirements data given in this report *do not* have a one-to-one correspondence with data from *Statistical Abstracts of the United States*, U.S. Department of Commerce.

A comparison:

Recorded value 1960 (trillion B.T.U.)

Texas Eastern (consumption)	42,967
Texas Eastern (requirements)	35,752
U.S. Bureau of Mines (consumption)	44,816
Resources in America's future (demand)	45,350
Resources in America's future (end use consumption)	43,300

Type of Forecast

As far as energy forecasting is concerned, this report presents a fairly complete set of projections. Included are forecasts for total end-use requirements, a breakdown by end-use categories, a breakdown by source of supply categories, and total consumption of fuels with breakdowns by (a) source of supply and (b) for each source, a further breakdown by the end-use categories. Also included was a separate section on electrical power generation. Some effort is devoted to regional aspects of electric power generation and fuel supply.

Method

Basically this was a building block approach. End-use energy requirements (see the section on Equivalent terminology for a definition) were projected first. This then provided the forecast for total energy requirements by summation. Finally the source of supply forecasts were forced to fit into this framework.

In those cases were regression analysis was deemed to be unsatisfactory, the forecasts appear to be equivalent to making projections using a model of the form $E=a_1 10^{b_1 (t-t_0)}$ where the b_1 are changed from one time interval to the next based on such intermediate variables as population projections, per capita energy use projections, GNP predictions, or based on judgment. The b_1 can be converted to annual rates of change.

REQUIREMENTS—AVERAGE ANNUAL RATES OF CHANGE

[In percent]

	Residential	Commercial	Industrial	Transportation
1960–65 [1]	2.83	5.71	3.51	3.88
1965–70 [2]	2.58	6.01	3.99	3.74
1970–75 [2]	2.83	6.34	3.90	3.46
1975–80 [2]	2.90	6.30	3.80	3.64
1980–85 [2]	2.92	6.24	3.74	3.30

[1] Experience.
[2] Forecast.

Residential: Regression analysis using the intermediate variables of (1) population, (2) per capita personal income, and (3) weather.

Population: 1.6% increase for 1947–1965—expect this to decrease to about 1.3% by 1985.

Per capita personal income: 2.3% increase 1947–65; 3.6% increase in the future.

Weather experience of degree-days (65°) for selected cities in the U.S.: Forecast at a normal level.

Commercial: Regression anaylsis was unsatisfactory; therefore judgment was used.

Consideration was given to changing living patterns, expansion of suburbs—new shopping centers, new government buildings, etc. A composite indicator is taken as nonresidential building (less industrial).

Industrial: Industrial use was broken down into the categories of coke and general industrial submarkets—the projections were then summed. Regression analysis employed using the variables of (1) industrial production index, (2) nondurables component of GNP, and (3) a mix of industrial output and the efficiency of energy utilization.

Transportation: Transportation use was broken down into the categories: (1) passenger cars, (2) industrial related transportation, and (3) aviation. Passenger car forecasts were obtained using a multiple regression approach. The intermediate variables included (1) number of auto registrations, (2) average brake horsepower per auto, and (3) average miles driven per auto. For the projection, brake horsepower was assigned the 1964 average. Average miles driven was assigned the value of 9,400. Auto registrations were forecast as a function of the variables of population and economic activity using a regression technique. Industrial transportation requirements first put historical data on a diesel equivalent basis for a railroad fuel and then predicted using multiple regression. The significant variables were GNP and "certain measures" of bus traffic. For aviation, the regression approach was not suitable for forecasting this market. Simple correlation with GNP and perhaps some judgment was used since their projections showed.

[In percent]

1965–1975:	
GNP	5.1
Aviation	5.5
1975–1985:	
GNP	4.9
Aviation	3.6

No limits of uncertainty were given for any of the forecast values presented. Theoretically where regression analyses were used to derive the forecasting relationships, it should have been possible to calculate such limits; however, there are quite a few difficulties from the practical point of view. Just a couple of the problems are:

1. The x-variables are frequently subject to measurement errors.

2. Some of the x-variables used (say GNP) are themselves functions of the energy consumption.

A summary of the projection variables and methods is given in Table 28.

Assumptions

1. The economic growth rate from 1961–1965 is more indicative of the growth rate to be expected in the near future than the growth rate from the historical period between 1947–1965.

2. A continuation of the energy price trends which have evolved since 1960.

3. No extraordinary technological developments. By and large, the forecasts in this report assume the same types of energy utilization and conversion that are in common use today. It is stated that this is largely an *assumption of convenience*—they don't really believe it.

4. There will be a sufficient supply of all fuels to meet consumption demands without distorting price relationships.

TABLE 28.—SUMMARY OF PROJECTION CHARACTERISTICS BY USE SECTOR

Sector and type of fuel	Regional consideration	Use	Important variables
Residential:			
Gas	By region	Heat	Customers and use. (10^3 customers with air conditioning.)
		Nonheat	Customers and use.
Petroleum		Heat	Do.
Electricity	By region	Heat, nonheat	Customers and use; multiunit housing, personal income, market share, competitive standing.
Coal			Vanishing market.
Commercial:			
Gas	By region		10 largest energy-using industries and market share.
Petroleum			Very complex: Government policy, etc.
Electricity			Customers and use.
Coal			Vanishing market.
Industrial:			
Gas			Not included.
Petroleum			Market share and total; industrial energy use.
Electricity			Regression analysis using industrial activity and total industrial energy market.
Coal		Coke	
		Other	Regression and cost and performance improvements.
Transportation:			
Gas			Nil.
Petroleum		Auto	Multiple regression.
		Aircraft	GNP correlation.
		Other	Traditional market.
Electricity			Constant.
Coal			Vanishing market.

TABLE 29.—FORECAST TABULATIONS

[In trillions of B.t.u.'s]

	1970	1975	1980	1985
Total End-use requirements	51,396	61,816	74,542	89,491
Residential requirements	10,240	11,776	13,587	15,693
Gas	5,171	6,443	7,958	9,723
Petroleum	3,559	3,497	3,441	3,271
Coal	200	120	30	0
Electricity	1,310	1,716	2,158	2,699
Commercial requirements	4,006	5,448	7,396	10,008
Gas	2,092	2,917	4,051	5,603
Petroleum	621	675	711	723
Coal	60	36	9	0
Electricity	1,233	1,820	2,625	3,682
Industrial requirements	21,649	26,216	31,591	37,954
Gas	9,524	11,752	14,432	17,563
Petroleum	4,118	4,785	5,401	6,089
Coal	6,075	7,165	8,550	10,266
Electricity	1,932	2,514	3,208	4,036
Transportation	15,501	18,376	21,968	25,836
Gas				
Petroleum	15,473	18,352	21,948	25,819
Coal	12	8	4	1
Electricity	16	16	16	16
Total energy and fuel consumption:				
Gas	20,883	26,123	31,894	38,711
Petroleum	28,127	33,764	40,174	47,625
Coal	13,945	16,638	19,880	23,121
Waterpower	761	943	1,120	1,331
Nuclear	728	2,143	4,757	8,809

NATIONAL POWER SURVEY: FEDERAL POWER COMMISSION, 1964

General

In 1962 the U.S. had about 6 percent of the world's population and used almost 40 percent of the electrical energy produced in the entire world.

In 1920 electricity used was about 11 percent of energy used in 1960.

Electric energy produced by utility systems was 753.4 billion Kwh in 1960.

Requirements will be approximately 2.8 trillion Kwh of electricity in 1980, slightly more than three times the amount generated in 1960. This does not include Alaska and Hawaii, but does include industrial in-plant generation.

Assumptions

1. Bureau of Census estimates of population growth and household formations.

2. Assumed annual increase in GNP of 4 percent.

3. Other pertinent data.

The "other" assumptions are not spelled out in detail.

Method

Load growth projections began by assembly of data for the 48 power supply areas, 16 coordination study areas, 8 statistical regions and 4 sectors. The FPC field offices were provided with a set of basic assumptions

which guided their estimates. Finally their projections were presented for detailed evaluation by the power requirements special technical committee, whose membership was selected from all segments of the industry and every region.

The committee reviewed the forecasts in depth not only as to the postulates on which they were based, but also in comparison with various long-range forecasts made by regional and national suppliers.

Other

Overall growth rate is projected to be 6.5 percent between 1960–1980. The South Central, West Central and Southwest regions have growth rates of 7.6, 7.2, and 7.2 percent respectively. East Central region has the slowest annual growth with 5.8 percent per year.

Technological factors considered in the energy use projections were.

1. Electric automobiles, not before 1980.
2. Electric railroads, no substantial growth before 1980.
3. Substantial increase in use for luxury conveniences in homes.

Table 30 provides a summary of the electrical energy requirements observed in 1960 and projected to 1970 and 1980.

TABLE 30.—PROJECTIONS OF ELECTRICAL ENERGY REQUIREMENTS

	1960 actual	1970	1980
Total utility	761	1,484	2,693
Industrial inplant	85	105	127
Use category:			
Residential (nonfarm)	174	373	729
Irrigation and drainage	10	17	25
Other farm	22	35	52
Commercial	121	241	430
Industrial:			
Purchased	330	615	1,098
Inplant	85	105	127
Street and highway	7	13	22
Electric transport	5	6	6
Other	22	42	71
Losses and unaccounted	70	142	260
Total	846	1,589	2,820

ENERGY RESOURCES

(A Report to the Committee on Natural Resources, National Academy of Sciences, National Research Council, 1962.)

General

The objective of this study *was not* to provide energy requirement projections for the relatively short period of time of 15–20 years in the future.

The author has addressed himself to the problem of an analysis of historical data to obtain objective estimates of ultimate potential reserves for the various fossil fuels in both the United States and the world. Included was a projection for the ultimate potential hydroelectric power capacity in the U.S. The method employed in estimating these ultimate reserves was imaginative and indicate that some deep thought went into insuring an appropriate use of reasonable mathematical models to describe the phenomenon being studied. A case in point is the author's method of estimating the time delay between the recognition and discovery of large oil fields. The approach used showed considerable deep thought and imagination.

The mathematical model which was used most in this study was the logistic or growth curve. This model has appeal from the statistical point of view and, even more importantly, it appears to fit all of the historical data very well. In addition, use was made of exponential type models and normal and log-normal distribution functions. Throughout the report, considerable care was taken to not only write down the model and the appropriate function estimates but also to present a reasonable amount of background and development to justify its use.

This is a well documented report. It is broken down into seven chapters and at the end of each chapter a detailed list of pertinent references to the discussion in that chapter is given. For example, most of the historical data used in this study were obtained from the following sources:

1. Department of Commerce, *Historical Statistics of the United States, 1789–1945*, U.S. Government Printing Office, 1949.
2. Department of Commerce, *Continuation to 1952 of Historical Statistics of the United States, 1789–1945*, U.S. Government Printing Office, 1954.
3. Department of Commerce, Annual Editions of *Statistical Abstract of the United States*, U.S. Government Printing Office, 1953–1961.

A very significant point which the author is attempting to drive home to the reader is that the world, in general, and the United States, in particular does not have available an infinite supply of fossil fuels. For example, the author estimates that the time required to use from the first 10 percent to the 90th percent of ultimate reserves will cover some 350 years (not an immediate problem which must be faced today) while the corresponding time span to cover the middle 80 percent of consumption of the ultimate reserves for oil and natural gas is something like 1935–2005.

New sources of supply such as nuclear and solar energy provide some reason for hope. However, these new sources have associated with them some rather serious problems—waste disposal in the case of nuclear energy and efficient harnessing in the case of solar energy.

The report even delves into the seriousness of the population growth and the non-fuel mineral resources problems which are facing the world. The population problem is finally being recognized by a fairly large number of people but such is not the case with the energy and mineral resources problems.

ENERGY IN THE UNITED STATES 1960–85: SARTORIUS & CO., SEPTEMBER 1967

General

The base historical time period was chosen as 1960–1965. The source data were obtained from statistical reports by the Federal Government and trade associations. These included the Bureau of the Census, the Bureau of Mines, the Federal Power Commission, the American Gas Association, the American Petroleum Institute, and the Edison Electric Institute. Auxiliary information concerning fuel prices and other pertinent factors were obtained from the above references or from reports or private communications from other government agencies or trade associations. The table showing the historical data used gives references to the source of the data. However, most of these are not references to a specific document or report (year not even given) but rather to the government agency or private organization.

The study is quite complete as far as forecast breakdowns are concerned—geographical regions, end-use categories, source of supply, and even different types of petroleum products—also coal, hydropower vs. nuclear electricity generation.

Method

The report is apparently a building block approach. (However, in the field of Ground Transportation, a building block approach was not used.) Consumption was completed separately for each type of energy source broken down by each category of consumer within each of the geographical areas used. Statements concerning whether or not a regression analysis approach was used could not be found. The method of forecasting used intermediate variables such as per capita consumption, population growth, per capita vehicle use, and anticipated future fuel costs. Mathematical models were not given.

Ten geographical areas and four consumer categories were used. It was implied that consumption projections were obtained within each of these 40 (10 x 4) categories and then summed to give the "all uses" or total consumption values.

Residential and Commercial: Space heating and non-heating uses were based upon per capita use and population. Weather conditions in the base period were used to adjust the data. The breakdown by energy sources was done in such a way that the individual forecasts had to fit into the framework established for total.

Industrial: Done on a per capita use and population basis since industrial activity is partially dependent on the population. Breakdown by energy source was forced to fit (subdivision).

Ground Transportation: For vehicles, the forecast total consumption was on the basis of total vehicular use (guided by U.S. Bureau of Public Roads). Allocation to geographical regions was based on current per capita use and population projections. For railroad usage, the forecast was on the basis of a straight forward time projection with modification using as the intermediate variable the efficiency.

Air and Water Transportation: For air, the forecasts were guided by Federal Aviation Agency projections. In the breakdown by energy sources, foreign purchases of aircraft fuels and imports were considered. Water transportation consumption was done in a similar fashion to the railroads' forecasts.

Gas and Electric Utilities: Gas and electric utility consumption was forecast to fit into the framework established by the total end-use projections. The breakdown by source of supply was done using as intermediate variables the projected relative prices for the fuels and generating costs within the individual geographical regions.

Assumptions

The main assumption made is that the growth rate will continue at approximately the same level as during the base period of 1960–1965. The principal intermediate variable in the projections was per capita consumption. Traditional as well as changing consumption trends, as measured by surveys and other data were used. Population estimates were obtained from U.S. Bureau of the Census data.

An assumption of rather minor importance in connection with energy consumption was about the use of electric cars and vehicles.

1.4×10^8 vehicles—1980
4.6×10^8 vehicles—1985

The projected power requirements for these vehicles used in this study were:

5×10^9 kwh—1980
17×10^9 kwh—1985

They were influenced by the Federal Power Commission report (February 1967) in arriving at these figures.

A more important assumption was one concerned with nuclear power. "Nuclear power is expected to revolutionize the electric utility industry during the next two decades. Most new generating capacity to be built after 1970 will be nuclear powered."

TABLE 31.—FORECAST FOR ENERGY CONSUMPTION BY SOURCE AND USE

	1970	1975	1980	1985
Total annual energy consumption [1]	60,827	74,944	93,374	118,126
	60,927	75,111	93,576	118,364
Residential and commercial:				
Gas	6,729	8,261	10,196	12,435
Petroleum	4,939	4,964	4,629	3,732
Coal	442	299	181	80
Electricity	2,627	4,035	6,263	9,781
Total	14,737	17,559	21,269	26,028
Industrial:				
Gas	10,769	13,830	17,678	22,461
Petroleum	4,209	4,439	4,647	4,782
Coal	5,244	5,643	6,183	6,837
Electricity	1,871	2,391	3,068	3,936
Total	22,093	26,303	31,576	38,016
Transportation:				
Gas	0	0	0	0
Petroleum	14,252	16,898	19,956	23,541
Coal	35	21	13	7
Electricity	16	16	33	74
Total	14,303	16,935	20,002	23,622
Utilities:				
Gas	3,336	3,963	5,156	6,619
Petroleum	837	720	659	655
Coal	8,493	9,050	9,647	9,780
Hydro	804	893	1,098	1,286
Nuclear	737	5,964	13,330	25,913
Total	14,207	20,590	29,890	44,253
Total	60,826	74,945	93,373	118,128

[1] These 2 sets of numbers occur on pp. 1 and 72 of the report. The difference in the 2 sets is not immediately apparent, and is small enough to be inconsequential.

RESOURCES IN AMERICA'S FUTURE: RESOURCES FOR THE FUTURE, INC., SEPTEMBER 1962

General

There was a substantial reliance on data collected and disseminated by the trade organizations such as American Gas Association, Edison Electric Institute, etc. These data were checked against and reconciled with government compiled data where possible.

The historical base was 1960.

The Residential, Commercial, Industrial, and Transportation end-uses were not, in general, broken down by geographic regions. In the case of fuels used for electricity generation, the study was carried out on a regional basis.

The authors indicate that the work is a major extension of *Energy in the American Economy, 1850–1975*, by Schurr, Netschart, et al. The work is well documented.

Method

Basically this study used a building block approach starting with a 1960 base for the various consuming (end-use) sectors and forward projection of the base. These projected demand figures were then disaggregated (subdivided) into the different sources of energy categories based on estimates of future sharing.

For quite a few of the individual projections, there were presented low, medium, and high forecast values. The medium value represented a "best estimate" and the low to high range is a reflection of the uncertainty to be associated with the forecast values but there is no statement concerning the confidence to be placed on these limits.

The low-medium-high estimates generally were in the range of +10 percent to +20 percent.

Residential

Space Heating—Past growth rates modified by customer preferences, etc. Electric heating projected on judgment alone. Number of households, heat output/household, share by energy sources and efficiency.

Other Uses—Ranges, hot water, lighting, air conditioning, miscellaneous. Historical data not too valuable.

Commercial

Obtained from long-run direct or indirect relationships with residential trends. The number of customers and use per customer were related to an "average" residential customer.

Industrial

Basically projections done by power per unit of production forecast multiplied by production index forecast and weighted by judgment on future sharing by various fuels.

Transportation

An extension of historical trends.

Electric Power

Regional breakdown with a detailed analysis of the part played in the past by gas, coal, and oil and the future sharing of these three sources and the new nuclear power.

Miscellaneous

Agriculture—Number of tractors and fuel use per tractor.

Public use.

Non-Power and Losses—Projected on basis of historical trends.

Assumptions

For space heating, allowances were made for improvements in the efficiency but it was assumed that the type of heaters would not change materially.

For transportation projections, it was assumed that the kinds of power plants will remain fairly similar (as far as fuel consumption is concerned) to what they were in the early 1960's. Also, the average annual mileage will remain at about 9,800 and miles per gallon at about 14½.

There were quite a few of the above type technological assumptions throughout the book. They were of the nature "no revolutionary technological changes."

"The assumptions behind the demand projections do not specifically include any major uses that differ greatly from those around us today, although within these uses provision is made for changing technology, including some entirely new devices.

"Certain uniform assumptions . . . Most important are population growth and the nation's output of goods and services, represented by the gross national product."

The assumptions include:

1. By the year 2000 a labor force of 142 million;

2. A 2% annual increase in productivity, and

3. Medium 3.8% per year increase in GNP; low, 3.0% per year increase in GNP; high 4.8% per year increase in GNP.

4. No general war—cold war to continue with about the current relationship of defense expenditures to GNP.

5. High projection assumes an increase in proportion of output to defense. Low projection assumes a decrease or tapering off of such expenditures.

Excluded is the possibility of a deep depression; therefore, projection is to "normal" years.

(They do not call these values "forecasts" or "predictions" since they have not been developed with consideration of the *cost* involved in supplying the required amounts.)

TABLE 32.—DEMAND FOR ENERGY BY SOURCE

[Trillions of B.t.u.'s]

	1970	1980	1990	2000
Petroleum	22,640	29,500	39,370	54,800
Gas	19,140	24,200	28,360	33,800
NGL	2,500	3,400	4,680	6,800
Coal	13,030	15,800	16,450	18,000
Hydro	2,520	2,600	2,770	2,800
Nuclear	360	3,700	10,280	19,000
Total	60,190	79,200	101,910	135,200

TECHNOLOGICAL CHANGE AND UNITED STATES ENERGY CONSUMPTION, 1939–54

(Alan M. Strout (Doctoral Dissertation, Unpublished), University of Chicago (1966).)

General

The projection portion of this tour-de-force in energy analysis was developed as a test of the totals arrived at in the Input-Output analysis for 1939–1947–1954. The sources of the model over the period 1921–1961 lent some confidence in the technique (per capita energy consumption was projected) and it was extended to the years 1980 and 2000.

Method

The basic method is a multiple linear regression model. After testing several variables for significance and accuracy and other variants of form, such as the loglinear form, the above-mentioned model, was found to be simplest and at least as satisfactory as the others.

The explicit form is:

$$Fc/P = 1.8757 + .0082\ FDD + .1148\ Y_P/P - .00097t$$

where:

FcP = the per capita fuel use, Fc (10^{15} BTU's) and P 10^6 people). Total domestic consumption and thermal equivalent of hydropower.

FDD = The average Fuel Degree Days for 36 metropolitan areas, weighted by the nearest decennial census

Y_P = Private Gross National Product (1954 dollars), not including general government spending.

t = The year (1921, 1922, . . . 1980, . . . 2000).

Assumptions

1. GNP is assumed to grow at the rate of 3.5 percent per year. The alternative of a rate of 4.0 percent per year is also calculated.

2. Population is assumed to grow at the rate of 1.6 percent per year through 1980 and at the rate of 1.5 percent thereafter.

3. The average fuel degree days is assumed to continue to decline at the rate of ⅓ of 1 percent per year. This trend is an extension

of the 1921–1960 trend and also reflects some shift of population to the warmer parts of the country.

Results

The projected total energy is summarized in Table 33.

TABLE 33.—TOTAL ENERGY PROJECTIONS
[In trillions of B.t.u.'s]

	1960 (actual)	1980	2000
GNP at 3.5 percent p.a.	48,200	90,300	174,000
GNP at 4 percent p.a.	99,700		213,000

AN ENERGY MODEL FOR THE UNITED STATES FEATURING ENERGY BALANCES FOR THE YEARS: U.S. DEPARTMENT OF THE INTERIOR, IC 8384, JULY 1968

General

The historical base period was 1947–1965 (a complete set of balances for those years). Whether any particular years received more weight than others is not apparent. The main sources of data and information are the Bureau of Mines energy series published in the annual issues of the U.S. Department of the Interior Minerals Yearbook, Vol. II Fuels. These are supplemented by data for the electric utilities obtained from publications and reports of the Federal Power Commission; for the nuclear power industry from reports of the USAEC; and for electricity sales and distribution from the annual issues of the Edison Electric Institute Yearbook. Data on energy demand by major industrial groups in the mineral and industrial sectors were obtained from the U.S. Department of Commerce, Bureau of Census for 10 years 1947, 1954, 1958, and 1962.

Projections are presented for total energy consumption and consumption broken down by end-use and source of supply. Regional forecasts are not given.

Method

The main emphasis in this report is on the prediction of the future demand for energy rather than supply.

"The basic model for energy, considered to be a logarithmic linear of an exponential function, is expressed as follows:

$$E \text{ or } Y_1 = f(x_1^b x_1^c, \ldots, x_{13}^n)$$

. . . ; and with b, c, . . . n the parameters or coefficients of the independent variables."

"The first step in the forecasting procedure was the projection of least squares historical trends for 1947 to 1965 of the quantitative structures for total energy E or Y, and its components, by form (direct fuel uses, utility electricity uses, and raw material non-fuel and non-power uses), sector, and source. The extrapolated trends, representing only a function of time, were subsequently altered by techniques which varied accordingly to the energy components being projected."

The basic method for obtaining the forecasting relationships cannot be assigned to a single technique since the authors state that, "Procedures for the forecasts may be described as opportunistic in that various types, methods, and techniques are used." Although models written in a generalized notation are presented throughout the report, nowhere is an actual model along with the required parameter estimates written down. Some of the "independent" variables used may not be really completely independent. As a matter of fact, fuels and electricity are themselves components of GNP. This statement is applicable to some of the other studies as well as this one.

Assumptions

Adequate supplies of energy resources, either domestic or imported, will be available to meet the forecast demand.

The real costs of the primary resources relative to each other and to the general level of commodity costs will remain constant or decrease during the forecast period. Some 22 "case studies" were made using the model for energy prediction and in most of these studies a large number of assumptions were made concerning the future behavior of the "independent" variables.

TABLE 34.—TOTAL ENERGY CONSUMPTION FORECAST BY FUEL AND CONSUMING SECTOR
[In trillions of B.t.u.'s]

Forecast tabulations	1970	1975	1980	2000
Household and commercial (Used as direct fuels):				
Gas	7,350	8,485	10,000	19,066
Petroleum	5,979	6,512	6,940	2,000
Coal	508	454	325	
Total	13,837	15,451	17,265	21,066
Industrial:				
Gas	8,988	10,458	11,780	17,504
Petroleum	5,481	6,431	7,104	13,090
Coal	5,901	5,557	5,749	2,000
Total	20,370	22,446	24,633	32,594
Transportation:				
Gas	560	628	689	1,000
Petroleum	14,959	18,069	20,736	41,649
Coal				
Total	15,552	18,697	21,434	42,649
Electric utilities:				
Gas	2,589	2,789	2,976	4,128
Petroleum	856	863	861	861
Coal	8,035	11,134	12,516	18,720
Hydro	2,193	2,422	3,027	5,056
Nuclear	874	1,803	4,878	43,526
Total	14,547	19,011	24,259	72,291
Miscellaneous:				
Gas			337	
Petroleum				
Coal			147	
Total			484	
Total gross consumption	64,276	75,605	88,075	168,000

TABLE 35.—UTILITY ELECTRICITY DISTRIBUTION FORECAST BY CONSUMING SECTOR
[In trillions of B.t.u.'s]

	1970	1975	1970
Household and commercial	2,899	4,055	5,541
Industrial	2,270	2,950	3,725
Transportation	26	36	47
Total	5,195	7,041	9,313

OUTLOOK FOR ENERGY IN THE UNITED STATES: ENERGY DIVISION, CHASE MANHATTAN BANK, OCTOBER 1968

General

No references are given in the report. The base historical time period was not specified in the report. They used an annual growth rate (energy consumption) of 3.8% which corresponds fairly closely to a value obtained using 1960 or 1961 through 1965 as the historical base. But most estimates of the growth rate using the early 1960's as the base are somewhat higher, around 3.9% to 4.0% per year.

This study was not an attempt to make *precise* projections, and actually only one projection was made—from 1965 to 1980. Forecasts for geographical regions were used. Total energy use was further broken down into end-use categories which were further broken down by source of supply.

Method

The study used geographic regions, end-use, and source of supply breakdowns. Regions: East Coast, North Central, Gulf Coast, Mountain, and West Coast. End-Use: Industrial-Commercial, Transportation, Electric Utilities, and Residential. Souce of Supply: Oil, gas, coal, hydro, and nuclear.

It could not be determined from the report whether the analysis was basically a building block or a subdivision approach—it could have proceeded either way. No statements about regression analysis or the type of mathematical model used could be found anywhere in the report. The projection of total energy use presented in the report appears to be equivalent to using the model:

$$E = 26{,}000{,}000(10)^{(.016519)(t-1965)}$$

where t is in years (e.g., t=1980) and E is in barrels of oil equivalent rather than BTU.

Energy use projections were apparently based on the use of intermediate variables such as population growth and per capital use trends. Their pet capita use projections appear to be based on rather complex patterns of shift in frequencies of the population in the various age groups over the years. They have placed a great deal of emphasis on the 20–35 year age group as being the primary indicator of energy use in the U.S. This reflects the use of the "rate of household formation" as a strong indicator of demand.

In connection with limits of uncertainty to be associated with the forecast values in the report, the authors made the following statement: "It is, of course, impossible to forecast future developments precisely. And the predictions in this study are intended to present no more than direction and order of magnitude."

Assumption

The size of the 20–35 year age group is a good indicator of economic activity (implied).

It was assumed that the electric powered vehicle would not be able to compete with the internal combustion engine vehicle by the end of their forecast period (1980).

TABLE 36.—FORECAST ENERGY CONSUMPTION BY SECTOR AND FRACTIONAL DISTRIBUTION BY FUEL

Total energy requirements	1965 oil equivalent Millions	1965 oil equivalent Percent	1965 B.t.u.'s[1] (trillions)	1980 oil equivalent Millions	1980 oil equivalent Percent	1980 B.t.u.'s[1] (trillions)
Industrial-commercial	3,650	100	21,170	5,100	100	29,580
Gas		45			44	
Oil		30			36	
Coal		25			20	
Electric-utilities	2,000	100	11,600	5,400	100	31,320
Gas		21			14	
Oil		6			2	
Coal		55			35	
Water		18			13	
Nuclear					36	
Residential	1,500	100	8,700	1,900	100	11,020
Gas		47			59	
Oil		45			38	
Coal		8			3	
Transportation:						
Gas						
Oil		100			100	

[1] Converted at 5,800,000 B.t.u.'s per barrel.

ECONOMIC STRATEGY FOR DEVELOPING NUCLEAR BREEDER REACTORS

(Paul W. MacAvoy—M.I.T. Press 1969)

The study contains an elegant attempt to predict the installation of nuclear reactors versus more conventional fuel for the generation of electricity.

The demand for electric generating capacity is assumed to be a function of the *price* of electricity, *per capita real income* and *population*. The expansion of plant as well as replacement is considered. These factors are used in a regression formula (least squares fitted) to predict additions to capacity. Population and income are projected exogenously and used directly. The price question is projected within the study.

Having a total capacity, an attempt is made to predict the share which is nuclear. This model uses the prices of plant and fuel for each kind of plant as the independent variables. Again a regression approach is used. The equation for projecting added capacity was

$$\log Q = -7.046 - 1.240 \log P + 0.855 \log (Y/N) + 0.914 \log N$$

where

Q=capacity installations.
P=price of electricity.
N=population.
Y/N=per capita income.

The equation for the nuclear share is

$$\log Qn/Q = -4.375 + .418 \log S - .859 \log (PNF/PFF) - 1.03 \log (PNK/PFK)$$

where

PNF=nuclear capital cost; PFF=conventional fuel cost.
PNK=nuclear capital cost; PFK=conventional capital cost.
S=plant size.

The second equation shows that there is a preference from nuclear power plants as the size (S) increases (Qn/Q increases). The competition based on relative fuel prices, (PNF/PFF), and the relative capital costs (PNK/PFK) indicate, not unexpectedly, that the nuclear fraction varies inversely with the costs.

The development of the second equation is based upon the rather skimpy data available at the time. It is also recommended in the study that the study be updated at appropriate intervals.

FOSSIL FUELS IN THE FUTURE

(Office of Operations Analysis and Forecasting, U.S. Atomic Energy Commission, Milton F. Searl, 1960.)

General

The purpose of this report, as stated by the author, was to review the extent of fossil-fuel resources and to forecast the rate at which they will be depleted in the absence of new sources of energy in order to estimate the earliest time when large amounts of nuclear power will be needed. It deals mainly with forecasts of energy consumption to the year 2000. It contains forecasts of world consumption of energy.

The United States is expected to use four times as much energy in 2000 than in 1958. Fuel resources available are adequate but the distribution of fuel resources with respect to fuel consumption patterns is poor.

Only the so-called commercial fuels were considered. The tendency for non-commercial fuels to be replaced by coal, petroleum and hydroelectric power will continue.

Method

The methodology employed was basically an extension of past trends (rates of growth) with variations. Per capita consumption in connection with population forecasts was also used.

Total energy—Commercial fuels and hydroelectric power not including Alaska and Hawaii

[In trillions of B.t.u.'s]

1960	45,000
1970	62,300
1980	86,200
1990	120,800
2000	170,100

PROJECTIONS OF THE CONSUMMATION OF COMMODITIES PRODUCIBLE ON THE PUBLIC LANDS OF THE UNITED STATES, 1980–2000

(Robert R. Nathan Associates, Inc., 1968.)

General

This report was prepared for The Public Land Law Review Commission in May 1968. The objective of the study was to provide projections of the consumption of commodities producible on the public lands, which can be used as a basis for evaluating the effects of alternative land policies.

Method

Projections of the residential, commercial, industrial, and transportation consumption of mineral fuels and electricity are based on the methods and projections of the 1963 study by Resources for the Future, Inc. Projections were made for population, labor force and employment, productivity, GNP, Index of Industrial Production and Gross Product Originating (GPO). Nine specific commodities and activities were projected.

Assumptions

Unless otherwise stated in the text of the report, recent *trends* in the following are assumed to persist to 1980 and 2000.

1. U.S. consumption needs and preferences.

2. Changes in the relative prices of competing commodities.

3. Federal policies regarding economic growth, economic stability, economic equity, regional development, and foreign policy.

4. Military commitments and mobilization for defense.

U.S. CONSUMPTION OF COAL, OIL, AND GAS, 1965 AND PROJECTED 1980 AND 2000

[In quadrillions of B.T.U.'s]

Fuel	Actual 1965	1980 Low	1980 Medium	1980 High	2000 Low	2000 Medium	2000 High
Coal	14	19	20	21	27	30	34
Oil	21	28	31	36	44	53	68
Gas	17	26	28	29	38	44	49
Total	52	73	79	86	109	127	151

U.S. CONSUMPTION OF ENERGY, BY USE

Item	Actual 1965	1980 Low	1980 Medium	1980 High	2000 Low	2000 Medium	2000 High
Conventional fuels:							
Residential and commercial	9	12	13	13	12	13	13
Industrial	12	19	21	22	33	39	44
Electric generation	11	14	16	20	20	22	24
Transportation	10	15	16	18	26	31	36
Other	10	11	13	15	17	22	29
Total	52	71	79	88	108	127	146
Other sources:							
Hydroelectric	2	3	3	3	3	3	3
Nuclear fuel		9	9	9	22	25	27

Note: Columns do not always add to totals shown. Difference is presumably due to rounding.

CIVILIAN NUCLEAR POWER: A REPORT TO THE PRESIDENT, NOVEMBER 1962

(1967 Supplement to the 1962 report to the President, February 1967, U.S. Atomic Energy Commission.)

General

The 1962 report concentrated on basic policies. It included examinations of the need for nuclear power, the direction in which the central station nuclear power program should be headed, the rate at which the program should proceed, and the nature and amount of Government participation necessary. The 1962 report data is incorporated with the 1967 supplement in this review.

The 1967 supplement contains information on International programs. Fossil fuel resource estimates had not experienced any significant changes from 1962 to 1967.

It is estimated that nuclear power generation capacity will account for 23 to 30 percent of electrical generating capacity in 1980 and about 50 percent in 2000.

In making the forecasts the report relies upon data from other sources, such as Edison Electric Institute, Federal Power Commission, and Resources in America's Future as well as other Atomic Energy Commission estimates and the judgement of the authors.

U.S. ENERGY CONSUMPTION

[10^{15} B.t.u. per year]

Year	1962 report	1967 report		
		Low	Medium	High
1965	54		[1] 54	
1980	82	76	80	84
2000	135	120	130	140
2020	207	190	210	230

[1] Actual.

PROJECTION OF ELECTRICAL GENERATION IN THE UNITED STATES

[In billions of kilowatt-hours]

	Low	Medium	High
1980	2,400	2,700	3,000
2000	6,000	8,000	10,000

U.S. ELECTRIC GENERATING CAPACITY PROJECTIONS

	1965 actual	1980	2000
Steam:			
Fossil	185	311	572
Nuclear	2	95	734
Subtotal	187	406	1,306
Other (hydro, etc.)	48	117	250
Total capacity	235	523	1,556
Electrical energy (10^{13} b.t.u.'s per year)[1]	11.1	25.2	62.9

[1] Kilowatt-hours converted to b.t.u.'s using 10,590 b.t.u.'s per kilowatt in 1965; 9,320 b.t.u.'s per kilowatt-hour in 1980; and 7,860 b.t.u.'s per kilowatt-hour in 2000.

FOOTNOTES

[1] An excellent discussion of the relationship between energy consumption and gross national product is contained in *Energy in the American Economy 1850–1975*, by Sam Schurr, Bruce Netschert, et al., published by The Johns Hopkins Press for Resources for the Future, Inc., 1960. This study had firm data only through 1955 available, and an updating of the energy-GNP relationship might be quite productive.

[2] The use of input-output analysis for quantifying the impact of technological change on energy consumption is being explored for OST by Pacific Northwest Laboratories of Battelle Memorial Institute in another phase of this study effort.

[3] This does not necessarily mean that economic efficiency is decreasing. Technical efficiency must be distinguished from economic efficiency.

Mr. JACKSON subsequently said: Mr. President, I ask unanimous consent that a bill to establish a Commission on Fuels and Energy and to recommend programs and policies intended to insure that U.S. requirements for low-cost energy will be met and to reconcile environmental quality requirements with future energy needs, introduced by the distinguished Senator from West Virginia (Mr. RANDOLPH) and other Senators, be referred to the Senate Committee on Interior and Insular Affairs.

I might say, Mr. President, that the distinguished senior Senator from Washington (Mr. MAGNUSON), chairman of the Committee on Commerce, is on the floor. We have discussed this matter, and possibly later we may have a joint hearing of the two committees, along with the Committees on Public Works and the Senate Members of the Joint Committee on Atomic Energy. This arrangement meets with the approval of the distinguished author of the bill, the senior Senator from West Virginia (Mr. RANDOLPH), who also chairs the Committee on Public Works.

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

Mr. BYRD of West Virginia. Mr. President, I am pleased to join my able colleague from West Virginia in cosponsoring this very meritorious legislation. I am grateful to him for his invitation to me to join in cosponsoring this legislation of which he is the principal sponsor.

The establishment of a National Commission on Fuels and Energy will go a long way in formulating a realistic and much overdue national energy policy for the United States.

It is a commission which should be promptly established to study and compare the fuel resources currently available in the Nation with its projected energy needs for the next two decades. The resulting data would provide us with a basis upon which to develop a national policy on fuel resources to meet the country's future fuel energy requirements.

I have consistently maintained that this country has long been delinquent in fully utilizing its indigenous energy resources, in particular the fossil fuels, and the synthetic fuels derived from natural fossil fuels. The inadequacy of our past efforts to plan for the fuel and energy needs of our country becomes more apparent every day.

There is no excuse for the fact that our country, the greatest country in the world, runs the risk this summer of not being able to supply the minimal amount of electrical power needed to sustain many of its most important metropolitan areas.

Mr. President, we can no longer allow our energy requirements to be neglected, nor can we allow our energy resources to remain undeveloped. This legislation is a first step in the right direction, and I am glad to lend my support to the efforts of my senior colleague on behalf of this legislation.

I am very grateful to my colleague for yielding.

Mr. RANDOLPH. Mr. President, I am exceedingly grateful to my colleague from West Virginia, Senator BYRD, who has spoken in reference to what, in a sense, may be a pioneering effort. It is an effort that must be undertaken and must be made, I think, as quickly as possible.

My colleague from West Virginia has spoken briefly but tellingly of the possibility of shortages which are imminent—the blackouts and brownouts. They are not just something to talk about. They are something that we must face up to.

Mr. President, we shall be hopeful, both of us, I know, that we will be able to go through the summer without a very serious electric energy breakdown.

I point out that electricity in hundreds and hundreds of hospitals in this country is enabling us to care for those who need X-ray, surgery, healing, and other forms of treatment.

There are so many indirect, as well as direct uses for electricity that, if we had the conditions of brownout or blackout come to pass, we might find the very fabric of our Nation weakened.

For that particular reason I am very grateful that my colleague has spoken of the situation which might face us through fuel and energy shortage in a very few weeks and at some period in the future if the problem is not recognized and approached aggressively and realistically.

Mr. President, I shall be gratified to work with my colleague, as with the other sponsors of the legislation, in attempting, through proper hearings before the committee to which the legislation would be assigned, to give consideration to the language which is in the original draft as presented today on language which might improve our purposes.

I think it is appropriate at this time to indicate the very real interest that exists in the Senate concerning this matter. More than 50 Senators have joined as cosponsors of the resolution which is being presented.

I feel that is an indication of the desire of the Senate to move forward.

I trust that the commission can be created as soon as possible, and do its work, and that then we shall have guidelines to help us keep America strong.

Mr. BYRD of West Virginia. Mr. President, I commend my colleague from West Virginia and thank him for his authorship of the legislation and for his diligent efforts to promote legislation of this nature.

Mr. RANDOLPH. Mr. President, I am gratified by the interest of my colleagues in this matter.

I ask unanimous consent that a thoroughly cogent and informative statement by the able Senator from Colorado (Mr. ALLOTT), who is unable to be here today, be printed in the RECORD.

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

Mr. ALLOTT. Mr. President, I am very happy to join with the distinguished Senator from West Virginia (Mr. RANDOLPH) in co-sponsoring this measure. It is my opinion that the establishment of a National Commission on Fuels and Energy is an important step in insuring this Nation's future energy needs will be met.

Senators may recall that S. 719, a bill to establish a National Mining and Minerals Policy passed the Senate unanimously on September 5, 1969. The purpose of S. 719 is to concisely enunciate and declare an overall national minerals policy, as a matter of law. The national policy established under the provisions of S. 719 would assist the Federal Government in fostering and encouraging: 1) a sound and stable domestic mining and minerals industry; 2) the development of sufficient domestic mineral resources and reserves to meet the future needs; and 3) the proper research to promote the efficient use of mineral resources.

Senators may also remember that minerals and materials such as coal, oil, gas, oil shale, and uranium are specifically excluded from the definition of minerals as that term is used in S. 719. The reason for this exclusion is that the sponsors of S. 719 and the Interior Committee were in agreement that these minerals, along with hydroelectric power and solar energy, have a direct relevance to our national energy problems. Clearly, there are many matters which pertain uniquely to energy. It is because I feel that the energy problem should be treated separately that I enthusiastically support this proposal to establish a National Commission on Fuels and Energy.

The bill provides that the Commission shall make ". . . a full and complete investigation and study of the energy demands and the fuels and energy resources requirements and policies of the United States." The Commission would also evaluate possible alternative methods of energy production and the relative merits of all energy sources including fossil fuels, synthetic fuels derived from natural fossil fuels, nuclear and any other practical sources. I believe that the findings of such a full and complete study will presage an expanded understanding of our energy posture.

Such a national policy is needed now. It is needed for two reasons. First, it is needed to make the Government more efficient in its policy-making. Second, it is needed to provide a secure basis for national strength.

With regard to making our Government policy-making more efficient, I would like to call attention to the problem of taking away with the left hand what we are trying to establish with the right hand.

On several occasions during the Spring I called Senators' attention to the problem of "hidden polices." The "hidden policy" is an increasingly serious obstacle to efficient government, and it is all the more serious because government inflicts it upon itself. Government has a "hidden policy" when a policy designed for one social problem has important ramifications on another social problem.

There is a clear and present danger that, unless planning is begun now on a national scale, we shall have energy policies which conflict with our emerging environment policies. To consider just one difficult problem, the Nation is using electric power at ever increasing rates, and this growing use comes at a time when people are increasingly concerned about the sort of air pollution problems that result from the generation of electricity in non-nuclear plants. In addition, Americans are worried—and properly so—about the thermal pollution that affects lakes and rivers when water is used for cooling purposes in nuclear generating plants. Such conflicts will be eased when we have before us a comprehensive understanding of our energy sources, and the alternative ways of using them to satisfy our energy needs.

Clearly, in our complex society many social efforts are inextricably entwined with other social efforts. Nowhere is the interdependency of things so clear and so important as in the relationships between the needs of our economy, the demands upon our sources of energy, and the fragile balance of our environment.

In this triad—the three "E's"—economy, energy and environment—it is proper to put energy in the middle. Without comprehensive energy policies, the economy faces dire dislocations in the near future. And without prudent balance in developing all energy sources we can do damage to our total environment—to the air, the water, and the land.

There are those who say we should reorder our priorities. There are even those who suggest that we should put severe limits on economic growth because economic growth puts unsupportable strains on the environment.

I think we should be constantly re-examining our priorities. Most importantly, we should try to insure that we have some control over our priorities. I do not think that economic growth and a healthy environment are mutually exclusive goals. But two things are clear.

First, unless we have a sensible long-term fuels and energy policy, we may find that our priorities are set for us by the rigorous exigencies of unplanned and unpleasant scarcity. Second, if such scarcities come, we will not have the economic capacity we need for a good life and a convincing defense, and we will not have the economic capacity to finance environmental improvement

We should make no mistake about it. It costs money to make the needs of the environment compatible with the needs of our economy. It is a luxury we can afford, and must insist on, but it is something that we will purchase with the margin provided by a robust economy.

Mr. President, to encourage efficient policy-making, to insure a growing economy, and to provide for a healthy environment—for all these reasons we should continue to seek more comprehensive knowledge of where we stand, and where we are going in the field of energy use.

The Interior Committee has held investigatory hearings on some of the problems in this area. The hearings have dealt with the shortage of natural gas, the possible use of magnetohydrodynamics (MHD), various oversight hearings on oil development and production, and the effect which energy production has on the environment. While these hearings and discussions have been beneficial in examining specific areas of concern, they were only designed to focus on particular problems. They were not supposed to provide an integrated, comprehensive survey of energy problems. Because of this, I believe that it is most important to authorize such a survey.

Mr. President, again I compliment the able senior Senator from West Virginia for proposing this pioneering Commission. I urge the Senate to give this proposal the prompt consideration it merits.

Mr. RANDOLPH. Mr. President, I am grateful for the support the distinguished senior Senator from Colorado gives to this legislative proposal. Mr. President, there are other Senators present in the Chamber who have been most helpful as we have considered and drafted this legislation. I believe I have just about utilized the 1 hour I was privileged to speak.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The time of the Senator from West Virginia has just expired.

Mr. RANDOLPH. Mr. President, I ask unanimous consent to proceed for an additional 10 minutes to accommodate other Senators who desire to discuss this subject further.

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

Mr. BELLMON. Mr. President, will the Senator from West Virginia yield?

Mr. RANDOLPH. I am happy to yield to the Senator from Oklahoma.

Mr. BELLMON. I should like to thank the Senator from West Virginia for yielding to me, and also to compliment him on an extremely thoughtful, comprehensive, and authoritative statement on one of the greatest problems our country faces at the present time.

I am very proud to be one of the coauthors of the legislation which the senior Senator from West Virginia has just introduced, to create a Federal Commission on Fuels and Energy. I certainly support the concept, and agree that a study of this kind has long been needed—it is probably long overdue.

I feel that, at the present time, probably no problem facing this country is more serious than the one of providing adequate and dependable energy sources for the continued development of this Nation.

Mr. President, the fact that, at the present time, much of our energy comes from sources that can be interrupted and that frequently have been interrupted, is a matter of great concern to me. The fact that, at the present time, drilling and exploration activities in this country are down sharply; the fact that we face, even in the present year, almost the certainty of brownouts all along the eastern coast and perhaps along the Great Lakes area as well; the fact that we have little reserve producing capacity remaining in the oil and gas fields; and the fact that there is a serious delay in building the trans-Alaska pipeline, upon which we have counted so heavily for energy sources, all of these things disturb me greatly.

The distinguished Senator from West Virginia is well aware of the fact that there is practically no reserve coal-producing capacity left in this country. For these reasons, we are in an extremely critical condition so far as many of the energy needs of this country are concerned.

But, to me, the really remarkable thing about the whole situation is that the United States has the potential to produce abundant energy. We have vast reserves in this country of oil and gas, and we have the technology to make it possible to produce from these reserves even though they exist at great depths. Their production is possible only through the expenditure of huge sums of money.

We have the financial resources needed for this kind of production and, yet, we are not getting the exploration and new developments we need.

Mr. President, the Senator from West Virginia has pointed out some hopeful, even revolutionary and new methods for obtaining a large portion of the available total energy from the fuels we consume, but even if we succeeded in making these new developments practical and get them into use, still there would be a tremendous demand for new energy sources.

I believe the reason that this country is in this present energy crisis, and the reason we are not developing the reserves we need, is that we have never truly undertaken a study such as this which the Senator from West Virginia has recommended. We have never had a Federal commission on fuels and energy that could go into this whole problem in an objective way and prepare information that could be taken at face value.

If we had a commission such as the Senator from West Virginia is now recommending, we probably would not have followed some of the shortsighted Government policies which have brought us to this state of affairs.

I believe that many of the policy decisions made by some of the Federal regulatory agencies have been shortsighted, and that they have created a situation in the energy business which has caused new investments to be noneconomical. For this reason venture capital has now dried up.

Thus, I am pleased to join with the distinguished senior Senator from West

Virginia in this new development. I look forward with eager anticipation to the report which will be forthcoming. I believe that a study such as the Senator has recommended will make it possible for us to find the energy we need, so that we will not be faced with the idle factories and the cold dark houses that are said to be in store for much of our country. Unless a study of this kind is made and unless needed developments follow in its course this Nation will truly face a major energy crisis.

I congratulate again the Senator from West Virginia and thank him for the leadership he has shown in making this move.

Mr. RANDOLPH. Mr. President, I am very grateful for the constructive comments of the distinguished Senator from Oklahoma. He is knowledgeable in the matter of the energy needs of this Nation. To have his active cooperation and coauthorship of the proposal gives me great encouragement as we move forward here today.

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

Mr. RANDOLPH. Mr. Presidnet, I yield to the able Senator from Alaska.

Mr. GRAVEL. Mr. President, in our daily lives, probably the largest bugaboo we face is the ability to develop some forethought, the ability to effect some planning into our lives. This bugaboo compounds itself on a national scale when we deal with the total organization of our country.

Probably the problem that besets this Nation and the world more than any other problem has been an orderly determination of our resources, particularly the resources of energy.

Today we have tragedy. We have a degree of pollution which threatens our own existence. Commensurately, we have a degree of need for energy, which is the only way we can develop the quality of life.

These two interests are not incompatible, but they are without planning, without forethought, and destructive.

I can only say that this is the first time in the history of the Congress of the United States, the history of the Nation, and the history of the world when there has been a concrete effort to address ourselves in a total manner to inventory and determine trade priorities with regard to our energy demands. That this should come from a Senator whom I have the honor to serve with on the Public Works Committee, who is my chairman and in essence my "boss," gives me a deep and sincere feeling of gratitude.

I congratulate him for his leadership. I am proud to cosponsor the legislation concerning an issue that, because of the blessed benefits my State has received, has been so acute of my own personal knowledge. I praise the Senator from West Virginia for his effort.

Mr. RANDOLPH. Mr. President, I am appreciative of the assurance given by the Senator from Alaska of his desire to have this program move forward. I am sure that we shall be sustained and strengthened by the ability that he will bring to the further discussions as we proceed through the hearings.

I know that the State of Alaska is a big area of this country and is vitally concerned with what we do here. His State is a State with a pioneering history and a great future, and we are thinking about the future here as we consider the overall fuel and energy needs of the United States.

The PRESIDING OFFICER (Mr. HUGHES). The Senator has 1 minute remaining.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that I be permitted to continue for an additional 4 minutes.

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

Mr. SCHWEIKER. Mr. President, will the distinguished Senator from West Virginia yield?

Mr. RANDOLPH. Mr. President, I yield to the able Senator from Pennsylvania.

Mr. SCHWEIKER. Mr. President, I am pleased to join with the distinguished Senator from West Virginia (Mr. RANDOLPH) and with my other colleagues in cosponsoring legislation to establish a National Commission on Fuels and Energy.

Mr. President, it is increasingly clear that our industrialized society is in the midst of two full-scale crises, separate crises but also closely interrelated. One is the crisis of pollution of the air, water, and land around us—the environment crisis. The other is the crisis of energy needs—the mix of oil, gas, coal, and nuclear power resources that will be needed in greater and greater quantities in the years ahead to fuel our economy.

It is high time that our Nation mounted a top-level effort to see exactly where we are headed in terms of our present and future energy resources and needs.

The current summer, for example, has brought with it dire warnings from electric utilities about possible power blackouts and brownouts. A large nuclear power facility near New York City has shut down for the entire summer so that retooling can take place, and as a result electric power service to our largest city will be subject to possible brownouts or power reductions. Last Sunday there was an explosion at the Keystone Power Station in western Pennsylvania, one of the new power stations incidentally which has been built directly over the mouth of a coal mine. As a result, the power reserves for the entire mid-Atlantic region were given a setback during the peak summer season.

What these incidents point out is the vulnerability of our electric power supply, at a time when the need for power is growing. There is no better time, Mr. President, for this legislation for a National Commission on Fuels and Energy, and I hope it can move promptly through Congress.

In addition, Mr. President, I am pleased that the National Coal Policy Conference, a group made up of both coal industry and labor union representatives, is giving its support to this bill. As a Senator from the Commonwealth of Pennsylvania, whose coal production is exceeded only by that of West Virginia, I naturally share with the coal policy conference a deep interest in the future of coal as a leading energy source. Nevertheless, to the credit of the coal policy conference, this group has seen the need for an overall look at all types of energy resources and needs, a look at oil, gas, and nuclear power, along with coal, as components in an overall fuel and energy mix.

I am glad, Mr. President, to join in cosponsorship of this most worthwhile and vital legislation with the distinguished Senator from West Virginia (Mr. RANDOLPH).

Mr. RANDOLPH. Mr. President, the Senator from Pennsylvania is especially knowledgeable in reference to the problems of the production of coal, both anthracite and bituminous, in his State. I know that he takes no narrow concept of the use of coal, although it is of a value that is beyond what people generally recognize and will be for a long time in the future. It is a basic energy fuel.

The Senator speaks of the broad organization and support of people as we go into this matter. There are so many possibilities. I know that the Senator from Rhode Island talked with me yesterday about energy that would come from the sun. He has been intensely interested in looking into this matter.

I assure my friend, the Senator from Pennsylvania, that we will work together. Approximately 53 Senators cosponsor the legislation. That constitutes more than half of the Members of the Senate. I think it reflects a broad assumption of responsibility in this matter, and it is a responsibility which the American people want us to be responsive to, because they, with us, see the problems of the future.

The Senator from Pennsylvania mentioned a matter that concerns all of us, the incident that occurred at the Keystone powerplant in his commonwealth.

I ask unanimous consent that an article concerning that explosion in his State, as it was covered in the Washington, D.C. Post of Tuesday, January 14, be printed in the RECORD.

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

ELECTRICITY RESERVES CUT BY BLAST IN PENNSYLVANIA

(By David Vienna)

A major electricity generating plant that provides an important part of the reserve power for Washington, sections of Maryland and three other states was knocked out for three to six months by an accidental explosion early Sunday morning.

The accident at the Keystone, Pa., facility reduced the excess or reserve capacity of electricity in the Pennsylvania-New Jersey-Maryland region from 12 per cent to 9 per cent of the anticipated total peak demand.

The Federal Power Commission says that 15 per cent is the bare minimum utilities must have in reserve to assure safe and reliable operations. A utility official reached yesterday said, however, he is not too concerned at this time.

Without reserve capacity, the increased use of air conditioners alone on a succession of hot summer days could tax the ability of utilities to supply electricity.

The result could be a reduction in voltage to conserve power, the intentional blacking out of some areas for short periods of time—even a total power failure, some federal power experts say.

The explosion that knocked out the Keystone, Pa., power station affects utilities and their customers in other states because power companies serving Washington and sec-

tions of Pennsylvania, New Jersey, Maryland and Delaware are joined in a pool and operate together as if they were one big utility. The arrangement is known as the PJM power pool.

In a statement yesterday, a PJM spokesman said "the loss of this unit does not pose an immediate threat to the PJM system's reliability."

Stephen R. Woodzell, president of the Potomac Electric Power Co., said in an interview yesterday, "I don't say that we're in the best shape in the world, but we're not in a crisis, either. We have the reserve to take care of the situation, but anything can happen. We're not too concerned at this time." Pepco serves Washington and the Maryland suburbs and is a member of the PMJ pool.

An official of the Federal Power Commission said the situation "would be critical if the pool loses another one of these big units, but the loss of the Keystone plant is not enough to cause major problems."

In a May 5 report, the President's Office of Emergency Preparedness noted that if PJM plants at Keystone and Conemaugh, Pa., as well as the facility at Oyster Creek, N.J., go out, "the area has no reserve."

Those three plants are by no means the only power-generating facilities for companies in the PJM pool, but they were singled out in the report as possible weak links in the system.

Though the government's report indicated the Keystone, Conemaugh and Oyster Creek plants produced reserve power, pool members say they have no facilities designated to produce excess power. Each plant in the system, they said, contributes to the reserve supply.

PROBLEMS ELSEWHERE

The companies in the PJM pool are not the only utilities with reserve problems. Those serving the Carolinas and Virginia, known as the CARVA pool, have a reserve capacity of only 6.5 per cent, according to the emergency preparedness office report.

That report notes that other pools and integrated utilities in the Midwest and Northeast also have low reserves.

There are several factors behind this problem.

There has been an increase in the summer demand for electricity caused by a growing use of air conditioners. The electric utilities themselves have pushed this demand through advertising campaigns encouraging consumers to buy and use electric instead of gas air conditioners.

As a result, demand for power is increasing at about 9 per cent a year while the utilities had planned for a 7 per cent increase.

Municipal and other government-owned power facility partisans charge that successful lobbying by big investor-owned utilities against proposed new publicly owned plants has also diminished the potential power supply.

NEW PLANT DELAYS

On the other hand, the investor-owned power companies complain that conservationists have fought construction of new, privately owned power facilities, thereby delaying their operations.

Moreover, plants built within the past year are experiencing normal start-up problems, which means they frequently can't be counted on to supply a continuous flow of electricity.

Those plants whose problems have been worked out are experiencing a new kind of problem. Federal Power Commission officials worry that coal supplies are getting "dangerously low." One southern plant, for example, had been carrying an inventory of coal equal to a 60-day supply but it is now down to a week's supply.

The problems of the electric power industry "may get worse before they get better," says one Federal Power Commission official.

Industry experts as well as federal power specialists say it will be three or four years before the generating capacity of the industry begins to come more in line with demand.

By 1973 or 1974, the power problems of the eastern region may be solved, but those in the West may just be beginning. Already, federal officials wonder if new plants in Southern California and the Pacific Northwest will be ready on time to meet anticipated demand.

It was a boiler explosion that crippled the Keystone, Pa., plant. It happened as workmen began firing up a generator, authorities said. No one was injured but the boiler and the building that housed it were damaged.

Mr. NELSON. Mr. President, will the Senator from West Virginia yield?

Mr. RANDOLPH. Mr. President, I yield to the able Senator from Wisconsin.

Mr. NELSON. Mr. President, I wish to join with so many of my colleagues in the proposal of the Senator from West Virginia to create a Federal Commission on Fuels and Energy.

Of the seven or eight most important problems facing the country—poverty, the delivery of medical care to people, peace, housing, education, transportation, energy, and violence—the distinguished Senator from West Virginia is a leader in three of those areas and is now conducting very important hearings on the country's highway transportation system. This is a problem that has developed in the past 15 years. It involves the disastrous disappearance of cheap, mass transportation in this country.

The Senator from West Virginia is addressing himself to that serious and very important area. I commend him for it.

Today he is addressing himself to a proposal to examine in depth the energy requirements of this country, which we should have done a long time ago.

I commend the Senator from West Virginia for being the one who came up with what I think is the appropriate approach to a study and understanding of what our requirements are as projected for the next few decades with regard to our fuel resources, and what the implications, particularly environmental, are with respect to the growing demand for energy.

As the Senator from West Virginia pointed out in his excellent speech, power consumption in this country has doubled every 10 years.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that we may proceed for 5 additional minutes.

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

Mr. NELSON. Mr. President, at that rate, by the end of 100 years this country will be consuming over 1,000 times as much energy as it is consuming today. Given known methods of production this would mean we would be stringing 1,000 times as much wire, using 1,000 times as much coal, and using 1,000 times as much nuclear energy. I think the fact of the matter is that there are neither the resources nor the facilities for this country to reach a stage where, under any known sources of power, we will produce 1,000 times as much. And if in the course of producing that energy we have to continue to use water as a coolant, every single river in America, for all practical purposes, will have to run through a powerplant on its way down to the Gulf of Mexico or to the oceans of the east coast and west coast which, of course, means that the various kinds of insects and plant life living in that water will be destroyed, with environmental consequences which no one can predict.

I am pleased to have the opportunity to cosponsor this legislation of the distinguished Senator from West Virginia. I commend him for what I think is one of the most important pieces of legislation introduced in Congress in the past decade.

Mr. RANDOLPH. Mr. President, I appreciate the comments and the cosponsorship of the distinguished Senator from Wisconsin. I am gratified that he will work actively with us in this matter.

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

Mr. RANDOLPH. Mr. President, I yield to the distinguished Senator from New York.

Mr. JAVITS. Mr. President, I, too, am a cosponsor of this legislation. I speak only because I think that what the Senator from West Virginia is trying to do is something which is related to a bitter experience we face now in connection with the railroads.

For years there was an effort to get a national transportation policy, which never got anywhere. Now we have a failure of one of the great railroads of the world and we have a feeling of concern and disorganization in the entire field. Nothing really was anticipated, not even improvements, not even the shift of passenger traffic, nor even the grave problems of interurban traffic and suburban traffic—which are so heavily complicated by the inadequacy of the rail system to deal with the problem. The problems are further distorted by the growth of central core cities and many other unhappy circumstances.

The use of atomic power and perhaps some power beyond atomic power has been suggested. Everything is possible in this world. As the Senator from Wisconsin said, old-fashioned methods will lag behind modern technology in various degrees of time intervals unless there is a concept of what is ahead. I do not believe a free society and a competitive economy needs, necessarily, to be unplanned; but the distinction which must be made is between planning which is compulsory in execution and planning which is advisory and guiding in its effect. The latter is not only compatible with freedom but probably essential to preserve it.

Mr. President, I am very pleased the Senator from West Virginia has taken this initiative, especially since he comes from a strong coal mining State. I hope we all join in this effort and that we will be creative about it, not letting up on it nor treating it as the interest of one particular Senator.

One of the hottest international situations today is attributable to the fact that the energy resources of the industry of Western Europe and Japan are concentrated in the Middle East.

This does not have to be and, hence, the proposal of the Senator from West Virginia is of critical importance in a strategic sense.

Mr. RANDOLPH. Mr. President, I appreciate the constructive comments of the distinguished Senator from New York. I want him to know I am thinking of this problem in its domestic proportions, and I think of it in world proportions, too.

The Senator made mention of West Germany and Japan and problems which concern the Middle East. I have touched on that in my remarks today. I think the knowledgeable Senator draws a very correct distinction between the compulsion and the advisory capacity of Government in placing before us the priorities and guidelines and policies which will be absolutely necessary if this country and its growing population are not only to be sustained but are to be enabled to continue to expand and prosper and to sustain the quality of life which is so important to us.

I am grateful to the senior Senator from New York for his interest in this matter, and for his cogent comments.

Mr. JAVITS. I thank the Senator.

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

Mr. RANDOLPH. I yield to the Senator from Rhode Island.

Mr. PELL. Mr. President, in my part of the country, Rhode Island and New England, we are principally consumers and we are concerned with the cost of power and our ability to compete in this producing world of ours.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. RANDOLPH. Mr. President, I ask unanimous consent that I may proceed for 2 additional minutes.

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

Mr. PELL. Mr. President, in this regard I congratulate the Senator from West Virginia on the leadership he has shown in introducing this measure. I am proud to be a cosponsor of it. I believe this commission can be in the forefront to lead the thought in our country to demonstrate that not enough attention has been given in any of the studies of the science of human environment, that is, of ekistics; and that neither has enough attention been given to the planning of energy requirements in the development of cities and the making of decisions with regard to kinds of energy.

When we speak of the kinds of energy, I trust this commission will examine probably the most pressing problem which will face our great grandchildren when supplies of petroleum may be exhausted. When we look at written history of the last 5,000 years, we realize that in 100 years, or in one-fiftieth of that period of time, there may no longer be energy from the principal sources we use today. We should pay very special attention to the work of this commission, on whose creation I particularly commend the senior Senator from West Virginia.

Mr. RANDOLPH. Mr. President, as I relinquish the floor, I wish to express, not in any perfunctory fashion, my personal appreciation to Walter Planet, who is a congressional fellow and who is with the Department of Commerce. He came to our Committee on Public Works and labored for 10 months on this subject matter. He has been of real value to us. I want to mention the considerable contribution of Richard Grundy, who is a technical staff member of the Committee on Public Works and who assisted very much in this effort. I wish to mention also the excellent work of James W. Harris, my executive assistant, who worked with these gentlemen, as did Richard Royce, staff director of the Committee on Public Works. These four gentlemen, and many, many others, have made notable contributions to our efforts.

ORDER OF BUSINESS

The PRESIDING OFFICER. Pursuant to the previous order, the Senator from New York (Mr. GOODELL) is recognized for not to exceed 20 minutes for the purpose of engaging in a colloquy with the Senator from Wisconsin (Mr. NELSON).

AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PROCUREMENT DURING FISCAL YEAR 1971—AMENDMENT

AMENDMENT NO. 784

Mr. GOODELL. Mr. President, I have taken this time to join with the Senator from Wisconsin (Mr. NELSON) to discuss an amendment which we shall offer against the use of environmental warfare. I shall be delighted to yield to the Senator from Wisconsin to take the lead in this, if he wishes.

I yield 10 minutes to the Senator from Wisconsin.

Mr. NELSON. Mr. President, today I submit an amendment I am coauthoring with Senator GOODELL that is cosponsored by Senators CASE, CRANSTON, EAGLETON, GRAVEL, HART, HUGHES, PROXMIRE, WILLIAMS of New Jersey, and YOUNG of Ohio. It is the amendment on environmental warfare to be offered to the military authorization bill for procurement. The measure will do three things. First, it prohibits the U.S. military use of antiplant chemical weapons. Second, it prevents the transfer of such weapons for use by second countries. Third, it provides for the elimination of the present stockpile of antiplant chemical weapons.

In December 1969, the General Assembly of the United Nations passed by a vote of 80 to 3 a resolution that declared the use of military herbicides a form of chemical warfare which is forbidden under the Geneva Protocol. The United States, Australia, and Portugal were the only dissenters.

The United States has pledged itself to uphold the Geneva protocol ban against the first use of chemical weapons, but has never officially ratified the agreement. Instead, the United States has been actively using antiplant chemicals in unprecedented amounts in Vietnam and has set a precedent for a new kind of insidious warfare.

Since 1961, 100 million pounds of antiplant chemicals have been sprayed over 5 million acres of South Vietnam, an area the size of the State of Massachusetts. This country has dumped enough chemicals to amount to 6 pounds for every man, woman, and child in South Vietnam.

The military use of herbicides is argued as being necessary to protect American bases and to prevent surprise attacks and infiltrations. The military also contends that defoliation destroys enemy infiltration routes and bases, forcing him to keep on the move and exposed to aerial observation. One of the primary uses of the chemicals is to destroy agricultural crops.

While there may have been limited military benefits, they have been exaggerated and misinterpreted. Defoliation of forests gives the enemy notice of 6 to 8 weeks to move his camp facilities, since it takes that long for the chemicals to defoliate the trees. Defoliation of infiltration routes has little effect on the elusive guerrillas who have an ability to change routes in response to military thrusts.

Defoliation to reduce the chance of ambush along allied supply and communication lines opens up the routes to attack from heavier weapons and gives allied soldiers traveling these routes little cover if they are attacked.

While about half a million acres of rice and other food crops have been destroyed by chemical sprays in South Vietnam, the destruction has had little impact on the guerrilla who manages to get the food he needs. The people of South Vietnam, mainly the women, children, loss of the food and livelihood of their and aged, who suffer the most from the farms, are forced to leave their lands to join the continually growing list of displaced refugees. We only succeed in making enemies of the Vietnamese farmer deprived of his livelihood and his home.

There is little evidence of the military value of the use of chemical defoliants, but even if there were some military value, the widespread use of herbicides for military purposes has dramatic environmental implications worldwide. There is no way of knowing what future environmental problems in Vietnam will be during the next 10, 50, or 100 years.

Scientists have warned that there are several possible long-term ecological dangers from the use of chemical defoliants. These include laterization, or the irreversible hardening of soil no longer protected from the sun by foilage; permanent destruction of mangrove swamp forests; poisoning of aquatic life by runoff into the water system; elimination of many forms of animal life and opening up vast areas to the permanent invasion of fast-spreading undesirable plants like bamboo, forcing out the future growth of natural plantlife.

In 1968, aware there was little data on the ecological effects of the military use of herbicides in Vietnam, the State Department sent F. H. Tschirley of the Agriculture Department to make a 30-day study. Tschirley's report indicated the military defoliation program "is having a profund effect on plantlife in Vietnam."

One of the long-range effects of ecological destruction that Tschirley found was in the massive destruction of mangrove forests. He found that mangroves are extremely susceptible to defoliants and that one application was sufficient to kill most trees. He reported visiting areas on the Rung Sat Peninsula that were still completely barren, even though they had been sprayed years earlier. He estimated it would take about 20 years for the reestablishment of a mangrove forest. Two zoologists, Gordon H. Orians and E. W. Pfeiffer, in a recent article on the "Ecological Effects of the War in Vietnam" in Science magazine, argued, however, that Tschirley's estimate was based on the assumption of the immediate redistribution of seeds to the defoliated areas and the presence of suitable germination conditions when they arrive.

Emphasizing the lack of knowledge on the use of defoliants, the zoologists contended there is reason to believe the timetable for mangrove regrowth may be longer than 20 years. "Possible conditions for seed germination are not now very good in the defoliated forests. The unusual soil conditions of mangrove forests may result in a failure of the herbicides to be decomposed," they argued.

There are areas of sprayed mangrove forests in Vietnam that were sprayed as early as 1961 that still have shown no significant recovery.

Orians and Pfeiffer also found that the almost complete destruction of all the vegetation of the mangrove areas had a severe effect upon the animals living there:

> During our tour of the defoliated areas, we did not see a single species of insectivorous (insect eating) or frugivorous (fruit eating) birds with the exception of barn swallows . . . which are migrants from the north.

They pointed out that they had received one report of many sick and dying birds and mammals in forests following defoliation and two reports of death of large numbers of small pigs near Saigon:

> Nevertheless, we must not forget that habitat destruction which defoliation regularly accomplishes is in most cases the equivalent of death for animals," Orians and Pfeiffer wrote. "The widespread view that animals can move to other nearby areas is untenable because recent ecological evidence suggests that tropical forests hold the maximum number of individuals of most species that the resources will support. Reduction of forest habitats will decrease the populations of forest animals by an equivalent amount. Nor is it true that forest species can live successfully in the greatly modified conditions which prevail in even partially defoliated forests.

The potential biological consequences of our herbicide program are equally alarming. Two sets of hearings by the Senate Subcommittee on Energy, Natural Resources, and the Environment on the teratogenic—deforming—effects of 2,4,5–T and 2,4–D greatly influenced the administration to restrict the use of 2,4,5–T and accelerate studies of 2,4–D. These two chemicals are the primary herbicides used in Vietnam. As a result, the Department of Defense has banned 2,4,5–T in Vietnam and is evidently having serious reservations about 2,4–D, because 2,4–D has already been shown to cause deformities in chicken embryos. The administration has not yet considered the results to be conclusive enough to take restrictive action.

We have sprayed sparsely populated areas at concentrations in excess of those used in experiments that showed substantial teratogenic effects to experimental animals. The Army has denied, however, any reports of hazards to health or any miscarriages, fetal deformities or deaths caused by the defoliation program. The United States has, nonetheless, paid more than $3 million to South Vietnamese claims for personal property damages, with many still outstanding.

The United States is now in the process of turning over the environmental warfare program to the South Vietnamese military as part of the Vietnamization program. This is a reprehensible act, not only because no one should be permitted to engage in this kind of warfare, but because chemicals that cause such widespread and possibly permanent environmental destruction should be denied everyone. Environmental warfare cannot be permitted to proliferate. It is an inexpensive and indiscriminate form of chemical-biological warfare that could cause ecological damages and effect irreversibly the balance of nature.

Mr. President, I ask unanimous consent that the amendment to end environmental warfare, the article by Drs. Orians and Pfeiffer appearing in Science, "Ecological Effects of the War in Vietnam," and the column by Ralph Blumenthal from the New York Times be printed at this point in the RECORD.

The PRESIDING OFFICER (Mr. HUGHES). The amendment will be received and printed, and will lie on the table; and, without objection, the amendment and the articles to which the Senator has referred will be printed in the RECORD.

The amendment (No. 784) is as follows:

AMENDMENT NO. 784

Sec. —. Prohibitions on environmental warfare.—No part of any amount authorized or appropriated pursuant to this Act or any other law shall be expended for the purpose of—

(1) engaging directly in the military application of antiplant chemicals;

(2) entering into or carrying out any contract or agreement to provide agents, delivery systems, dissemination equipment or instruction for the military application of antiplant chemicals;

(3) procuring or maintaining agents, delivery systems or dissemination equipment intended for the military application of antiplant chemicals.

The articles, presented by Mr. NELSON, are as follows:

ECOLOGICAL EFFECTS OF THE WAR IN VIETNAM

(By Gordon H. Orians and E. W. Pfeiffer)

Wars are always destructive of environments, but never before have the ecological effects of a war been a major issue. For the past several years there has been widespread concern among scientists about the massive use of chemicals for defoliation and crop destruction in Vietnam. Because these chemicals have never before been used in military operations, there are no data upon which to predict the effects of such use. However, J. S. Foster, Director of Defense Research and Engineering, Department of Defense, has stated that the Department of Defense would not use these chemicals if it judged that seriously adverse ecological consequences would occur. The basis upon which this judgment was made is not clear in view of the fact that the report of the Midwest Research Institute (sponsored by the Department of Defense) on the ecological effects of herbicides[1] points out that predictions based on civilian uses are not valid. This is because the military application of herbicides in Vietnam is carried out under conditions that are not comparable to the civilian situation.

Recognizing that there were no data on the ecological effects of the military use of herbicides in Vietnam, the Department of State sent F. H. Tschirley, a U.S. Department of Agriculture plant ecologist, to Vietnam in March 1968, to make a 30-day assessment of the ecological effects of defoliation. His report[2] indicates that the defoliation program is having a profound effect on plant life in Vietnam. He was, however, unable to get first-hand data on many aspects of the problem, including effects on animal life. Accordingly, the Society for Social Responsibility in Science decided to sponsor a trip in March 1969, with the objective of supplementing Tschirley's observations with those of zoologists. Unfortunately both of these visits have been made in the dry season.

SOURCES OF INFORMATION

We gathered information and impressions from interviews with military personnel involved with both field operations and policy decisions. We traveled by helicopter over areas damaged by B–52 bombing raids, and we flew on spray missions with the C–123 aircraft which have been modified for spray application. We were also able to take a 2-hour, 40-minute (104 kilometers) trip by Navy patrol boat through the Rung Sat Special Zone, an extensive region of mangroves on the Nha Be River, which has been heavily defoliated. The main shipping channel to Saigon passes through the area and widespread defoliation has been used to reduce the incidence of rocket and mortar attacks on vessels coming up the river. We are grateful to the U.S. Embassy, Army, Navy, and Air Force, the Rubber Research Institute of Vietnam, Plantations Michelin, and the many Vietnamese biologists, both in governmental and nongovernmental positions in their country, for their cooperation and hospitality. All information which we requested from the Department of Defense that did not carry a security classification was made available to us.

Because rubber plantations are one of the most important sources of foreign capital in Vietnam and since the rubber tree *Hevea brasiliensis* is particularly susceptible to damage by defoliants, especially 2,4,5-trichlorophenoxyacetic acid (2,4,5-T)[3], we interviewed plantation owners concerning defoliation damage. The planters themselves have not carried out systematic studies of the physiological effects of defoliants on rubber trees, but they have been very much interested in estimating their losses. The Rubber Research Institute of Vietnam, a private research corporation, has made careful observations of the nature and extent of damage to rubber trees and has carried out some experiments to find ways of minimizing the loss to defoliants. The data in the files and publications of the Institute, kindly made available to us by the director, Jean-Paul Poliniere, were invaluable to us in learning more about effects of defoliation on rubber trees. Also, during a visit to the research station of the Institute, we were able to observe recent damage to trees by defoliants and to view pictures of trees damaged and killed by previous defoliations. Of

Footnotes at end of article.

ficials of the Michelin Plantations also provided us with data from their files on the nature and extent of herbicide damage to rubber trees on one of their plantations.

The Faculty of Science, University of Saigon, and government agencies concerned with plants and animals, such as Ministries of Fisheries, Forestry, and Agriculture, are staffed with biologists trained primarily in France and the United States. These people are knowledgeable and concerned about the ecological effects of the war in their country. By means of interviews with them we were able to assess their concerns, find out what kinds of studies have been initiated, explore ways of helping them launch future studies, and to gather information they had collected which was relevant to our mission.

Wartime conditions prevented us from making ground observations in heavily defoliated forests, but we were able to discuss damage with B. R. Flamm, Chief, Forestry Branch, U.S. Agency for International Development, Saigon, and to examine photographs he took inside forests receiving one and two applications of defoliants. In addition, one of us (G.H.O.) visited some of the sites in Puerto Rico, which have been used to test defoliants under tropical conditions, in April 1969, for a closer look at vegetation recovery and animal populations.

Because previous work on the effects of defoliation in the field have dealt almost entirely with direct effects upon plants, we made a special effort to observe animals in all the areas we visited and to ask as many questions as we could about changes in the status of animals. Because our own knowledge was most extensive about birds we learned the most about them, but we did gather some information on other taxa through interviews. Because of the short duration of our visit we were unable to obtain definitive answers to some of the most important questions which have been raised by the American scientific community about the ecological effects of the war, but we feel that the material we gathered forms a significant contribution to continuing efforts to assess the impact of modern warfare upon the environment in which man must live.

OPERATIONAL ASPECTS OF THE DEFOLIATION PROGRAM

Inasmuch as it is the widespread use of herbicides in Vietnam that has been of greatest concern to American scientists, we gave top priority to learning about the effects of the defoliation program in Vietnam. Defoliants have been used in Vietnam by the United States since 1962. The program started modestly but increased sharply after 1965 (Table 1). A peak was reached in 1967 followed by a slight reduction of total area sprayed with defoliants in 1968 as a result of the reassignment of equipment for other missions following the Tet Offensive.[4] The bulk of the spraying is directed against forests and brush, but a significant proportion is directed against cropland in the mountainous parts of the country.[4] The U.S. military authorities believe the food grown in the mountainous areas is used to feed the forces of the National Liberation Front. They deny using defoliants on rice crops in the delta region. Much of the defoliation is along roads and rivers and around military establishments, and border areas (near Laos and Cambodia) are extensively defoliated. Forested regions north and northwest of Saigon in Tay Ninh, Binh Long, Binh Duong, Phuoc Long, and Long Khanh provinces have been very hard hit. This area contains some of the most valuable timber lands in the country. In most cases, broad forest areas have not been repeatedly defoliated, though possibly 20 to 25 percent of the forests of the country have been sprayed more than once. Roadsides and riverbanks are subjected to multiple defoliation at regular intervals.

TABLE 1. ESTIMATED AREA

[1 acre=0.4 hectare) treated with herbicides in Vietnam. Actual area sprayed is not known accurately because some areas are resprayed. Areas are estimated from the number of spray missions flown, the calibrated spray rates and the width of spray swath covered.]

Year	Defoliation (acres)	Crop destruction (acres)
1962	17,119	717
1963	34,517	297
1964	53,873	10,136
1965	94,726	49,637
1966	775,894	112,678
1967	1,486,446	221,312
1968	1,297,244	87,064

Source: From Department of Defense data.

Officially the defoliation program is a Vietnamese program with the assistance of the United States. The initial request for defoliation may be made by either a district or a province chief with the support of his American advisor. Included in the request must be the claim that the targeted area is under control of the National Liberation Front or of the North Vietnamese. The chief must also pledge to reimburse his people if there is any accidental damage to their crops by wind-blown spray or other causes. The request also must contain a promise to inform people in the target area that it will be sprayed, giving them the reasons for the spraying, and offering them the opportunity to change their allegiances if they so desire. Plans are supposed to be made in advance to handle any refugees which might result from the operation.

This request then goes to the division tactical zone commander and his American advisor, then to the Corps commander and his advisor, and then to the Vietnamese Joint General Staff and its American advisors in Saigon. In Saigon the request is circulated among a broad spectrum of groups dealing with pacification operations, intelligence, psychological warfare, and chemical warfare. Finally, permission must be given by the commanding general and the United States Ambassador to Vietnam.

Despite this formal arrangement, in Vietnam the program is generally considered to be an American one, and military justification of it is always given in terms of the American lives it saves. Moreover, there is evidence that the many precautions specified by the procedures are neglected regularly. For example, aerial reconnaissance of the target area prior to the decision to spray it, is omitted if the schedule is busy, and in enemy-held areas there is often no warning given.

To reduce transfer of herbicides by the wind and to improve the kill on the desired target, the military authorities have established regulations governing conditions under which defoliation may take place. Missions are to be flown only when the temperature is less than 85° F (29.4° C) and the wind is less than 10 knots. This restricts aerial spraying to morning hours, though usually an attempt is made to fly two successive missions each morning.

The defoliants used in Vietnam, the concentrations used, and those used in U.S. civilian operations, and the purposes for which they are best suited are given in Table 2. In the region of Saigon, where wind-blown and gaseous herbicides pose threats to cropland, agent White is now preferred because of its lower volatility and persistence, but in regions where there is little agriculture, Orange is the preferred agent because it is more economical. Presently in Vietnam, Orange constitutes about 50 percent of the total herbicide used, White 35 percent, and Blue 15 percent, the latter being used primarily against mountain rice crops.[4] Approximate areas where extensive defoliation has been carried out are shown in Fig. 1.

EFFECTS OF DEFOLIANTS ON TREES

It was impossible for us to visit defoliated forests on foot or by means of ground transportation. We, therefore, are unable to add much to what has already been reported on the direct effects of defoliants on forest trees. We can confirm Tschirley's report[2] that the trees which are collectively known as mangroves are extremely susceptible to the action of defoliants and that one application at the normal rate employed in Vietnam is sufficient to kill most of the trees. Most of the areas we visited by boat on the Rung Sat Peninsula (Fig. 1) were still completely barren even though some of the areas had been sprayed several years earlier. Only in occasional places was there any regeneration of mangrove trees. We observed no growth of the saltwater fern *Achrosticum aureaum* which often invades mangrove areas.

Mangrove vegetation is floristically simple, the forests in Vietnam being dominated by *Avicennia marina, A. intermedia, Rhizophora conjugata, Bruguiera parviflora, B. gymnorhiza, Ceriops candoleana,* and *Nipa fruticans,* the latter species also forming dense stands along most rivers in the delta region where they are subject to tidal influence. The normal pattern of vegetation succession in mangrove areas has been reviewed by Tschirley[2] who suggests that about 20 years would be required for the reestablishment of the dominant *Rhizophora-Bruguiera* forest. This estimate is based upon the assumption of immediate redistribution of seeds to the defoliated areas and the presence of suitable germination conditions when they arrive. Although our observations were limited to what we could see from the boats with binoculars, there is reason to believe that the timetable may be somewhat longer than this. Possibly conditions for seed germination are not now very good in the defoliated forests. The unusual soil conditions of mangrove forests may result in a failure of the herbicides to be decomposed. If the molecules remain bound to the soil particles they might influence seed germination for a long time. Alternatively, seed dispersal into the areas is difficult because of the large areas in which mature trees have been killed. Many of the areas, as a result of continued soil deposition under the trees, are flooded only at the highest of high tides, and seeds must be transported for long distances from the river channels under very unfavorable conditions. It cannot be excluded that reestablishment of the original forest may be impossible except along the edges of the river channels and backwaters.

Military operations in Vietnam provide an opportunity to study the effects of unusually high rates of application of herbicides. For example, before jet pods were installed in the C–123 aircraft, the planes were unable to remain aloft in case of engine trouble. In such a contingency, the crew could jettison the entire contents of the tank (1000 gallons; 3.79 kiloliters), in slightly less than 30 seconds, whereas normal spray time is about 4 minutes. Although such contingencies are said to occur less frequently now, they do continue to happen. On the spray mission which one of us (E.W.P.) accompanied as observer, the spray nozzles of one plane failed to work properly, and the entire tank was unloaded at the end of the target. Because the locations of targets are pinpointed very precisely, and because reports are made of all unusual activities during a spraying mission, it should be possible to keep a record of such occurrences. It is most important that all

Footnotes at end of article.

such incidents be recorded in order to enable biologists, in the future, to investigate the sites of concentrated defoliant applications.

EFFECTS OF DEFOLIATION ON UPLAND FORESTS

Our observations on upland forests that were sprayed directly were limited to aerial reconnaissance. Regrettably we have nothing to add to the published studies about the short-term effect of defoliants on tropical forest trees after single applications of herbicides[1 2 5]. The area in northern Long Khanh province that one of us (G.H.O.) observed from the air had been sprayed previously, and many of the trees on the actual target of the mission already appeared to be dead. Except for the wetter spots which were covered with bamboo, the ground was clearly visible in most areas from the low-flying aircraft. Many areas in War Zones C and D have been sprayed more than once, and this multiple spraying is also associated with coverage of wide areas. Vegetative recovery as judged from the air was limited to the growth of bamboo and understory trees rather than to refoliation of the canopy dominants.

Observations of defoliated upland forests were made from the ground by Tschirley[2] and Flamm.[6] They visited defoliated forests near Special Forces camps in Tay Ninh and Binh Long provinces northwest of Saigon, a region of gray podzolic soils. According to these studies, after defoliation, on sites sprayed once, there appears to be a modest kill of canopy trees, but understory seedlings and saplings survive and forest regeneration begins fairly rapidly. However, on sites that received two sprayings roughly 1 year apart, a heavy kill of all woody plants, including seedlings, is reported. Two or three spray applications may kill approximately 50 percent of commercially valuable timber in such forests. These areas are being invaded by grasses which are resistant to forest defoliants and which may arrest succession by preventing the reestablishment of tree seedlings for a long time. Even if this does not occur, it will take many decades before a mature forest grows. Subtle effects, such as changes in the species composition and forest physiognomy, may persist for much longer than that.

A year after spraying, timber is still in good condition, and could be harvested for commercial use, if equipment and markets are available. However shrapnel will be a serious problem for the Vietnamese lumber industry for many years. Most sawmills report that they lose from 1 to 3 hours each day because shrapnel in the logs severely damages the saw blades. The forestry program is looking for suitable metal detection equipment that might help to reduce this damage.

A variety of herbicides, including picloram, bromacil, isopropylamine, prometone, dicamba, divron, and fenac have been tested for their effects under tropical conditions in Puerto Rico since 1962.[7] The plots visited in April 1969 were located at an elevation of 540 meters in the Luquillo Experimental Forest in northeastern Puerto Rico. They had been sprayed in 1965 with a Hiller 12–5 helicopter which delivers the spray over a standard swath 35 feet (10.7 meters) wide. The plots were 60 by 80 feet (18 by 24 meters) separated by buffer zones 20 feet (6 meters) wide and there were three replications, ordered in a randominzed block design, with 50-foot (15-meter) buffer zones between the strips. The extent of defoliation had been measured 1 year after treatment, the percentage of defoliation on each tree being estimated visually. Apparently there had been no recent ground visits to the sites because all the trails were overgrown and the boundaries of the plots were almost impossible to find. There has been little interest in the continuing effects of the herbicide treatments. This is unfortunate for some areas received very high rates of herbicide application [27 pounds acid equivalent per acre (30.2 kilograms per hectare)]. Assays of growth rate and germination of cucumbers, made in soils up to 1 year after application of the herbicides, revealed relatively high concentrations of picloram, although this technique does not provide precise quantitative measures.

There is a possible serious source of error in the visual estimates of the speed of refoliation in these Puerto Rican rain forest plots. At the higher rates of herbicide application, it was clear that most of the trees had been either killed or severely damaged. However, these plots had been invaded by vines which climbed the trunks of the dead trees and spread out over the former canopy. On some of the plots nearby all of the greenery above 3 meters was contributed by vines and not by refoliation of the original trees. Nevertheless, a quick visual estimate, particularly if it were made from a helicopter, might be taken to indicate that extensive refoliation of trees had occurred. The vine-choked plots will not return to their former state as rapidly as they might otherwise, because the dead trunks will probably collapse under the weight of the vines in a few years, creating a low, vine-covered mat through which regeneration could be very difficult. We urge that continued studies of vegetation succession on these and other Puerto Rican test plots be undertaken so that the time required to reestablish the original forest and the factors influencing the pattern of succession can be determined.

TABLE 2.—CHEMICAL COMPOSITION, RATES OF APPLICATION, AND USES OF MILITARY HERBICIDES

Agent	Composition (percent)	Concentration (pounds per gallon AE)	Rate of application (pounds per acre)		Use
			Vietnam	United States	
Orange	n-Butyl ester 2,4-D 50	4.2	27.0	2	General defoliation of forest, brush, and broad-leafed crops.
	n-Butyl ester 2,4,5-T 50	3.7			
Purple	n-Butyl ester 2,4-D 50	4.2			General defoliation agent used interchangeably with agent Orange.
	n-Butyl ester 2,4,5-T 30	2.2			
	Isobutyl ester 2,4,5-T 20	1.5			
White	Triisopropanolamine salt, 2,4-D	2.0	6.0	5–2	Forest defoliation where longer term control is desired.
	Triisopropanolamine salt, picloram	.54	1.5		
Blue	Sodium cacodylate 27.7	3.1	9.3	5–7.5	Rapid short-term defoliation. Good for grass control and use on rice.
	Free cacodylic acid 4.8				
	Water, sodium chloride balance				

Source: From data supplied by the U.S. Departments of Defense and Agriculture. One pound per gallon, acid equivalent (AE) equals 114 grams per liter. One pound per acre equals 1.12 kilograms per hectare.

Some vine invasion was also characteristic of plots receiving lesser amounts of herbicides, but a severe setback in these forests did not appear to have taken place. Seedlings of mahogany, *Swietenia macrophylla*, and Caribbean pine, *Pinus caribaea*, which had been planted in some of the plots a month after defoliation were surviving quite well.

EFFECTS OF DEFOLIANTS ON ANIMALS

Tschirley obtained no direct information on the effects that killing the mangroves had on animal populations, but he cited statistics that the fish catch in the Republic of Vietnam has been increasing. Because many factors influence total fish catch and because most of the fish are caught in regions not directly exposed to defoliation, the significance of these data is unclear. Therefore, we attempted to learn as much as we could about animal populations in the defoliated mangrove forests.

As might be expected, the almost complete killing of all of the vegetation of the mangrove areas by herbicides has had a severe effect upon the animals living there. During our tour of the defoliated areas we did not see a single species of insectivorous or frugivirous bird with the exception of barn swallows, *Hirundo rustica*, which are migrants from the north. Although no data regarding the bird populations in the Rung Sat prior to defoliation exist, our experiences in mangrove areas in tropical America indicate that there should have been large numbers of land birds. For example, in Panama as many species of birds were found in pure red mangrove (*Rhizophora mangle*) forest as would be expected on the basis of the leaf height profile (density of leaves per unit volume as a function of height of forest) of the stand,[8] and in a brief census of a similar mangrove forest (primarily *Rhizophora*) in Costa Rica, 44 species of land birds which appeared to be resident and breeding were recorded.[9] Mangrove areas throughout the tropics are rich in bird species,[10] many of them restricted to that type of vegetation, and the Southeast Asian mangroves are no exception.

Fish-eating birds seem to have suffered less severely, but even their numbers were much fewer than we expected. The species of birds and the number of individuals per species that we observed during a 2-hour period in the defoliated areas, are: oriental darter (*Anhinga melanogaster*), 2; grey heron (*Ardea cinerea*), 13; large egret (*Egretta alba*), 3; little egret (*E. garzetta*), 12; intermediate egret (*E. intermedia*), 1; javan pond heron (*Ardeola speciosa*), 6; stork (*Leproptilos* sp.), 2; black-winged kite (*Elanus caeruleus*), 1; osprey (*Pandion haliaetus*), 9; whimbrel (*Numenius phaeopus*), 3; little tern (*Sterna albifrons*), 10; and white-breasted kingfisher (*Halcyon smyrnensis*), 2. All except the kite, which feeds on small mammals, are fish-eating birds. This suggests, as would be expected, that aquatic food chains in the mangroves may have been less severely affected by defoliation than the terrestrial ones. The only other vertebrate we saw in the defoliated areas was a large crocodile (*Crocodylus*) on the bank of a small channel.

Of all the areas in Vietnam, the mangroves in the delta of the Saigon River have probably been most severely affected by defoliation. The area treated has been very extensive, covering many square kilometers, the vegetation is extremely sensitive to herbicides, and many of the species of animals inhabiting mangroves are restricted to that type of vegetation. These animals are therefore inhabitants of "islands" surrounded by unsuitable habitat and as such are expected to have higher rates of extinction even under normal conditions than species of more continuous habitats.[11] These same properties make them more susceptible to local and complete extermination by disturbance and destruction of habitat than are species of upland habitats. Long-term studies of the ecology of the Rung Sat should be given a high priority, including investigation of the status of such invertebrates as crustaceans.

Birds were scarce in the heavily defoliated plots in Puerto Rico but in the more lightly treated areas both species composition and

Footnotes at end of table.

general population density were comparable to that found in untreated areas in the general vicinity. There was not time to conduct a complete census, but it is doubtful whether such studies would be worthwhile since the plots are so small that they are less than the average size of most bird territories. Therefore, the effects of the tests on bird populations should in any event be minimum. It is important to remember, however, that results from spraying of very small areas cannot be assumed to apply to extensively treated areas.

TOXICITY OF HERBICIDES

The problem of the toxicity of herbicides to animals is not yet resolved. Nearly all studies are short term, and results are contradictory. Some reports [1] suggest that at the prevailing concentrations herbicides are not directly toxic to animals, and Tschirley [2] states: "There is no evidence to suggest that the herbicides used in Vietnam will cause toxicity problems for man or animals." However, according to Holden [12] 2,4–dichlorophenoxyacetic acid (2,4–D) may constitute a potential danger to fish even in normal use. The LD_{50} value for salmonids during a 24-hour exposure to 2,4–D is 0.5 part per million. Thus, a concentration of 4 pounds of active constituent per gallon (458 grams per liter) in a small [10 cubic feet (0.28 cubic meter) per second] stream would expose fish to about 100 times the LD_{50}. It should be recalled that the rate of application of 2,4–D in Vietnam is slightly greater than this. According to Holden, the toxicity of 2,4,5–T is about one-half that of 2,4–D.

Another possible source of toxicity to animals from defoliation is in indirect effect of the activity of 2,4–D in plants. Stahler and Whitehead [13] reported that there are several cases of cattle becoming ill or dying after eating certain species of weeds that had been treated with 2,4–D. These authors present data that clearly indicate that sublethal dosages of 2,4–D may markedly affect the metabolism of certain plant species so that toxic quantities of nitrates accumulate in the treated plants. In the animals the nitrates are changed to nitrites which are absorbed into the blood producing methemoglobin which results in oxygen deficiency to the tissues. This condition may cause death or illness resulting in abortion. Leaves of sugar beets that had been treated with 2,4–D were shown to have amounts of nitrate well above the minimum lethal concentration. A recent statement [14] by an American agricultural specialist emphasizes that "Dairy cows should not be grazed on irrigated pasture for seven days after application of 2,4–D at the one-half pound and over rate of application."

To our knowledge there are no studies of the effects of agent Orange on Vietnamese forage plants to determine whether these plants become toxic to animals due to nitrate accumulation following defoliation with Orange. Determination of nitrate concentration in leaves should be made in defoliated and control areas, and the hemoglobins of animals which feed on exposed plants should be studied.

A recent study of the teratogenicity of 2,4-D and 2,4,5-T [15] shows that the latter compound is highly teratogenic in rats and mice at dosages that are possible of ingestion by humans in Vietnam.

We uncovered little evidence of direct toxic effects on animals. The Tan Son Nhut air base in Saigon is sprayed by hand with agent Blue several times each year and nonetheless has a serious rat problem. A trapping crew every night puts out 100 snap traps and 30 live traps, baited with bacon. From 3 January 1969 to 19 March 1969, they had trapped 613 rats and 8 viverrids of at least two species. We netted and observed birds on a previously sprayed brushy area near Bien Hoa on two different mornings and found birds very common. We saw much territorial defense and singing as would be expected at the end of the dry season in the tropics.

We did receive one report of many sick and dying birds and mammals in forests following defoliation and two reports of death of large numbers of small pigs near Saigon, but were unable to follow up either report. The Ministry of Agriculture has received no bona fide claims of animal damage from defoliants. Nevertheless, we must not forget that habitat destruction, which defoliation regularly accomplishes, is in most cases the equivalent of death for animals. The widespread view that animals can move to other nearby areas is untenable because recent ecological evidence suggests that tropical forests hold the maximum number of individuals of most species that the resources will support. Reduction of forest habitats will decrease the populations of forest animals by an equivalent amount. Nor is it true that forest species can live successfully in the greatly modified conditions which prevail in even partially defoliated forests. Species characteristic of successional stages will, of course, be expected to move into the disturbed areas, but even they may have to wait until the basic food resources, such as insects and fruit, have built up again, and we do not know how long this will take.

A phenomenon that should be investigated immediately is a widespread sickness which appears at the beginning of the rainy season in commercially important freshwater fishes. The symptoms are many small, round, dark spots in the muscles. The taste of the fish is also adversely affected. Poor people continue to eat the fish even though they are diseased. This disease has always been characteristic of that time of the year in Vietnam, but the director of the Institute of Fisheries has received reports which suggest that the incidence is now higher than before. Conditions in the shallow water of the fields are ideal for concentration of herbicides. The Vietnamese fisheries people, who are qualified and presently have greater mobility in the country than Americans, are in a position to initiate such studies now. The Minister has already circulated a letter among his representatives in the provinces asking for any information they may have, and we agreed to help formulate a more detailed questionnaire for future circulation.

Some insight into the possible harmful effects of the harbicides now in use in Vietnam may be gained by consulting the labels which give directions for their uses. Dow Chemical Co., makers of agents Orange and White, warn that these chemicals should be kept out of reach of children and animals. The label on agent White states: "Do not allow material to contaminate water used for irrigation, drinking, or other domestic purposes." Dow Chemical Co. also recommends that no grazing be allowed on treated areas for 2 years after treatment and that some broadleafed crops may show damage 3 years after application.

Ansul Chemical Co., makers of agent Blue, state that when an individual is exposed (to cacodylic acid) daily for extended periods, the inspection of skin sensitivity should be supplemented by monthly urinalysis for arsenic. Symptoms of acute poisoning from cacodylic acid are headache, vomiting, diarrhea, dizziness, stupor convulsions, general paralysis, and death. The dosage required to cause these symptoms may be as little as one ounce (28 grams) of cacodylic acid per human adult.

EFFECTS OF DEFOLIANTS ON RUBBER CULTURE

Most studies of the effects of defoliants on forest trees have been confined to observation of the percentage of defoliation after relatively short intervals following single applications of herbicides. Studies of the effects of defoliation on rubber trees have been initiated by the Rubber Research Institute of Malaya and by the Rubber Research Institute of Vietnam because of the economic importance of rubber trees to Vietnam and because of the widespread damage to plantations from military spraying. Although these studies contain the best available data, they have been limited by the shortage of funds and difficulties of field work in a country during wartime.

Damage to rubber trees in Vietnam has been extensive. During 1967–68, the Institute staff visited over 200 different plantations in the provinces of Bien Hoa, Binh Duong, Gia Dinh, Hau Nghia, Long Khanh, Phuoc Tuy, Tay Ninh, and Binh Long. (This covers most of the area between the rice-growing areas of the Saigon and Mekong River deltas and the mountainous central part of the country.) On this extensive area of approximately 130 by 40 kilometers, all plantations reported damage by defoliants. More than 40,000 hectares planted with rubber trees were defoliated at least to the extent of 10 percent. It is difficult to estimate the total amount of damage resulting from defoliation. Plantation owners might possibly submit exaggerated claims, but there is no doubt that the damage has been considerable. For example, Plantation de Dautieng of the Michelin Company has been affected by defoliants three times since 1965. In all cases, the defoliant has not been applied directly to the rubber trees, but has been carried by the wind from applications in the general area. No trees were killed, but, by measuring the drop in latex production due to stoppage of tapping, decreased yield of lightly damaged trees, and costs of cutting and trimming back partially killed trees, the company estimates that the damage amounted to $27,835 in 1965, $37,479 in 1966, and $27,844 in 1967. The areas of spraying, direction of the wind, and areas of the plantation affected are shown in Figs. 3 to 5.

The yield of rubber per hectare is decreasing. In 1960, rubber plantations in Vietnam yielded 1066 kilograms of dry rubber per hectare (on plantations of more than 25 hectares). In 1967, the yield had dropped to 793 kilograms per hectare. In contrast, in Malaysia the yield in 1960 was 758 kilograms of dry rubber per hectare, but had risen to 1007 kilograms per hectare in 1966. The decrease in yield in Vietnam is due to a combination of circumstances such as the cessation of tapping forced by military action, less experienced labor and less thorough control in the field, herbicide damage, lack of general upkeep of plantations, and the cutting of rubber trees along roads where about 3000 hectares have already been cut. The relative importance of each factor seems impossible to assess. It is a fact that they are all the consequence of the war.

The total yield of rubber in Vietnam has also declined. In 1960, 77,560 tons of dry rubber were produced. Rubber exports amounted to $48,000,000, which was 56 percent of South Vietnam's total exports for that year. In 1967, the yield had dropped to 42,510 tons of dry rubber, which, considering the devaluation of the piaster, amounted only to $12,800,000. Inasmuch as other exports suffered even more heavily, this diminished amount (26 percent of the 1960 exports) made up 72 percent of South Vietnam's exports, which had decreased to $17,800,000, or 20.8 percent of the 1960 exports.[16]

If a rubber tree is completely defoliated by herbicides, the Institute recommends that planters stop tapping until its new leaves are fully grown. Because it takes a month for a new leaf to grow to full size from the time of breaking of bud dormancy and because dormancy is not usually broken immediately after defoliation, the minimum period of stopping is about 2 months. The maximum period of stoppage is, of course, permanent if the tree is killed. If tapping is not stopped while the tree is defoliated, there is competi-

Footnotes at end of article.

tion between growth of new leaves and yield within the tree, and the future health of the tree is jeopardized. In a number of cases where trees were not killed, tapping has been stopped for as long as 1 year. If only some of the leaves are lost, tapping can be continued, but there is a drop in latex production after a lag of about 1 month. The loss, over a period of a year, has been estimated to be sometimes as much as 30 percent of the normal yield of latex. At current prices that amount of loss reduces profit from about $90 per hectare per year to nothing. As a consequence, most of the small plantations have been unable to stay in business. Only the large planters, with solid financial backing, can afford to remain in operation despite the war.

According to studies by Dow Chemical Company (as reported to us by the Rubber Research Institute), the defoliant is absorbed through the leaves of the trees and is carried down through the phloem within 24-hours, and symptoms of defoliation appear within a few weeks after spraying. The distance the defoliant travels down the tree is a function of the dosage received, and the Institute people have assessed this by the simple device of cutting into the trunk of the trees at different heights to investigate the flow of latex. Necroses are also clearly visible in the sectioned trunks, many of which we examined in the laboratories of the Institute. As might be expected, the smaller the rubber tree, the more readily it is killed by defoliants. Research in Malaysia has shown that a wide range of concentrations of the *n*-butyl ester of 2,4,5–T killed rubber seedlings in 6 weeks.[8] Accidental defoliations in Vietnam indicate that trees less than 7 years old can be killed by the dosages used in military operations, but that older trees normally recover. Nevertheless, all trees on 100 hectares on Plantation Ben Cui were killed by herbicides in 1965, despite the fact that the trees were 33 years old. From such occurrences, the Rubber Research Institute concluded that repeated defoliations threaten the very existence of rubber culture in Vietnam.[17]

In spite of such evidence, Chemical Operations Division, United States Army, claims that rubber trees cannot be killed by defoliants. According to our observations, although we do not claim expertise in this field, damage to rubber production is severe. The Rubber Research Institute, which does not itself maintain any plantations and cannot be accused of bias on that account, seems to be in an excellent position to conduct further research into the physiological effects of defoliants on trees. Funds are urgently needed for this purpose.

EFFECTS OF ACCIDENTAL DEFOLIATION

The extent of damage resulting from windblown and gaseous herbicides has been much debated. Agent Orange is classified as a volatile herbicide by plant physiologists, but physical chemists regard it as nonvolatile. Under proper weather conditions nearly all of the spray is deposited on the vegetation or ground within a minute after release from the aircraft. Those vapors formed during fall of droplets subsequently diffuse according to the laws of gaseous diffusion. Therefore, it has been concluded that "The rate of downwind movement of vapors, and therefore the duration of exposure of plants to the vapors, is dependent upon wind speed in the first few minutes subsequent to spray release. *While no quantitative data are available,* it is our considered judgment, based on the above reasoning, the vapors arising during the actual spray operation, as usually carried out, can be dismissed as a source of herbicides for crop damage outside target areas" [18] (emphasis added by us). This assumes the existence of inversion conditions and that transport of the liquid spray droplets by the wind is negligible. Our direct observations and interviews suggest that the seriousness of this problem has been greatly under estimated.

We were able to observe defoliation damage to several species of trees far removed from target areas. On 25 March, in the village of Ho-Nai, we observed many fruit trees that had recently been damaged by defoliants. The characteristic sign was the presence of curled, dead leaves on the trees. Damage seemed excessive on the south side of the trees, which suggests that the spray was carried into the village by a southerly or southeasterly wind. Villagers informed us that spray had hit them about 1 week previously. Chemical Operations Division, United States Army, reported to us that a defoliation aircraft had had to jettison its chemicals at the time of takeoff from nearby Bien Hoa Air Base, approximately at the time when the Ho-Nai residents had observed the spray. The most severe damage was to jack fruit (*Artocarpus heterophyllus,* Moraceae) which is also a producer of a milky sap. The residents of Ho-Nai claimed to have been affected by defoliation missions seven times within the past year.

On 23 March, in a residential area between Saigon and the U.S. Air Base at Bien Hoa, we examined and photographed many diseased mango trees. The owner, a biologist trained in the United States, claimed that the trees suffered defoliation 3 years ago, after which they became infected and had not since flowered or produced fruit. In other areas we subsequently observed the same symptoms in mango and other trees. According to the Rubber Research Institute, latex-producing trees seem to be more susceptible to herbicide damage than other species.

Every Vietnamese biologist we talked to explained that actual herbicide damage has been frequent and regular over much of the delta region. In the Ministry of Agriculture we were shown photographs of damaged jack fruit, manioc, and rubber and were told that many guava trees had been killed. The Ministry has attempted in a preliminary way to assess the total damage reported and found it to be so extensive that adequate financial compensation to the owners of damaged trees would probably be impossible. The experimental station of the College of Agriculture of the University of Saigon at Tu Duc has been affected by windblown defoliants several times, usually with almost complete kill of vegetables.

It is difficult to determine the amount of claims actually submitted to or paid by the Vietnamese government. Funds for the payment of defoliation claims are provided by the United States, but the claims are handled by the Political Warfare Department of the Air Force of the Republic of Vietnam under the Military Civil Assistance Program. Damage claims are considered and paid by province officials under guidelines established by the central government. Everyone we talked with agreed that payments are minimum. We were told by Vietnamese that people who file claims with the government are often threatened with imprisonment if they continue to press their claims. Many others do not attempt to file claims because they feel it will be of no use. United States officials argue that most claims are fraudulent.

It is our opinion that significant quantities of defoliants are regularly carried by the wind over broad areas of cropland in the Republic of Vietnam. Even given the difficulties of making first-hand observations in a war zone, it would be possible for independent observers to verify or disprove many of the conflicting claims. Such a study is urgently needed. Rising damage claims in 1967 caused a serious review of the defoliation program at that time.[19] Serious controversies over damage caused by windblown spray had arisen, and the psychological impact on the Vietnamese was great. It is noteworthy (and substantiates the claims of widespread crop damage) that the United States now has changed its policy and uses primarily agent White in the delta region because its volatility is lower than that of the other available agents. Nevertheless, we encountered many reports of very recent damage in that area.

CROP DESTRUCTION

Direct and deliberate application of agent Blue to cropland has been restricted to the highland regions of the country which are held by the National Liberation Front. Consequently, scientists of the Republic of Vietnam and those of the United States are unable to make first-hand studies at present. American officials consider the program very successful because many captured soldiers from these areas are seriously undernourished; some to the extent of being stretcher cases at the time of capture. These reports might suggest that the "resource denial" program has been successful, but there are strong reasons for believing that food shortages affect women, children, and elderly people much more than they affect soldiers.[20]

EFFECT OF B–52 BOMBING

Although it has not attracted the concern of American scientists, the damage caused by raids with B-52 bombers is of considerable ecological significance. The 500- and 750-pound bombs dropped by these aircraft leave craters as much as 30 feet deep and 45 feet across. Most of these are filled with water even late in the dry season. The army does not disclose the total number of bombs dropped, and the total area affected cannot be calculated accurately. However, the magnitude of the effect can be estimated from the following facts. A standard load for a B–52 is 108 500-pound bombs or nearly 30 tons of explosives. Normally, a "mission" consists of 3 to 12 aircraft. In 1967, 982 missions were flown over the Republic of Vietnam. In 1968, 3022 missions were flown (Table 3). If one assumes an average of eight planes per mission, then one can estimate that about 848-000 craters were formed in 1967 and 2,600,000 craters in 1968. As one Vietnamese put it, we are making the country look like the surface of the moon. Unless heavy earth-moving equipment can be brought to the sites to fill the craters they will remain a permanent feature of the Vietnamese landscape. Areas such as War Zones C and D, which have been heavily hit by B–52 attacks, are riddled by craters.

Since most of the attacks have occurred in militarily contested areas it has not been possible for scientists to investigate heavily cratered areas to determine the effects on local ecology. Obviously, they are potential breeding grounds for mosquitoes; they may possibly be fish-breeding ponds; they may also render many agricultural areas difficult to utilize.

MISCELLANEOUS EFFECTS

The prolonged military activity in Vietnam is causing other ecological upheavals. Not the least are the major sociological changes that are taking place in the country, such as the amazingly rapid rate of urbanization of the population. This results as people flee from war-torn countryside or are forcibly transported to the city. Within the last decade Saigon has changed from a quiet city of 250,000 to an overcrowded city of 3,000,000 inhabitants. The tremendous infusion of American capital has also resulted in rapid increase in the number of motorized vehicles in the streets. Japanese motor bikes and small cars of Japanese or Italian manufacture seem to be prevalent. Traffic accidents are common. Saigon's air pollution problem due to fumes from the mixture of gasoline and oil which serves as fuel is so severe that many trees along the major arterials in the city are dead or dying. (It is possible that

Footnotes at end of article.

the winddrift of defoliants has contributed to weakening the trees, but it is likely that the major cause is fumes from motor vehicles.) There are no immediate prospects for any improvement as the population of the city continues to grow and creation of an adequate municipal transportation system seems improbable.

A major cause of forest destruction in Vietnam today is fire. Some fires are started deliberately by the Vietnamese army and some are caused by artillery shells. Over 40 percent of the pine plantations in the country have been burned recently; the extent of destruction of the mixed forests is unknown. We were unable to estimate the total area involved.

Because of the war, all hunting in the Republic of Vietnam has been officially discontinued. Nevertheless, there are large numbers of armed men in the forest, many of whom are poorly nourished. Presumably, they regularly shoot all suitable food animals. Tigers, on the other hand, seem to have benefited from the war. In the past 24 years, they have learned to associate the sounds of gunfire with the presence of dead and wounded human beings in the vicinity. As a result, tigers rapidly move toward gunfire and apparently consume large numbers of battle casualties. Although there are no accurate statistics on the tiger population past or present, it is likely that the tiger population has increased much as the wolf population in Poland increased during World War II.

SUMMARY AND CONCLUSIONS

In Vietnam the chemical weapons of a technologically advanced society are being used massively for the first time in a guerrilla war. In this conflict there are no battle lines, no secure territory, and no fixed, permanent military installations which can serve as targets for attack. Rather, the military efforts are aimed at increasing the toll of fatalities, denying food to the enemy, and depriving him of the cover and concealment afforded by natural growth. This type of warfare is, therefore, extremely destructive, both of human lives and environment. Our own observations showed the profound effects of denuding the country of growth. The military is emphatic about the effectiveness of defoliation in reducing American casualties significantly. The demand for the services of 12th Air Commando Squadron greatly exceeds their ability to supply them. Although the total numbers of requests for defoliation missions was not disclosed, we were told that even if no further requests were made, the defoliation crews would be kept busy for years by the present backlog. The current extent of the defoliation program is not determined by military demand nor by any considerations of saving the ecology and viability of the land and natural resources of Vietnam, but solely by competition for equipment and personnel.

TABLE 3.—MISSIONS FLOWN BY B-52 BOMBERS OVER VIETNAM

Month	I Corps	II Corps	III Corps	IV Corps	DMZ N	DMZ S	North Vietnam
1967							
January	18	14	27	1	2	7	
February	23	30	30	1	1		
March	45	23	32				
April	55	13	22	2	2	4	
May	55	27	23	1	1	3	
June	45	28	25	1			
July	44	31	22	3		3	3
August	26	28	24			24	1
September	13	9	6			57	15
October	17	15	20			30	27
November	13	47	16	1		12	9
December	6	19	22			27	8
1968							
January	59	22	23			4	1
February	204	53	34				
March	222	58	27	4		6	
April	173	66	19	7		2	
May	71	123	27	10		13	1
June	24	87	171	11	4	6	
July	28	34	152	26	7		45
August	71	55	161	13	8	8	8
September	51	55	167	18	1	10	8
October	86	33	128	25	2	1	15
November	45	36	109	17			
December	53	22	125	17			

With general agreement among military experts that defoliation is a potent weapon in guerrilla warfare, it is to be expected that in any future wars of this nature more extensive use will be made of it. At the end of their war against the Vietnamese, the French discovered the usefulness of helicopters as field combat aircraft, but they had only about a dozen at their disposal. There are now several thousand helicopters in Vietnam as a major component of our offensive air power. Making a realistic appraisal of defoliation and its ecological consequences, we must, therefore, consider not only the present extent of use but also anticipate greatly expanded defoliation actions in the future.

We consider that the ecological consequences of defoliation are severe. Enough is now known to reveal that a significant fraction of mature trees in most forests are killed by single applications of herbicides and that almost complete kill, including destruction of seedlings and saplings, is to be expected if repeated sprayings are made. Because of military demands for respraying, we must expect virtual elimination of woody vegetation of defoliated sites as a common result of the military use of herbicides.

It is evident that the most stringent regulations for the application of defoliants cannot prevent the widespread dispersal of herbicides to areas far beyond those that were intended to be defoliated. We found abundant evidence of repeated moderate to severe defoliation of trees and herbs in areas many miles removed from sites of direct application. Every responsible Vietnamese person we met confirmed this. Moreover, a pilot in a war zone will jettison his load of defoliant, rather than jeopardize the safety of his crew and plane, and a spray plane will not return to its base with a full tank because its crew found the temperature or the wind velocity higher in the target area than anticipated. Military use of defoliants will inevitably result in herbicide damage to areas that are far more extensive than those specified as targets.

It is evident that the defoliation program has been a tremendous psychological impact upon the Vietnamese people and has profoundly affected their attitude toward Americans. A farmer whose entire crop has been destroyed by herbicides, whose fruit trees do not bear fruit for 3 years, will inevitably be resentful. We were told repeatedly, though politely, that a significant deterioration of attitudes toward Americans has resulted from the massive use of defoliants. The claim that defoliation is more humane than other weapons of war because it does not directly cause human casualties, may appeal to those whose land has not been defoliated, but hardly to those whose food supply or property has been destroyed. A realistic assessment of the effects of defoliation must take into account the psychological effects upon the people.

The politically sensitive nature of effects of defoliation is fully recognized by the military authorities. Although they claim that defoliants produce no long-term effects on the environment, they have instituted the most stringent regulations to govern their use. The Army claims that it is more difficult to get permission for the defoliation of trees in Vietnam than for killing persons, and permission to spray rubber trees has never been granted, according to military sources, even when enemy forces were "known" to use plantations for concealment. It seems that preferential treatment of the politically powerful rubber interests in Vietnam has added to the hostility of the poorer Vietnamese.

The secrecy surrounding the use of defoliants in Vietnam has also contributed to the feelings we have reported above. The government of the Republic of Vietnam and American officials have not disclosed information to the Vietnamese about the agents used, areas sprayed, and the nature of the chemical action of defoliants and herbicides. The most concerned Vietnamese scientists did not know the chemical composition of the herbicides even though they have tried to ascertain it from their government.

RECOMMENDATIONS

American scientists will want to know what investigations might be immediately possible to sift facts from among so many conflicting claims regarding the ecological effects of defoliants and to stem the tide of increasing mistrust between the Vietnamese and the Americans. Support for research projects should be initiated by the American scientific community without delay. In Vietnam there are scientists, well-trained at American and European universities, who are deeply concerned about the effects of the war on their country. They are eager to conduct research that is necessary for the rehabilitation of their ravaged land. The flora and fauna of the country are well known. The Rubber Research Institute of Vietnam continues to function, although it has once been displaced by military action. It is capable of expanded research into the physiological effects of defoliants on rubber trees and other species. Its staff is interested in investigating the possibilities of diversifying so that it can advise rubber planters on avoiding complete dependence upon rubber. A modest investment of funds for Vietnamese scientists is likely to produce important research results. It would also improve Vietnamese relations with American scientists.

Although long-term studies, such as following vegetational succession on heavily defoliated areas, would be impossible for Vietnamese (Saigon) or American investigators, there are no insuperable barriers to the investigation of fish diseases, of methods of minimizing herbicide damage to commercially important trees which have been deliberately or inadvertently sprayed, and of further studies of toxicity to animals. It should also be possible to gather soil samples from areas that have been subjected to different treatments to learn more about the fate of arsenical compounds, their effects on soil microorganisms, and possible accumulation in the soil of the more persistent herbicides

Footnotes at end of article.

such as picloram. We urge that such studies be initiated now rather than be delayed until hostilities cease, although obviously the difficulties are great. We recommend most strongly that the American Association for the Advancement of Science, in accordance with its resolutions of 1966 and 1968 [21], take the initiative in setting up an international research program on the long-range effects of the military use of herbicides in Vietnam. We believe that such action is necessary if United States scientists wish to maintain (or regain) the respect of scientists in Southeast Asia.

FOOTNOTES

[1] W. B. House, L. H. Goodson, H. M. Gadberry, K. W. Docter, *Assessment of Ecological Effects of Extensive or Repeated Use of Herbicides*, Midwest Research Institute Report No. 3102–B (1967).

[2] F. H. Tschirley, *Science* 163, 779 (1969).

[3] F. Hutchinson, *J. Rubber Res. Inst. Malaya* 15–5, 241 (1958).

[4] Information supplied by officers in the Chemical Operations Division, Military Assistance Command, Vietnam.

[5] R. A. Darrow, G. B. Truchelut, G. M. Bartlett, *OCONUS Defoliation Test Program, Tech. Rep. No. 79* (U.S. Army Biology Center, Fort Detrick, Maryland, 1966), p. 149.

[6] B. R. Flamm, *A Partial Evaluation of Herbicidal Effects to Natural Forest Stands Principally in Tay Ninh Province* (U.S. Agency for International Development, 1968).

[7] J. E. Munoz and L. W. Hill, *The use of herbicides for site preparation and their effects on tree survival, U.S. Forest Service Research Note No. IFT 12* (Institute of Tropical Forestry, Rio Piedras, Puerto Rico, 1967).

[8] R. H. MacArthur, H. Recher, M. Cody, *Amer. Natur.* 100, 319 (1966).

[9] G. H. Orians, *Ecology*, in press.

[10] G. D. Field, *Ibis* 110, 354 (1968; R. P. French, *ibid.* 108, 423 (1966); T. Haverschmidt, *ibid.* 107, 540 (1965); E. M. Cawkell, *ibid.* 106, 251 (1964); I. C. T. Nisbet, *ibid.* 110, 348 (1968); B. C. Smythies, in *The Birds of Burma* (Oliver & Boyd, Edinburgh, 1953).

[11] R. H. MacArthur and E. O. Wilson, *The Theory of Island Biogeography* (Princeton Univ. Press, Princeton, N.J., 1967).

[12] A. V. Holden, *J. Inst. Sew. Purif.* 1964, 361 (1964).

[13] L. M. Stahler and E. I. Whitehead, *Science* 112, 749 (1950).

[14] T. Woiciechowski (Missoula County Agent), *Missoulian* (8 May 1969).

[15] B. Nelson, *Science* 166, 977 (1969).

[16] From data supplied to us by Plantations Michelin, Saigon.

[17] J. P. Poliniere, *Situation Phytosanitaire de Différent Sites Hévéicoles en Relation avec Apport Probable de Defoliants (à suivre)*, arch. 5/67 (Institut des Recherches sur le Caoutchouc au Viet-Nam, 1967).

[18] C. E. Minarik and R. A. Darrow, *Potential Hazards of Herbicide Vapors* (Headquarters U.S. Military Assistance Command Vietnam, Chemical Operations Division, 1968).

[19] E. Pond, *Christian Science Monitor* (25 and 29 Nov. and 8 Dec. 1967).

[20] J. Mayer, *Scientist and Citizen* 9, 115 (1967).

[21] D. Wolfle, *Science* 167, 1151 (1970).

United States Shows Signs of Concern Over Effect in Vietnam of 9-Year Defoliation Program

(By Ralph Blumenthal)

Saigon, South Vietnam, March 14.—Many South Vietnamese who live adjacent to areas that are being defoliated by spray from United States planes are convinced that any ailments or misfortunes that they suffer are related to the sprayings.

There is no proof that they are right about the effect of the chemical sprays on the human body, but neither is there any assurance that they are wrong.

Although the defoliation program, organized and run by the United States, has been in operation for nearly nine years, the full effect of the chemicals on animal and human life remains largely undetermined.

The United States military command says the program, which is designed to strip plant cover from areas occupied by the enemy and to destroy crops that might yield him food, has covered about 5,000 of South Vietnam's 66,350 square miles.

United States command terms it valuable

The United States command says the program has proved its military worth. "It has contributed materially to the security of units operating in the field by increasing their visibility from the ground as well as the air," the command said.

About 13 per cent of the program has been directed against crops, presumably food grown by and for the enemy. Because of the drifting of defoliants and the difficulty of assessing the results on the ground, it is virtually impossible to say how much of the crop has been destroyed by the chemicals, but it would not appear to be a significant part of the country's capacity. It has brought hardships, however, to individual farmers.

After years of assuring the South Vietnamese that this extensive spraying was harmless to animals and humans, United States officials are showing signs of concern over recent reports that the chemical sprays may have some little-understood and alarming effects.

Panel studying effects

In the last several months, reportedly on instruction from Washington, the United States military command and the United States Embassy have formed a special committee to review the effects of the defoliation program, especially on humans.

The sensitivity of the issue has foreclosed official comment, but according to informed sources the science advisory office of the command is responsible for gathering data in interviews and tests that embassy officials will then evaluate.

The South Vietnamese Government regards the entire subject as taboo. Vietnamese newspapers have been suspended for publishing articles about birth defects allegedly attributed to the defoliants, and the public Health Ministry declines to provide any statistics on normal and abnormal births.

However, the concern felt among the Americans is shared by many South Vietnamese scientists, physicians, health officials and villagers interviewed in a three-week survey of the effects of the program.

Officers of the United States command are aware of the allegations of birth defects but they generally discount the reports.

Responsible South Vietnamese scientists and officials say they know virtually nothing about the effects of the chemical sprays.

Saigon's leading maternity hospital, Tudu, from which rumors of an increase of abnormal births emanate periodically, has not even compiled annual reports of statistics for the last three years. Recent monthly figures show an average of about 140 miscarriages and 150 premature births among approximately 2,800 pregnancies, but the hospital is not prepared to say whether this represents an increase and, if so, what the cause might be.

A high Agriculture Ministry official said: "I don't think the Americans would use the chemicals if they were harmful."

He conceded that his ministry had made no tests and asserted that his experts had been unable to get any information about the defoliants from the Defense Ministry, which considers such data secret. The main defoliant compounds and some information about them are available in the United States.

Last Oct. 29, President Nixon's science adviser, Dr. Lee A. DuBridge, announced that as a result of a study showing that one of the defoliants used, 2, 4, 5–T, had caused an unexpectedly high incidence of fetal deformities in mice and rats, the compound would henceforth be restricted to areas remote from population.

That directive appears to be ambiguous in South Vietnam for military spokesmen assert that 2, 4, 5–T continues to be used only in "enemy staging areas"—by definition populated regions.

Defoliants were concealed

Don That Trinh, Minister of Agriculture from November, 1967 to May, 1968, and for 10 years professor of agronomy at Saigon University, said that while he was minister, the Defense Ministry "would try to conceal the defoliant products from me."

"I did not believe in defoliation," he added.

According to one of the Vietnamese directors of a Government research laboratory in Saigon: "We didn't know anything before the United States started spraying. It was only when we received complaints from the livestock people that we started getting interested." But, he added, there are still no Vietnamese studies.

Even the village of Tanhiep, 20 miles north of Saigon, on which 1,000 gallons of defoliants were jettisoned on Dec. 1, 1968, has not been the object of attention or study.

An American C–123 flying out of Bienhoa air base, Northeast of Saigon, developed engine trouble shortly after takeoff. To lighten the craft, the pilot sprayed the full load of chemicals over Tanhiep and nearby Binhtri in 30 seconds instead of the usual 4 minutes 30 seconds, which spreads the defoliant at the rate of three gallons an acre in unpopulated areas.

The defoliant involved, according to the United States command, was a 50–50 mixture of 2,4-Dichlorophenoxyacetate, or 2,4-D, and 2,4,5-Trichlorophenoxyacetate, or 2,4,5-T, in an oil base. It is one of three compounds the military says it uses here, the others being a Dow chemical product called Tordon 101, a mixture of amine salts of 2,4-D and Picloram, and an arsenic compound of cacodylic acid.

No physicians visited Tanhiep to examine the people after their exposure, which, like eight similar emergency dumpings since 1968—some over unpopulated forests—was not made public by the United States command.

A United States Air Force medical team visited Binhtri shortly after the spraying and, according to American district officials, found the villagers had suffered no ill effects. There was no later inquiry.

Mrs. Tran Thi Tien of Tanhiep, who says she has four normal children, is convinced that the malfunction of her son, who still looks like a newborn at 14 months of age, "must be due to the chemicals I breathed."

Her neighbors, Mrs. Nguyen Thi Hai and Mrs. Tong Thi An, blame the spraying for the fact that their children, one year and 20 months old respectively, still crawl instead of walk.

Nguyen Van Nhap, a farmer, complains of suffering bouts of fever, sneezing and weakness.

"I was working in the field when the spray came down," Mrs. Tien said through an interpreter. "I felt dizzy, like vomiting and had to stay in bed three or four days." She was holding her stunted baby, who was born about a month after the spraying.

Many other villagers reported feeling the same sensations as Mrs. Tien, but, except for the two children described as retarded in learning to walk, no other abnormal children were described to visitors at the village of 1,200 residents.

Tran Van Dang, a farmer in neighboring Binhtri, recalled that three days after the spraying two villagers, Tam Ten and Mrs. Hai Mua, died after suffering respiratory difficulties and trembling. The next day, he said, a third villager, Mrs. Hai Nuc, died after showing similar symptoms. Mr. Ten was an old man and could have been expected to die soon anyway but the two oth-

ers, Mr. Dang said, were middle-aged and had seemed healthy. At the funerals, he said, the relatives and friends attributed the deaths to the spraying.

Such complaints are not limited to Tanhiep and Binhtri where villagers were admittedly exposed to concentrated doses of defoliant—though just how concentrated has not been established.

In Bienhoa city, 10 miles from Tanhiep, any defoliant in the air drifts down from the heavily sprayed battle area to the north.

Dr. Nguyen Son Cao says he finds a clear correlation between the days when there is spraying and the number of patients who come in with respiratory ailments, mostly sneezing and coughing.

Dr. Cao, who has been practicing in Bienhoa for 21 years, said he had also noticed that in the last two or three years the number of miscarriages among his patients had doubled. Of the average of 40 pregnant women a month who come in to see him, he said, more than 10 suffer miscarriages where there used to be five or six.

"These women are convinced they are the victims of the chemicals," he said. "I only suspect there could be a relationship. This suspicion is very well known. The increase in miscarriages is very obvious, very significant."

Mr. GOODELL. Mr. President, I am pleased to join with the Senator from Wisconsin (Mr. NELSON) in submitting this amendment against environmental warfare.

It is very similar to the amendment I submitted on May 26 of this year prohibiting use, transfer, and stockpiling of antiplant chemical weapons. My amendment has been referred to and considered by the Senate Armed Services Committee as part of the military procurement bill.

Yesterday, the committee reported out the military procurement bill. Regarding antiplant chemical weapons, I regret to note that the committee has seen fit only to require another study on the effects of herbicides used in military application. The study is to be conducted by the National Academy of Sciences. The committee recommends a study into "the ecological and physiological consequences inherent generally in the use of herbicides and also into the specific ecological and physiological effects which have followed from our use of herbicides as defoliants in Vietnam."

Mr. President, it is difficult for me to understand why we persist in this "use now, study later" approach to environment-damaging chemicals as weapons of war. It is true that pollutants of environment derived from peaceful uses of chemicals and pesticides have received the most attention from our citizens in demands for governmental action and control. It is true that what has been neglected is the control of pollutants derived from chemicals, herbicides, and defoliants used as weapons of war.

The Nelson-Goodell amendment prohibiting environmental warfare attempts to fill this area of neglect. We feel that there has been sufficient evidence gathered by studies to date on the military use of herbicides and defoliants in Vietnam to warrant the complete termination of the military defoliation program there. We believe in a "stop now-also study" approach to the military use of antiplant chemicals and to the effects of such use—on environment, on arms control, on weapons proliferation, on community economy, public health, and general living conditions. We have welcomed the decision of the American Association for the Advancement of Science—a decision made last December—to conduct an on-the-spot study of the ecological effects of wartime use of herbicides and defoliants in Vietnam. Preparation for this study is well underway and the study team led by Prof. Matthew S. Meselson, a leading expert on chemical and biological weapons use, is scheduled to be in Vietnam this August.

While studies continue, let us move now to stop the highly questionable use of antiplant chemicals as weapons of war.

Mr. President, Senators will recall that defoliation, the reduction of forest vegetation and plant growth, has been adopted for warfare by the Department of Defense on the grounds that it allows an additional military tactical option for U.S. forces in combat.

According to a recent Army training manual, "antiplant agents" for military application are:

chemical agents which possess a high offensive potential for destroying or seriously limiting the production of food and defoliating vegetation. These compounds include herbicides that kill or inhibit the growth of plants; plant growth regulators that either regulate or inhibit plant growth, sometimes causing plant death; dessicants that dry up plant foliage. . . . Military applications for anti-plant agents are based on denying the enemy food and concealment.

Source: Department of the Army Training Circular TC 3–16 (Department of the Army, April 1969), p. 62.

Antiplant chemical agents developed for the military defoliation program include: "Orange," a mixture of 2,4–D and 2,4,5–T; "White," a mixture of 2,4–D and picloram; and "Blue," an aqueous solution of cacodylic acid. Collectively, these agents have commonly been called "herbicides" and "defoliants." Technically, "Orange" and "White" are "growth-regulating compounds" and are directed mainly against forest vegetation; "Blue" is considered a "dessicant" and used primarily to destroy crops. Each of these antiplant chemical agents has been used as a weapon of war in Vietnam.

Use of defoliants by U.S. forces began on December 4, 1961 when President Kennedy authorized the Department of Defense to test the military effectiveness of defoliation on several lines of communication in South Vietnam. Since that time, this country has spent over $96 million to defoliate over 5 million acres of forest and cropland in South Vietnam. The primary target for the military defoliation program has been forest areas. Roughly 13 percent of South Vietnam's forest areas have been sprayed at least once and 15–20 percent of this sprayed forest area has been subject to repeated sprayings. Regarding crop destruction, it is estimated that 7 percent of Vietnam croplands have been sprayed.

Objectives of this environmental warfare program are to deny the enemy food and concealment. According to the Defense Department, "in the final analysis the sole purpose of the herbicide program is to protect friendly forces, conserve manpower and deny food resources to the enemy."

Mr. President, let us also recall that in April of this year the U.S. Department of Agriculture ordered an immediate cancellation of registrations of 2,4,5-T for use in the U.S. around homes and water areas because such use could constitute a hazard to human health. At the same time, the Defense Department announced a ban on its primary defoliant "Orange," a mixture of 2,4,-D and 2,4,5-T, for military use in Vietnam. To date, the Defense Department has further restricted its military defoliation program in Vietnam by foregoing the use of "White," a mixture of 2,4-D and picloram as a possible substitute to defoliate forest areas for military purposes.

Desiccant "Blue," then, it appears, is the only agent now authorized by the Defense Department for use in the remaining defoliation program in Vietnam. Agent "Blue," an aqueous solution of cacodylic acid, has been primarily used for crop destruction, but could also be used as a defoliant for forest and roadside areas.

Mr. President, the recent decisions of the Defense Department to greatly limit the military application of antiplant chemicals, provide an appropriate opportunity to review and assess the basic question of whether an antiplant chemical warfare arsenal is really needed and whether the negative side effects of the United States first use of these chemicals in Vietnam outweigh the value of defoliation and crop destruction as tactics in war.

Mr. President, there is the danger that military application of defoliants is producing long-lasting, irreversible damage to the environment of South Vietnam.

I fear that when we leave Vietnam we will also leave a vast environmental wasteland due to massive use of antiplant chemicals weapons sprayed on forest acreage and food croplands. The legislation we are introducing today aims at preventing this wasteland tragedy.

Regarding other negative side effects of the military application of antiplant chemicals, there is evidence that environmental warfare has hampered pacification in Vietnam by creating resentment among rural populations due to accidental destruction of civilian crops and damage to country landscape. Already over $3 million has been paid to Vietnamese for defoliant damage claims. Still pending is a Cambodian claim for over $12 million for damage to rubber trees due to defoliant spraying. Equally important, is the dangerous weapons proliferation that will occur if an antiplant chemical warfare capability is transferred to the South Vietnamese. The Army has revealed that this is the present intention.

This amendment against environmental warfare which I have coauthored with Senator GAYLORD NELSON prohibits the use of environment-damaging chemicals for military purposes; it forbids the transfer of such chemicals to allied troops; and it calls for the gradual dismantling of antiplant chemical weapons.

Mr. President, for every environ-

mentalist, concern does not stop at a nation's edge; it is worldwide.

Today man's environment, now and for the future, is a focal point of concern. Vast amounts of potent pollutants still threaten clean air, clean water, and a livable environment here at home.

Chemical pollutants from war use are deserving of our attention and control as well as chemical pollutants from peaceful uses.

Our concern for environment must be matched by our determination to take firm action against unwise use of chemicals leading down a mad collision course of environmental catastrophe.

Mr. HART. Mr. President, I welcome the opportunity to cosponsor what I believe to be one of the more significant amendments to be considered to the Military Procurement bill.

Senator NELSON and Senator GOODELL have shown perceptive leadership in recognizing the potential damage which may result from continuation of our defoliation and anticrop operations in South Vietnam.

They are also to be commended for pointing out how little evidence is available as to the actual military effectiveness of these operations.

Our experience in the Subcommittee on Energy, Natural Resources and the Environment has been related to the first of these points—the potential damage—and has demonstrated the rather alarming risks inherent in the use of chemicals like 2,4,-T and 2,4-D. In our hearings several prominent scientists have argued that no limits can yet be placed on the potential damage to man that may result from these chemicals. Whereas no case of human damage has yet been determined conclusively to be attributable to 2,4,5-T or 2,4-D, constantly we have been reminded that birth defects seldom bear a brand name which will allow determination of their cause.

Perhaps the most alarming prospect discussed at the hearings was that a highly toxic contaminant known as dioxin may now be building up in our bodies and in those of the Vietnamese. Currently produced 2,4,-T, a major ingredient of agent "Orange" is known to contain small amounts of this contaminant. Although dioxin has not yet been found in 2,4-D, which is used in both agent "Orange" and agent "White" it has been discovered in its chemical precursor, 2,4-dichlorophenol. Some scientists have concluded, as a result, that it is likely that it is contained in 2,4-D as well.

The dioxin associated with 2,4,5-T, we have been told, is stable when sprayed on soil. We have also learned that it accumulates in the tissue of chicks. What this evidence suggests is that dioxin may persist in the environment after being deposited on forests and plants and that it may, when transferred to the human body through the food chain, accumulate in human tissue. Although we do not know that it will do so, it seems irresponsible to take the risk with a chemical shown to be many times more toxic than thalidomide in experiments with chick embryos.

We have also received testimony at our hearings on the ecological damage that may be caused by defoliants. The risks of destruction of nontarget plants and of wildlife and fish species has been discussed, as has the possibility of permanent replacement of valuable vegetation by bamboo.

Although in most of these cases, we are dealing with possibilities rather than with instances of known harm to humans and the environment, we must ask ourselves whether the benefits of our defoliation and anticrop programs can justify these risks. Until impressive evidence of military effectiveness is available, I cannot find any such justification. At a time when we must make every effort to wind down the war in Southeast Asia, every weapon in our arsenal must be subjected to increased scrutiny and stiffer tests for effectiveness and possible harmful consequences. With the evidence at hand it does not appear that these tests have been met.

A policy which would destroy a country in order to save it would be absurd. It is the responsibility of Congress to insure against actions which might have such a consequence.

AMERICAN PRISONERS OF WAR

Mr. GOODELL. Mr. President, for 5 years or more American soldiers have been held as prisoners of war by the North Vietnamese Communist government. We do not know the exact number, we do not know how many are alive or dead, in good health or bad. The families of these unfortunate men have heard very little, in most cases nothing at all, about their men whom, in some cases, they last saw 6 years ago. All this despite the fact that the Government of North Vietnam is a signatory to the Geneva Convention on prisoners of war.

I grant you that these statements calling attention to the violations of this convention and to the plight of these Americans are not in themselves of great import. Nor, to be honest, have they produced the results for which we hope.

That should not discourage us. In the words of Samuel Johnson, "He who waits to do a great deal of good at once, will never do anything."

We will continue to press for action at all levels, public and private, to persuade the North Vietnam Government to obey the Prisoner of War Convention they signed.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. HUGHES). Pursuant to the previous order, there will now be a period for the transaction of routine morning business, with statements therein limited to 3 minutes.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. GRAVEL) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Armed Services.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had agreed to a concurrent resolution (H. Con. Res. 675) expressing the sense of the Congress with respect to the conquest of cancer as a national crusade, in which it requested the concurrence of the Senate.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills and joint resolution:

S. 1520. An act to exempt from the antitrust laws certain combinations and arrangements necessary for the survival of failing newspapers;

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;

H.R. 11766. An act to amend title II of the Marine Resources and Engineering Development Act of 1966; and

S.J. Res. 88. Joint resolution to create a commission to study the bankruptcy laws of the United States.

HOUSE CONCURRENT RESOLUTION REFERRED

The concurrent resolution (H. Con. Res. 675) expressing the sense of the Congress with respect to the conquest of cancer as a national crusade, was referred to the Committee on Labor and Public Welfare.

BILLS AND JOINT RESOLUTIONS INTRODUCED

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

By Mr. RIBICOFF:

S. 4090. A bill to preserve and promote the resources of the Connecticut River Valley, and for other purposes; to the Committee on Interior and Insular Affairs.

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

By Mr. SCHWEIKER (by request):

S. 4091. A bill to provide for the establishment of a National Weather Modification Regulating Commission to regulate all weather modification activities, and for other purposes; to the Committee on Commerce.

By Mr. RANDOLPH (for himself, Mr. ALLOTT, Mr. ALLEN, Mr. BAKER, Mr. BAYH, Mr. BELLMON, Mr. BIBLE, Mr. BOGGS, Mr. BURDICK, Mr. BYRD of West Virginia, Mr. COOK, Mr. COOPER, Mr. CRANSTON, Mr. CASE, Mr. DOLE, Mr. DOMINICK, Mr. EAGLETON, Mr. EASTLAND, Mr. FONG, Mr. GRAVEL, Mr. HARRIS, Mr. HART, Mr. HATFIELD, Mr. HOLLINGS, Mr. HUGHES, Mr. INOUYE, Mr. JACKSON, Mr. JAVITS, Mr. JORDAN of Idaho, Mr. JORDAN of North Carolina, Mr. MAGNUSON, Mr. MANSFIELD,

Mr. MATHIAS, Mr. MCGEE, Mr. MCINTYRE, Mr. MONTOYA, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PACKWOOD, Mr. PELL, Mr. PROUTY, Mr. SAXBE, Mr. SCOTT, Mr. SCHWEIKER, Mr. SPARKMAN, Mr. SPONG, Mr. STEVENS, Mr. SYMINGTON, Mr. TOWER, Mr. TYDINGS, Mr. WILLIAMS of New Jersey, and Mr. YARBOROUGH):

S. 4092. A bill to establish a Commission on Fuels and Energy to recommend programs and policies intended to insure that United States requirements for low cost energy will be met, and to reconcile environmental quality requirements with future energy needs; to the Committee on Interior and Insular Affairs, by unanimous consent.

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

By Mr. GOODELL (for himself and Mr. JAVITS):

S. 4093. A bill to authorize increases in construction cost limitations applicable to certain federally assisted housing; and

S. 4094. A bill to amend section 236 of the National Housing Act; to the Committee on Banking and Currency.

By Mr. MOSS:

S. 4095. A bill for the relief of Osvaldo R. Borelo, Angela Borelo, Diana Laora Borelo, Viviana Christina Borelo, Estevan Daniel Borelo and Mirian Borelo; to the Committee on the Judiciary.

By Mr. HOLLINGS:

S. 4096. A bill to amend the Federal Food, Drug, and Cosmetic Act, and for other purposes; to the Committee on Labor and Public Welfare.

By Mr. SPONG:

S.J. Res. 221. Joint resolution to provide for the construction of a monument commemorating the Apollo 11 lunar landing; to the Committee on Interior and Insular Affairs.

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

By Mr. JAVITS (for himself, Mr. GOODELL, Mr. CASE, and Mr. WILLIAMS of New Jersey):

S.J. Res. 222. Joint resolution granting the consent of Congress to the States of New Jersey and New York for certain amendments to the Waterfront Commission Compact and for entering into the Airport Commission Compact, and for other purposes; held at the desk temporarily, by unanimous consent request.

S. 4090—INTRODUCTION OF A BILL TO PRESERVE AND PROMOTE THE RESOURCES OF THE CONNECTICUT RIVER VALLEY

Mr. RIBICOFF. Mr. President, I introduce for appropriate reference a bill to create the Connecticut Historic Riverway. This legislation is a vital step in the efforts to preserve one of nature's great natural resources—the Connecticut River.

The Connecticut Historic Riverway would encompass 23,500 acres along an 11-mile stretch of the Connecticut River from Old Saybrook to Haddam, Conn. This is the identical area described as the Gateway Unit in an earlier version of this legislation.

Last year, I sponsored S. 1805, a bill to create a Connecticut River National Recreation Area. Today's bill is a new draft of this earlier legislation. It remains based on the report, New England Heritage, drawn up by the Bureau of Outdoor Recreation in the Department of the Interior and published in 1968.

The new legislation contains two major revisions.

In May of this year, Senator ALAN BIBLE, chairman of the Senate Subcommittee on National Parks and Recreation, joined me in a day-long excursion of the proposed Federal unit in the State of Connecticut. Consultations held with many Connecticut residents at that time and subsequently have convinced me that further safeguards must be included in the bill to protect the proposed riverway from needless and unwise despoliation.

These safeguards will serve as standards for the National Park Service which will administer the federally owned area. To reflect the emphasis on preservation, the former Gateway Unit has been renamed the Connecticut Historic Riverway.

Second, the bill has been redrafted to permit action on the Connecticut portion of the river while awaiting further developments in Massachusetts, Vermont, and New Hampshire.

We cannot overestimate the need for initiating constructive steps to preserve the Connecticut River at the earliest possible moment. The urgency of the situation, however, should not make us forgetful of the importance of including local residents in the planning process.

In Connecticut, private individuals and public officials alike have been consulted at every step in the long process to establish a Federal park area in Connecticut. Their assistance has been invaluable. The thoughts and suggestions of these Connecticut citizens are reflected throughout this bill. Constructive cooperation of this nature has been heartening and has convinced me that we in Connecticut are now prepared to take actual steps to preserve the Connecticut River for our future generations.

Similar discussions and consultations are now taking place in Massachusetts, Vermont, and New Hampshire regarding the Mount Holyoke and Coos Scenic River Units of the original bill, S. 1805. It is my belief, which is shared by the Senators from these States, that action on these units should be deferred until the full exchange of views so necessary to the successful implementation of the plan has taken place.

Nevertheless, I hope and expect the proposals to create the Mount Holyoke and Coos Scenic River Units will become reality in the near future.

Meanwhile, this legislation would provide authorization to move ahead with the Connecticut portion of the comprehensive plan for the Connecticut River outlined in New England Heritage.

The Connecticut riverway would be comprised of 19,800 acres of land adjacent to the Connecticut River and 3,700 acres of water area. This legislation authorized acquisition by the Federal Government of no more than 5,000 acres of land which would be mainly undeveloped area including 870 acres of tidal marshlands so important to the survival of marine and aquatic wildlife. The remaining area of the riverway would remain in private hands under locally enacted zoning ordinances meeting standards prescribed by the Secretary of the Interior. The total Federal cost of the riverway is expected to be $36 million.

The proposed riverway is an area of varied natural beauty. It includes both the low-lying tidal marshes of the coastlands and the forested hills and coves of the upland area further north on the river. The value of the riverway lies precisely in this natural bounty and in the strong role it has played in the history of New England.

Federal administration of the riverway would accordingly be carefully circumscribed to respect the tranquillity and scenic charm of the area. No new road system or massive and intensive recreational facilities are contemplated. The ecology of this scenic and pastoral area must be preserved.

The bill establishes a local advisory committee to assist in the administration of the riverway. This committee would consist of representatives from the several towns adjacent to the area as well as representatives from the State and regional planning commissions. Consultation with the Secretary of the Interior on matters relating to the development and administration of the area would be on a regular basis. This advisory committee would provide residents of the proposed riverway direct access to those charged with administering the Federal area.

Crucial to the legislation is the concept of the Connecticut Valley Corridor, a provision of S. 1805 which has been included in this new legislation. The corridor includes the first tier of Connecticut towns adjacent to the river and the Connecticut portion of the river itself. The authorization of this corridor will permit coordinated planning and conservation efforts by State, local, and Federal agencies in the Connecticut portion of the river valley.

In addition, all Federal projects affecting the river and corridor will be subject to the review of the Secretary of the Interior.

Although only the riverway itself is under direct Federal control, the Secretary will be authorized to assist local and State efforts to enhance the recreation resources within the corridor which are outside of the riverway.

Mr. President, this bill represents recognition that conservation is no longer a luxury for anyone seriously concerned with the future of the Connecticut River Valley. It is furthermore a commitment to the preservation of the beauty and majesty of this river which has been so great a part of the heritage of New England.

The Connecticut, which has given man so much, now needs man's help. We cannot afford to ignore the signs of decay already present. It is to our advantage to take this first step toward saving this great natural resource.

The ACTING PRESIDENT pro tempore (Mr. GRAVEL). The bill will be received and appropriately referred.

The bill (S. 4090) to preserve and promote the resources of the Connecticut River Valley, and for other purposes, introduced by Mr. RIBICOFF, was received, read twice by its title, and referred to the Committee on Interior and Insular Affairs.

SENATE JOINT RESOLUTION 221—INTRODUCTION OF A JOINT RESOLUTION TO PROVIDE FOR THE CONSTRUCTION OF A MONUMENT COMMEMORATING THE APOLLO 11 LUNAR LANDING

Mr. SPONG. Mr. President, I introduce for appropriate reference a joint resolution to erect a monument in the District of Columbia commemorating the Appolo 11 lunar landing.

It was a year ago today that the Apollo 11 lifted off from Cape Kennedy toward its epic rendezvous with the moon 4 days later. History will record it as the most spectacular technological achievement of our time and as the true opening of the space age.

I hope that it will be remembered also as the beginning of an era in which the power of our science is turned away from war and toward the goal of human enrichment. In this, the Apollo 11 flight stands in stark relief to another scientific achievement on the same day 25 years earlier—Alamogordo and the first atomic explosion.

As a Virginia Senator, I note with considerable pride the contributions of the scientists and engineers of the Langley Research Center to the success of the Apollo moon landing. The very first Space Task Group organized by NASA in its first week of existence was based at Langley. And it was at Langley the concept of the "Little Joe" test vehicle which was to become the workhorse of the Mercury program was perfected. From there, the Langley group went on to draft the preliminary specifications for the Mercury program which began in June 1958.

Langley scientists also were instrumental in proving the feasibility of the heat shield and planning the Mercury tracking network.

Looking toward the day of longer space flights, these scientists studied the concept of rendezvous and staging of space flights and established the value of the lunar orbit rendezvous which is the foundation of the entire Apollo program.

Mr. President, the Apollo 11 flight consummated an age-old dream of man to explore the heavens and beyond. I believe that it is fitting that we memorialize that event for the generations to come.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of this joint resolution and an excerpt from the NASA publication, "Fifty Years of Aeronautical Research" which pays tribute to the contributions of the Langley Research Center to our space program.

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

The joint resolution (S.J. Res. 221) to provide for the construction of a monument commemorating the Apollo 11 lunar landing, introduced by Mr. SPONG, was received, read twice by its title, referred to the Committee on Interior and Insular Affairs, and ordered to be printed in the RECORD, as follows:

S.J. RES. 221

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Administrator of the National Aeronautics and Space Administration shall erect, on a site provided in accordance with subsection (b) of this section, an appropriate monument expressing the sense of national pride and honor as a result of the lunar landing of Apollo 11. The design of the monument shall be approved by the Commission of Fine Arts.

(b) The Secretary of the Interior shall select, with the approval of the Commission of Fine Arts, a suitable site on public grounds within the District of Columbia or the immediate vicinity thereto, upon which may be erected the monument authorized by subsection (a) of this section.

(c) The maintenance and care of the monument erected under the provisions of this section and of the site provided in accordance with this section shall be the responsibility of the Secretary of the Interior.

Sec. 2. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this joint resolution.

The excerpt, presented by Mr. SPONG, is as follows:

FROM "FIFTY YEARS OF AERONAUTICAL RESEARCH"

During the years since the establishment of NASA, Langley scientists have continued to make major contributions to the science of space flight, to develop unique test facilities for better understanding of the problems, and to adapt existing test facilities to new uses.

NASA was assigned responsibility for the U.S. manned space flight program in August 1958. In its first week of existence, NASA organized the Space Task Group, and based it at Langley. It included 45 scientists from the Langley and Lewis Research Centers.

Many of the Langley members of the Space Task Group staff were no strangers to the problems of manned space flight. Before the Group was organized, they had developed the concept of the "Little Joe" test vehicle, which became a workhorse of the Mercury program; they had shown the feasibility of a manned satellite program, using existing intercontinental ballistic missiles for launch vehicles and the ballistic re-entry shape as the crew capsule. And the contour couch concept—later used in all the space capsules' crew positions—had been conceived and built at Langley, and tested to prove its feasibility.

They had drafted the preliminary specifications for what was to become the Mercury program in June 1958; when they were appointed to the Space Task Group in August, they were ready to go.

After that date, they designed the "Big Joe" test vehicle, proved the feasibility of the ablative heat-shield, and developed procedure trainers for the Mercury astronauts which were the foundations for the complex simulators of later space flights. In support, Langley Research Center took on the responsibility for planning and contracting for the Mercury tracking network.

Langley scientists developed supporting programs for manned space flight such as Project Fire, which investigated the heat of re-entry and its effects on materials; Project RAM (Radio Attenuation Measurements) which focused on the problems of transmitting through the plasma sheath formed around a re-entering spacecraft; and the development of infra-red sensors to tell a spacecraft which way was up.

The automatically inflating satellite, like the huge Echo balloon, was a Langley concept and development; so was the inflatable space vehicle, which was one approach to the problem of housing men in an orbiting laboratory.

Re-entry speeds as high as Mach 26 were achieved in multistage rocket firings from the Wallops Station in a study of the problems of that unique phase of space flight.

The concept of rendezvous and the staging of a space flight from an initial established orbit was studied by Langely scientists who established the value of the lunar-orbit rendezvous, which is the foundation of the entire Apollo program, and which made the Apollo program feasible with the available sizes of launch vehicles and crew capsules.

More recently, the highly successful Lunar Orbiter series of exploration satellites, designed to transmit topographic information about the lunar surface, was conceived at Langley and the development program managed by Langely scientists.

Project Mercury grew into Project Apollo, in which the first announced goal was simply to sustain an orbit around the earth or the moon with a multi-man crew. It was later expanded to tackle the job of manned lunar exploration, and Project Gemini was established to solve some of the problems of orbital rendezvous and docking that would characterize the advanced phases of the Apollo program.

SENATE JOINT RESOLUTION 222—INTRODUCTION OF A JOINT RESOLUTION TO AUTHORIZE THE STATES OF NEW YORK AND NEW JERSEY TO MAKE CERTAIN AMENDMENTS TO THE EXISTING WATERFRONT COMMISSION COMPACT AND TO ENTER INTO AN AIRPORT COMMISSION COMPACT

Mr. JAVITS. Mr. President, on behalf of Senators GOODELL, CASE, WILLIAMS of New Jersey, and myself, and for the States of New York and New Jersey, I introduce a joint resolution authorizing the States of New York and New Jersey to make certain amendments to the existing waterfront commission compact and to enter into an airport commission compact.

Mr. President, I introduce the joint resolution for appropriate reference, but I ask unanimous consent that it may be temporarily held at the desk subject to appropriate reference at a later date.

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

Mr. JAVITS. Mr. President, this same legislation is being introduced simultaneously in the other body under the auspices of the steering committee of the New York congressional delegation by Representative CELLER, of New York, the senior member of the delegation, and by a number of Representatives from the State of New York, and by the New Jersey delegation as well. The intent of this airport commission compact is to help prevent aircargo thefts at the major New York-New Jersey airports by authorizing the commission—to be named the "Waterfront and Airport Commission of New York and New Jersey"—to regulate the airfreight industry at these aviation centers.

Evidence submitted to the States of New York and New Jersey and at hearings before the U.S. Senate Small Business Committee, on which I serve as ranking minority member, makes it abundantly clear that legislation such as this is needed. The testimony has shown that there has been an alarming increase in aircargo theft throughout the Nation,

citing the pervasive existence of criminals and corrupt practices in the handling of airfreight, especially in the New York-New Jersey metropolitan area. For example, during the past 2 years, reported aircargo thefts at Kennedy International Airport alone have substantially increased from about $2 million to $3,300,000, and the magnitude of the problem is readily seen only after noting that 7 years ago thefts amounted to only $45,000. To cite another example, I am informed that postal thefts at Kennedy International Airport from 1967 through 1969 amounted to $65 million.

Although it is difficult to estimate the total aircargo loss for the country because there exists no systematic loss reporting system, it has been suggested to the Small Business Committee that the domestic-international aircargo loss for the Nation in 1969 was between $20 and $50 million. Last year Kennedy Airport handled more than $9½ billion worth of cargo, 22 percent more than in 1968, and with the coming of the mammoth cargo aircraft, aircargo traffic is expected to quadruple during this decade. Certainly, some regulatory control is needed. This cargo pilferage in the New York-New Jersey area must be stopped. Because shipments from throughout the country, and indeed throughout the world filter through the New York-New Jersey center, businessmen worldwide are affected and, ultimately, it is the consumer who pays the crime-inflated price of this unchecked pilferage.

As a result of the extensive hearings conducted by the U.S. Senate Select Committee on Small Business, the distinguished senior Senator from Nevada, Senator BIBLE, this session of Congress introduced S. 3595, a bill which I have cosponsored. Senate bill 3595, now pending in the Senate Commerce Committee, provides for a 5-year study commission to investigate the problem of thefts in all modes of transportation—air, truck, rail, and water—and to make comprehensive recommendations concerning "practical and effective measures for the prevention and deterrence of loss, theft, and pilferage of cargo in interstate and international commerce." Senate bill 3595 specifically recognizes that "State and local governments, through exercise of their regulatory powers, have an equal responsibility in stimulating measures to enhance the safety and security of cargo storage and transport." In the airport compact that we now introduce, we have just such an enlightened example of States joining together to attack the problems of criminality and cargo thefts in the airports in the New York-New Jersey metropolitan area.

Briefly summarizing the provisions of this joint resolution:

The first section would give the consent of Congress to amendments to articles II and III of the existing waterfront commission compact between New York and New Jersey, which was approved by act of Congress in 1953, merely amending article II so as to change the name of the commission from the Waterfront Commission of New York Harbor to the Waterfront and Airport Commission of New York and New Jersey, and article III to increase the membership of the commission from two to four members to reflect the increased responsibilities of the commission.

The second section of the joint resolution provides for the consent of Congress to the new airport commission compact between the States of New York and New Jersey extending the jurisdiction of the commission to the airports.

This new airport commission compact consists of 10 articles. Article I of the airport compact sets forth the findings of the States of New York and New Jersey that the public interest requires a joint exercise of the police powers of the two States to deal with the shocking infiltration of criminal elements into the airfreight industry at the major airports of the States. These findings declare in part—

> That criminal and racketeer elements have infiltrated the air freight industry; that such criminal infiltration is threatening the growth of said airfreight industry; that one of the means by which such criminal and racketeer elements infiltrate the airfreight industry is by posing as labor relations consultants and that firms handling airfreight are often forced to employ or engage such persons; that the airfreight industry is suffering an alarming rise in the amount of pilferage and theft of airfreight; and that it is imperative to the continued growth and economic well-being of the states of New York and New Jersey that every possible effective measure be taken to prevent the pilferage and theft of airfreight and the criminal infiltration of the airfreight industry.

Article II contains the definitions which constitute the basis for the commission's regulatory control over airfreight operations at John F. Kennedy, La Guardia, and Newark Airports.

Article III extends the powers that the commission presently possesses on the waterfront to the airports and adds the following new power—the power to make security regulations for the protection of airfreight. One of the major reasons for frequent losses of aircargo through theft is that valuable cargo is easily accessible to any person in the airports. Under this article, the commission can mandate the airfreight industry to provide proper physical facilities for the protection of cargo and, in addition, require proper accounting for airfreight and prompt and accurate reporting of losses.

Under the next two articles, articles IV and V, the commission will:

License employees engaged in the movement of airfreight or performing services incidental to the movement of airfreight;

License trucking firms that contract to haul airfreight to and from the airports and their truck personnel;

License owners or operators of airfreight terminals and their air-handlers; and

License airfreight labor relations consultants in the airfreight industry.

The licensure of these persons by the commission is a key part of the program to root out criminal elements from the airfreight industry. By licensing employees handling airfreight, contracting trucking firms, the operators of airfreight terminals, and airfreight labor relations consultants in the airfreight industry, the commission will be able, under this legislation, to apply its expertise to root out criminal elements in the industry and to prevent them from placing their criminal associates in key positions affording access to information as to the presence and location of high-value shipments. In addition to eliminating undesirable criminals from airport employment, the possible loss of license would serve as an effective deterrent to participation in thefts and other misconduct by licensees.

Article VI empowers the commission to designate airfreight security areas within the airports so as to limit access to aircargo in those areas only to persons authorized by the commission in order to protect the cargo. Commission police will be assigned to protect cargo at these and other areas in the airports.

The remaining four articles of the airport compact contain various technical and administrative provisions. Thus, article VII relating to the commission's administrative hearings requires that no license or permit can be denied or revoked without a hearing. Article VIII relates to the expenses of the administration; article IX to civil and criminal penalties for violations of the compact; and article X to amendments and construction of the compact.

Article VIII relating to expenses provides that the extension of the commission's jurisdiction to the airports shall be financed by assessments levied upon the airfreight industry. A payroll assessment of up to 2 percent would be levied upon employers of licensed persons who work only at the airports. This payroll assessment is exactly identical to the payroll assessment in force upon the waterfront industry in the Port of New York. Employers of licensed truck personnel would pay an annual license fee of up to $100 and persons whose business requires them to have access to airfreight security areas upon a regular basis would pay an annual permit fee of up to $75.

Congressional action on this joint resolution and on S. 3595, as well, is essential to help stem this criminal threat at our airports.

Mr. President, S. 3595 is a most important measure and I am very hopeful it will pass. In the meantime, self-help by the States is critically important. The introduction of this joint resolution, seeks the required consent by Congress to the compact between both States and in effect also seeks for the States the opportunity for them to help regulate an important element of interstate commerce. The critical element here is licensing of the parties involved, the workers and others concerned. This turned out to be a very successful effort in respect of the waterfront, and we believe it will be just as successful here.

There is an urgent need to get action on this legislation before the close of the session. My reason for deferring the matter of reference is to be able to do my utmost, with other Senators concerned, to get the chairman of the committee or committees that may be involved to expeditiously consider it in order to be able to deal with an extremely serious question one which every day sees new losses which we believe can be eliminated by the legislation introduced today.

At an appropriate time I shall ask for the necessary reference of the bill.

Mr. President, I ask unanimous consent to have printed in the RECORD a summary of the bill.

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

SUMMARY OF BILL—NEW YORK-NEW JERSEY COMPACT AMENDING THE WATERFRONT COMMISSION ACT TO PROVIDE FOR THE WATERFRONT AND AIRPORT COMMISSION OF NEW YORK AND NEW JERSEY

PURPOSE OF THE BILL

To grant congressional consent to the compact between New York and New Jersey designed to combat organized crime and to prevent air cargo thefts by providing for regulation of the air freight industry at the major New York-New Jersey airports.

SUMMARY OF PROVISIONS OF THE BILLS

This Compact would authorize the Waterfront Commission of New York Harbor (to be known as the "Waterfront and Airport Commission of New York and New Jersey") to exercise regulatory powers at airports at New York and New Jersey similar to those powers now exercised by the Commission along the waterfront of New York harbor.

The Commission will, under the new compact, in addition to its function relating to the waterfront:

License employees engaged in the movement of air freight or performing services incidental to the movement of air freight;

License trucking firms that contract to haul air freight to and from the airport;

License owners or operators of air freight terminals; and

License persons who are consultants to or advisors and represent air carriers, owners or operators of air freight terminals, airline contract trucking firms hauling air freight; or a labor organization representing employers licensed by the Commission or an organization of such person or persons.

The Commission is empowered to promulgate regulations for the security of air cargo and designate air freight security areas within airports in order to limit access to air cargo to authorized personnel for the protection of the cargo.

The compact also prevents persons who have been convicted of a felony or a serious misdemeanor from serving as officers or employees of (1) labor unions which receive 20% or more of their funds from licensees under the supervision of the Commission, or (2) any employer organization, 20% or more of whose members employ persons belonging to a union which is subject to the act.

The compact is supported by an appropriation of $750,000 to pay for New York State's share of the initial start-up costs to be incurred by the expanded Commission in discharging its new responsibilities. New Jersey has appropriated $250,000 as its share. These monies will be repaid from assessment to be levied upon the air freight industry. A payroll assessment of up to 2% would be levied upon employers of persons licensed by the Commission. Air freight truck carriers, however, who employ persons licensed by the Commission, would pay an annual license fee of $100 for each employee so licensed.

STATEMENT IN SUPPORT OF THE COMPACT

In 1967, the State Commission of Investigation conducted hearings which exposed an alarming incidence of theft and pilferage of air cargo and the existence of criminal and corrupt practices by persons seeking to infiltrate the air freight industry in New York.

In its report issued on December 20, 1967, the Commission stated:

"The evidence was convincingly clear that racketeer elements had infiltrated and gained a foothold in the air freight industry at Kennedy International Airport. In its wake has come violence, crime, monopoly practices and racketeering.

"This attempt by the racketeers and criminal elements to gain control of the air freight industry in New York must be stopped at the very threshold. Efforts of all law enforcement agencies must be combined and coordinated to accomplish this task."

The port of New York district is the Nation's center for domestic and international air commerce. The value of air cargo at Kennedy Airport alone has increased from $2.7 billion in 1962 to approximately $10 billion in 1969. In the next decade, a vast increase both in volume and value of air cargo is certain, particularly in light of the introduction of the massive jumbo jets and supersonic airliners.

In the past seven years, the economic loss from theft and pilferage of air freight in the port of New York district has increased from $45,000 to over $3,000,000. Despite the shocking disclosures by the S.I.C. in 1967, conditions have not improved and in fact have worsened.

Mr. GOODELL. Mr. President, I am pleased to join with my colleagues, the senior Senator from New York, Mr. JAVITS, and the Senators from New Jersey, Mr. CASE and Mr. WILLIAMS, in introducing this joint resolution to grant congressional consent to the airport compact recently agreed to between New York and New Jersey.

The compact is designed to combat the influence of organized crime at the New York-New Jersey metropolitan airports and to curb aircargo thefts which have been steadily increasing over the past 7 years. In 1963, thefts of air freight at Kennedy International Airport amounted to $45,000. In 1967, reported thefts had climbed to over $2 million, and in 1969, they amounted to $3,300,000.

In 1967, the New York State Investigation Commission reported that organized crime had gained a foothold in the airfreight operations at Kennedy Airport. In 1969, a reexamination of the situation by the New York commission revealed that criminal elements were even more deeply involved at that airport.

The New York port area is the center of this country's international and domestic air commerce. The rampant thefts affecting the New York-New Jersey airports, therefore, have tremendous implications for the maintenance of the U.S. role in international trade. It is also clear that airport pilferage ultimately gets passed on to the U.S. consumer in the form of higher prices. Some concrete action is obviously very urgently needed.

This compact provides for the regulation of the air freight industry in the New York-New Jersey metropolitan area airports, and gives jurisdiction over the protection of aircargo to the Waterfront Commission of New York and New Jersey—renamed the Waterfront and Airport Commission of New York and New Jersey.

Significant substantive provisions of the compact include:

Commission authority to promulgate security regulations for the protection of airfreight at the airports that are required to be observed by persons in the airfreight industry;

Commission authority to license airport employees handling airfreight, trucking firms which have contracts with air carriers to transport airfreight and their truck personnel, operators of airfreight terminals and labor relations consultants in the airfreight industry;

Commission authority to designate airfreight security areas within the airports in order to limit access to airfreight to persons authorized by the commission. Commission police would be assigned to protect cargo at the airports.

Under the provisions of the compact, the cost of combatting airport cargo theft will not be borne by the general taxpaying public, but by the airfreight industry itself—the immediate beneficiaries of improved conditions at the airports.

Mr. President, cargo pilferage is a critical problem. It has a serious effect upon our economy, and is extremely detrimental to the public. I would hope that swift consideration will be given to this compact in this session of the Congress.

Mr. WILLIAMS of New Jersey. Mr. President, I join today with my Senate colleagues from New Jersey and New York in introducing legislation designed to halt thievery from air and sea terminals.

This piracy has grown ever more serious over just the last few years. Several years ago the value of stolen items from air commerce in the Port of New York district was approximately $45,000. It is estimated however, that aircargo thefts totaled over $3 million in 1969. In that same year, it is reported that $6 million was lost to thievery from the piers of New York harbor.

Mr. President, it had been hoped that the continuing containerization process for ship and air cargo would cut down on what, in the early midsixties, amounted to large-scale pilferage. However, containerization has apparently attracted the attention and avarice of organized crime. Theft of such large packaging cannot be the result of a whim on the part of an individual. It must encompass a number of organized individuals who can identify the cargo, transport it without detection and apprehension, store large amounts of stolen cargo, and dispose of it through safe "fences." This takes large-scale criminal resources available only through organized crime.

The container has become, in the words of the special report of the Waterfront Commission of New York Harbor to the Governors of New Jersey and New York, "An attractive and valuable target for thieves." Each container holds cargo valued at from $50,000 to $200,000. Testimony before the waterfront commission indicated that in 1967 there were 25 thefts from New York Harbor docks. There were 41 thefts in 1968 and 50 in 1969.

Mr. President, it is obvious that great economic losses result from this professional thievery. And, as usual, the burden is borne not by those directly involved in the loss, but by the consumer, who underwrites increases in prices, insurance rates, and security costs.

I wish to take this opportunity to applaud the expeditious presentation of this compact to the Congress. The water-

front commission held important and very revealing hearings. The Governors presented legislation recommended by the commission to the State legislatures. The legislation extending jurisdiction of the Commission to New York metropolitan aircargo terminals was passed swiftly and forwarded to Washington for congressional approval.

Such responsive action by Government is necessary to combat the organized efforts of professional thieves to live well at the expense of the working, taxpaying, American consumer. Anticrime legislation is particularly needed now when increases in the amount of cargo being shipped by sea, and particularly by huge air transports, will be even more tempting.

Mr. President, I am confident that the Senate committees to which the legislation is referred will understand the urgent nature of this issue and take expeditious action.

The continued theft of valuable cargoes from the seaports and airports of the Metropolitan New York Area cannot be tolerated. New Jersey and New York should be enabled to intensify their efforts to halt this organized and costly thievery.

ADDITIONAL COSPONSORS OF BILLS

S. 4002

Mr. DOLE. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Wisconsin (Mr. NELSON), the Senator from Oregon (Mr. PACKWOOD), the Senator from Pennsylvania (Mr. SCOTT), and the Senator from Maryland (Mr. MATHIAS), be added as cosponsors of S. 4002, a bill to establish a National Information Resource Center for the Handicapped.

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

S. 4041

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

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

S. 4075

Mr. HRUSKA. Mr. President, at the request of the Senator from Texas (Mr. TOWER), I ask unanimous consent that, at the next printing, his name be added as a cosponsor of S. 4075, to provide for limitations on the importation of sulfur.

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

S. 4080 AND S. 4081

Mr. ERVIN. Mr. President, I ask unanimous consent that, at the next printing, the names of the following Senators be added as cosponsors of S. 4080 and S. 4081: the Senator from California (Mr. CRANSTON), the Senator from Oklahoma (Mr. HARRIS), the Senator from Iowa (Mr. HUGHES), the Senator from New York (Mr. JAVITS), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Wisconsin (Mr. NELSON), the Senator from Connecticut Mr. RIBICOFF), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG).

S. 4080, is designed to reorganize the courts of the District of Columbia, improve the District of Columbia Bail Agency, authorize a District of Columbia Public Defender Agency, allow the District of Columbia to participate in the Interstate Compact on Juveniles, and for other purposes. S. 4081, is designed to revise the laws of the District of Columbia relating to juvenile proceedings, to revise the laws of the District of Columbia relating to criminal law and procedure, and to extend the life of the Commission on Revision of Criminal laws, and for other purposes.

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

ADDITIONAL COSPONSOR OF A JOINT RESOLUTION

SENATE JOINT RESOLUTION 212

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Vermont (Mr. AIKEN), I ask unanimous consent that, at the next printing, the name of the Senator from Rhode Island (Mr. PELL) be added as a cosponsor of Senate Joint Resolution 212, to authorize the President to designate the period beginning September 20, 1970, and ending September 26, 1970, as "National Machine Tool Week."

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

SENATE RESOLUTION 431—SUBMISSION OF A RESOLUTION TO PRINT AS A SENATE DOCUMENT THE REPORT "MANPOWER AND TRAINING NEEDS FOR AIR POLLUTION CONTROL"

Mr. RANDOLPH submitted the following resolution (S. Res. 431); which was referred to the Committee on Rules and Administration:

S. RES. 431

Resolved, That there be printed as a Senate Document, with illustrations, a report of the Secretary of Health, Education, and Welfare, entitled "Manpower and Training Needs for Air Pollution Control", submitted to the Congress in accordance with section 305(b), Public Law 90-148, the Clean Air Act, as amended, and that there be printed two thousand five hundred additional copies of such document for the use of the Committee on Public Works.

AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PROCUREMENT DURING FISCAL YEAR 1971—AMENDMENT

AMENDMENT NO. 784

Mr. NELSON (for himself, Mr. GOODELL, Mr. CASE, Mr. CRANSTON, Mr. EAGLETON, Mr. GRAVEL, Mr. HART, Mr. HUGHES, Mr. PROXMIRE, Mr. WILLIAMS of New Jersey, and Mr. YOUNG of Ohio) submitted an amendment, intended to be proposed by them, jointly, to the bill (H.R. 17123) to authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes, which was ordered to lie on the table and to be printed.

(The remarks of Mr. NELSON when he submitted the amendment appear earlier in the RECORD under the appropriate heading.)

SOCIAL SECURITY AMENDMENTS OF 1970—AMENDMENT

AMENDMENT NO. 785

Mr. PROUTY. Mr. President, on June 10 of this year I submitted three amendments to H.R. 17550, the House-passed social security reform bill of 1970. My amendments, including a proposed $100 per month minimum social security benefit, effective January 1, 1971, are cosponsored by the distinguished minority leader, Mr. SCOTT, and by Senators COTTON and FONG. Upon submitting my amendments I asked my colleagues to join with me in recognizing the urgent need of today's retired citizens to achieve adequate retirement income. In my view, an adequate minimum benefit must be provided if we are to adopt an automatic cost-of-living increase provision; otherwise, we are simply ignoring our responsibility to assure a decent retirement for the elderly.

Today I am submitting a further amendment to H.R. 17550, in order to permit all persons reaching age 70 by January 1, 1972, to be eligible for special benefits under section 228 of the Social Security Act, if they are not otherwise entitled to benefits. I ask that the amendment be referred to the Committee on Finance, which is now holding hearings on H.R. 17550, and I ask unanimous consent that the text of my amendment be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. PROUTY. As the law now stands, Mr. President, persons otherwise ineligible for benefits who reached age 72 before 1968 are entitled to the special payment. The monthly amount is currently $46; I have introduced an amendment to increase that amount by 10 percent to $50.60.

I am proud to have authored the special payment law in 1966 to blanket-in elderly persons who, although they worked all their lives, happened through no fault of their own to have worked at jobs not covered at the time by social security. Thousands of Americans labored long throughout the forties, and

fifties in nonindustrial jobs—agricultural workers, migrant laborers, retail clerks, and domestics—only to retire into poverty without even minimum social security coverage.

My initial proposal in 1966 would have blanketed in at $44 per month all uncovered persons age 70 and over. Although the Senate adopted my measure, it was limited in conference to a $35 payment for persons reaching age 72 before 1968. This modest benefit has helped over 1,000,000 retired persons to enjoy at least some semblance of decent living; they can at least buy food for their tables.

But, Mr. President, there still remains in this abundant Nation a large segment of retired persons who did not—and, for the most part, could not—qualify with quarters of coverage under social security. Approximately 700,000 retired persons who were age 65 and older in 1966, when my amendment became law, continued to suffer their retirement without any social security benefits. They worked in many fields of labor to contribute to the Nation's prosperity; some were self-employed, some performed retail or domestic work, some were in agricultural work. Some indeed, particularly women, simply did not earn enough quarters of coverage; most, however, worked for years in jobs not covered by law.

My modest proposal is simply to correct this injustice by expanding special benefits to all persons reaching age 70 by 1972, thereby covering those persons who reached aged 65 in 1966 when my initial amendment was enacted.

Until 1950, social security benefits were payable only to persons who worked in industry and commerce. That year coverage was extended to most farm and domestic workers and nonfarm self-employed persons. Very few people indeed are now not eligible for social security—about 2 percent of the work force. Most of these people are eligible under State and Federal civil service plans. Yet, a small pocket of retired persons remains ineligible. I, therefore, urge the Congress now, in 1970, to step up to its duty to these citizens and to permit them to begin living respectable lives; to give them enough money for food on the table and adequate shelter.

The cost of my proposal is surely not excessive; I estimate that for the first year it will be $125 million, approximately $110 of which will be borne by the general revenues.

Let us act now, Mr. President, to fulfill our Nation's duty to its retired citizens.

The amendment (No. 785) was referred to the Committee on Finance, as follows:

EXHIBIT 1

AMENDMENT NO. 785

On page 73, after line 22, insert the following:

"REDUCTION FROM 72 TO 70 THE AGE AT WHICH CERTAIN UNINSURED INDIVIDUALS MAY RECEIVE BENEFITS

"SEC. 126. (a) (1) Section 228(a) (1) of the Social Security Act is amended by striking out '72' and inserting in lieu thereof '70'.

"(2) Section 228(a) (2) (A) of such Act is amended by striking out '1968' and inserting in lieu thereof '1972'.

"(b) The heading to section 228 of such Act is amended by striking out '72' and inserting in lieu thereof '70'.

"(c) The amendments made by this section shall apply with respect to monthly benefits under section 228 of the Social Security Act for months after December 1970 on the basis of applications filed in or after the month in which this Act is enacted."

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENTS NOS. 682, 683, AND 684

Mr. PROUTY. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Pennsylvania (Mr. SCOTT), the Senator from New Hampshire (Mr. COTTON), and the Senator from Hawaii (Mr. FONG), be added as cosponsors of my proposed amendments Nos. 682, 683, and 684 to H.R. 17550, the Social Security Act Amendments of 1970.

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

AMENDMENT NO. 728

Mr. DOLE. Mr. President, at the request of the Senator from Pennsylvania (Mr. SCHWEIKER), I ask unanimous consent that, at the next printing, the names of the Senator from North Dakota (Mr. BURDICK), the Senator from Kentucky (Mr. COOK), and the Senator from California (Mr. MURPHY) be added as cosponsors of amendment No. 728 to S. 3650, to amend section 837 of title 18, United States Code, to strengthen the laws concerning illegal use, transportation, or possession of explosives and the penalties with respect thereto, and for other purposes.

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

NOTICE OF HEARING ON GEORGE WASHINGTON MEMORIAL INSTITUTE FOR THE SOCIAL SCIENCES

Mr. KENNEDY. Mr. President, on behalf of the Senator from Minnesota (Mr. MONDALE), who is chairman of the Special Subcommittee on the Evacuation and Planning of Social Programs of the Committee on Labor and Public Welfare, I would like to announce hearings on S. 3983, which was introduced by the Senator from South Dakota (Mr. MCGOVERN). This bill would establish an institute for the social sciences in memory of George Washington and in fulfillment of his bequest to endow a national university. The hearings will be held on Wednesday, July 22.

CONGRATULATIONS TO ADMINISTRATION ON FORMULATION OF OCEAN POLICY AND ON DRAFT SEABED TREATY

Mr. PELL. Mr. President, I rise to congratulate the administration on the fine job it has done in proceeding with the implementation of the President's earlier and excellent announced ocean policy and in the development of a draft treaty concerning the oceans' seabeds.

As one who has long labored in this field, one who strongly believes in the urgency of such a treaty and one who, in fact, has introduced a draft seabed treaty in the form of Senate Resolution 33, I am especially delighted that knowledge of its existence has become public.

However, it would be improper for me to comment on its contents, just as it would have been improper for me to comment on its existence if the press had not become aware of it through their own channels and had, in fact, queried me on the subject.

At the same time, however, I must express a concern that some representatives of industry are at this time fighting hard to have their views accommodated. I very much hope that the administration will not yield to these pressures.

Moreover, I trust the administration's spokesmen will maintain the current momentum and put forward such a draft treaty at the August meeting of the United Nations Seabed Committee scheduled to begin on August 3 in Geneva, Switzerland.

Once again, I congratulate the administration on its excellent moves in the right direction.

THE MANDATORY OIL IMPORT PROGRAM

Mr. PROUTY. Mr. President, I was deeply disturbed and disappointed to learn this morning that the House Ways and Means Committee has acted to write into the tariff bill a provision freezing into law the 1959 mandatory oil import program. The program heretofore has been regulated by Presidential proclamation pursuant to section 232 of the Trade Expansion Act. I believe that this action is wrong for several reasons, and I am hopeful that the full Ways and Means Committee will reconsider its action before finally reporting out the tariff bill.

The tentative action by the House committe would require the President to adopt a quota system and would remove from him any discretion to utilize other means, such as tariffs or licenses, to protect domestic oil production. I strongly fear that this move will freeze the present quota system and eliminate prospects for needed reform.

The economic operation of the quota system has resulted in higher consumer prices for petroleum products. It has been estimated that consumers paid about $5 billion more for oil products in 1969 than they would have paid in the absence of import restrictions.

The burden to consumer is felt when they buy their gasoline, when they heat their homes, and even when they purchase fabrics made from petrochemicals. That burden is greatest in my own New England region, where we must rely on domestic products which cost more both at the gulf coast wellhead and as delivered via tanker. The homeowners of New England have too long suffered the burden of paying artificially high prices in the area of national security, and he should, therefore, not be hamstrung in deciding how to best protect domestic resources from international interruption.

It is all too sad but true that the quota system, which was initially devised solely for national security reasons, has now

become an instrument for the economic protection of an industry. The action of the House committee confirms this distortion of purpose.

I shall state now for the record that I cannot vote for any bill which would freeze into law the inequitable aspects of the oil import program. I have labored long and hard to obtain needed changes in the system and now, just as we entered the road to successful reform the House committee action threatens to frustrate our efforts.

I urge my Senate colleagues to soundly reject this effort to turn back the clock and wipe out the progress achieved in reforming the system.

Virtually every day I receive letters from citizens in New England and throughout the country asking why they must put up with increasing gasoline and fuel oil prices. We cannot fail to listen to the legitimate needs of the American consumer merely to perpetuate a highly questionable protection program. There are too many sound arguments against the quota system to ignore. Indeed, the Cabinet Task Force determined that the United States can be self-sufficient in its petroleum need in the event of international supply disruption. Moreover, sound for such necessary commodities as home heating fuel.

Although I have recognized and appreciated the national security interests behind the import system, I do not believe that the program was ever intended to operate to the detriment of the American consumer. I, therefore, applauded the conscientious recommendations made last February by the President's Cabinet Task Force on Oil Imports. Their report recommended changes in the system so as to fairly balance the legitimate national security interests with the rights of the consumers. Now, however, it is apparent that a small group of vested interests has chosen to disregard the needs of the American consumers in favor of locking in the existing program by legislation.

Such action will petrify the inequities of the import program and make it even more difficult to make needed reforms in the system.

The action of the Ways and Means Committee is, therefore, unsound economically and improper in its removal of Presidential discretion. President Nixon has courageously attacked the oil import problem in a reasonable and fair manner. He has acted recently to abolish some of the inequities in the program, particularly in his recognition of the fuel oil needs of the Northeast States. I say that we must let the President supervise the program on the basis of his powers to conduct foreign affairs. It is the President who has chief responsibility, arguments have been advanced suggesting that the quota system reduces rather than enhances our domestic reserves. Recently, for example, exploration and production of domestic reserves has increased in light of certain reductions in the supply of Syrian and Lybian oil. I do not entirely reject the need for some control over foreign oil imports to serve our legitimate national security needs. But I do reject the inequities in this system and I emphatically oppose any attempt at congressional enactment of the program.

I hope that my colleagues shall do likewise.

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

ORDER OF BUSINESS

The PRESIDING OFFICER. Without objection, the Senator from Mississippi (Mr. STENNIS) will be recognized for not to exceed 20 minutes.

THE DEFENSE BUDGET AND OUR WORLDWIDE MILITARY COMMITMENTS

Mr. STENNIS. Mr. President, although the fiscal year 1971 military authorization bill is not now the pending business, I think it is appropriate for me to outline in general terms the impact of this bill on our national security and its relationship to our defense requirements and treaty commitments.

However, let me point out initially that on June 30, 1970, during the debate on the Cooper-Church amendment, the distinguished Senator from Wyoming (Mr. MCGEE) made several significant comments. First, he emphasized that we should not intentionally hobble the efforts of Asians to attain a security effort to protect their own interests.

Second, he raised the question of how we might update the role of the Senate in the latter half of the 20th century in the exercise of its responsibility in foreign policy in a nuclear age.

Third, he urged the Senate Committee on Foreign Relations, of which he is a very valuable and informed member, to turn its energies, resources, and good judgment into a searching exploration of a modern role for the Senate, in concert with the President of the United States, in projecting future crisis decisions in the field of foreign policy.

I mention these sound statements by the Senator from Wyoming at the outset because I believe that they have a direct relation to the remarks which I am about to make on the military authorization bill which will shortly be before the Senate. I commend the distinguished Senator for his perception and analysis of the problems confronting us in the field of foreign affairs. They are of particular significance and value because of his membership on Foreign Relations and his broad experience in this field.

We all recall that the military authorization bill last year was the subject of extensive debate and that many amendments were offered to reduce or eliminate vital weapon programs. On September 3, 1969, I told the Senate "that if these weaponry amendments are passed and the error not corrected, the safety of the American people will be placed in jeopardy. I also said that in military strength we will be a second rate nation by 1975 and this fact shall become well known long before that time."

I anticipate that this year, as last, the authorization bill will be debated at length.

I know the Senate understands that I do not criticize debate on these issues. Such debate is important and helpful.

I emphasize that debate on the defense budget should be knowledgeable because if we do not understand the problem we cannot be a part of the solution; nor can we make sound decisions.

There are many in our society who earnestly, conscientiously and sincerely believe that if we reduce our defense establishment we somehow reduce the probability of our involvement in hostilities. History argues to the contrary. It shows that aggressor nations in general will wage war if there is a prospect that it will be to their advantage. This is a lesson which in the past we have been slow to learn and quick to forget, but I hope that by now we have learned it well and will never forget it. We play a dangerous game if we reduce the defense budget simply to make more funds available for massive Federal funding of other programs.

In saying this I do not mean to suggest that the defense budget cannot stand judicious pruning; it can and must. And I think that you will find the Committee on Armed Services has done just this. But massive assaults on the budget just for the purpose of diverting the dollars for other purposes can very well leave us in a very shaky position with respect to our ability to meet the demands for our security which includes our many and heavy commitments around the world and face the growing Soviet threat.

We forget too often that the necessity to maintain a strong military capability and an adequate deterrence is not based simply on the proposition that we must defend our own shores. A portion of the requirement arises from our heavy commitments all around the world. This should be clearly recognized because, when we consider our military and defense requirements, we should face the facts.

Like it or not, we are a world power—the acknowledged leader of the free world—and this imposes on us a very heavy responsibility. Like it or not, we are committed to more than 40 nations by solemn, formal treaties or other formal agreements voluntarily undertaken by us to assist them in the event of aggression. I will discuss some of these later. The point is that in planning our defense posture we must—unless we want to withdraw into fortress America—take into consideration our heavy worldwide military commitments. The Congress should be well aware that our defense requirements are based in part on the need to be prepared to help defend other nations with whom we have mutual defense agreements approved by the Congress or whose defense is vital to our own national security interests. The primary consideration, of course, is our own security and protection.

Now let me discuss some of our treaty obligations. I emphasis again that all of these were approved by the Senate. They were voluntarily assumed by us. Many of the present Members of this body voted in favor of them.

One of our most important treaties is, of course, the North Atlantic Treaty, which is a multilateral treaty with 14 other free world nations. It provides that:

The Parties agree that an armed attack against one or more of them in Europe or in North America shall be considered as an attack against them all; and . . . each of them will assist the . . . attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary including the use of armed force.

The Senate gave its advice and consent to the ratification of this treaty on July 21, 1949, by a vote of 87 to 8.

The Inter-American Treaty of Reciprocal Assistance, more commonly referred to as the Rio Pact, involves 21 Latin American nations. It provides that an armed attack against any American state "shall be considered an attack against all the American states and—each one—undertakes to assist in meeting the attack." This treaty was ratified by the Senate on December 8, 1947 by a vote of 72 to 1.

Incidentally, I think that is the first major vote that I cast as a Member of this body.

The Anzus Treaty involves Australia, New Zealand, and the United States. It provides that each of the parties:

Recognize that an armed attack in the Pacific area on any of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes.

So far as I know, that is the origin of the term "in accordance with its constitutional processes."

This treaty was ratified by the Senate on March 20, 1952. There was no roll call vote.

Also, on March 20, 1952, without a roll call vote, the Senate gave its advice and consent to the bilateral treaty with the Philippines, the terms of which provide that "an armed attack in the Pacific area on either of the Parties would be dangerous to its own peace and safety" and that each party agrees that it will act "to meet the common danger in accordance with its constitutional process."

On June 22, 1960, by a vote of 58 to 9, the Senate gave its advice and consent to the bilateral treaty between the United States and Japan, which provides that each party "recognizes that an armed attack against either party in the territory under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processess." This treaty replaces the security treaty signed September 8, 1951.

On January 26, 1954, the Senate had before it the bilateral treaty with the Republic of Korea. Advice and consent to the ratification of this treaty was given by a vote of 81 to 6. This treaty provides that each party "recognizes that an armed attack in the Pacific area on either of the parties would be dangerous to its own peace and safety" and that each party "would act to meet the common danger in accordance with its constitutional processes."

On February 1, 1955, the Senate took up for consideration the Southeast Asia Collective Defense Treaty, better known as SEATO, which involves eight other countries. Advice and consent to the ratification of this treaty was given by a vote of 82 to 1. The language of the SEATO Treaty provides that each party "recognizes that aggression by means of armed attack in the treaty area against any of the parties would endanger its own peace and safety" and that each will "in that event act to meet the common danger in accordance with its constitutional processes."

Finally, on February 9, 1955, the Senate ratified the bilateral treaty with the Republic of China by a vote of 65 to 6. The language of this treaty is that each of the parties "recognizes that an armed attack in the west Pacific area directed against the territories of either of the parties would be dangerous to its own peace and safety" and that each "would act to meet the common danger in accordance with its constitutional processes."

In addition to the formal treaties which I have discussed briefly we have bilateral agreements of cooperation with several countries, including Iran, Turkey, Liberia, and Pakistan. While these were not formalized as treaties and were not submitted to the Senate for ratification or rejection, each of them imposes obligations upon the United States to assist the other party in the event of aggression against it.

I recite these facts for the purpose of pointing out the extent of the obligations we have assumed all around the world to assist our friends in the event of aggression against them. We were not compelled to assume these commitments. We did it freely and voluntarily because we thought it was the right and proper thing to do and that it was in our best interests.

I emphasize that each of the treaties I have discussed was approved by the Senate by a wide margin. Whether, in hindsight, we now approve of these treaty obligations, the fact is that they are solemn and binding obligations upon us. The fact is also that they affect very materially the quantity and quality of the weapons and arms which we require. When we look at the military arsenal which we must build and maintain, we cannot afford to think only of defending our own shores but we have to think of what is needed in order to give some reasonable assurance that we will be able to meet the extensive commitments we have assumed so freely.

Frankly, I think that many of these commitments should be reviewed with some adjustments made. I do not favor repudiating any promise or pledge. We cannot run out where our word has been solemnly given and is solemnly and seriously involved. While I did not vote for at least one of these treaties, I do not want to welsh on any of them.

These requirements also generate a broad need for a variety of weapons. We cannot afford, in this nuclear age, to rely solely on strategic weapons because this might force us to a nuclear exchange which could otherwise be avoided. We must build on entire arsenal of strategic and general purpose weapons so as to be able to insure that we can respond appropriately across the entire spectrum of possible general or conventional wars which might confront us.

Since the middle of 1965 we have had large amounts of land, air, and sea forces committed to Southeast Asia at great cost to us in weapons, equipment, and supplies. Not only have we been compelled to supply our own weapons, equipment, and materiel, we have also had to bear almost the entire financial burden for the free world allies who have been fighting on our side.

All of these are inescapable facts which I hope the Members of the Senate will keep in mind. I feel that most Members will do this as we consider the military authorization bill. We cannot ignore our treaty commitments and we cannot walk away from them. These are solemn international contracts with other nations which must be respected and honored as long as they are in existence.

However, it would be far better to walk away from them and openly renounce them than to render the United States so impotent that it would not have the ability to meet its commitments should the occasion arise. This is the issue which we should and must face. Either we must provide the weapons and the other implements of war and resources which are necessary for us to meet our worldwide obligations or we should let it be known that we no longer consider ourselves bound by these obligations.

Despite all the complaints which have been made about our involvement in the war in South Vietnam, there has been no effort whatsoever to adjust any of our worldwide commitments or to relieve us of any of them. The President has made no recommendation that we abrogate or cancel any of the treaties. The Foreign Relations Committee of the Senate has not made any recommendations so far as I can tell, for any change on this subject or the elimination of any of our treaty commitments.

I point out once again that these commitments are a part of our defense requirement and that we cannot avoid the responsibilities and obligations which these commitments impose upon us.

I have long been concerned by the extent of these treaty commitments and have thought that, at some point in time, we might very well have to make a hardheaded distinction between what we are willing to do and what we are reasonably able to do within the limits of our military manpower, resources, and assets. However, it is my judgment that this is an issue that should be met head on and directly—not indirectly by failing to provide what is needed to meet our defense requirements. I personally would welcome an entire examination of our treaty commitments around the world to see whether they are now required and whether they are still fully valid or whether adjustments could and should be made.

I hope that our Committee on Foreign Relations—which is unusually well qualified in this field—will give this matter serious study and consideration in

addition to the consideration they are now giving it. I think that such a study would be a very timely effort and that something constructive should be done about it and reasonably soon.

In the meantime, however, I think that we are going to have to face the hard facts and recognize that these treaty commitments are part and parcel of our military requirement and that when we consider the defense budget they have to be recognized as such and cannot be ignored.

It is well known that it takes years to develop and produce the complex and sophisticated machines of defense which are absolutely vital to our security. Thus, what we did on the defense budget last year and what we do this year, and next year, will have vital postural implications 5, 10, and 15 years from now.

We were little better than a second rate military power when we entered World War II and that was also true when we entered the Korean conflict. Fortunately, in both instances we had the time to gear up our industrial machine and produce the necessary arms and weapons of war in overwhelming quantities. Never again, however, in a general war, will we have time to do this. We will have to go with what we have, and this is why it is so essential that we have the arms and weapon systems which are vital to our defense in being.

The basic point that I am making today is that, as long as we have these heavy worldwide commitments and, as long as conditions in world affairs remain substantially as they are now, we are obligated to provide the resources to meet them. If we are not willing to do this, then we should take prompt action to divest ourselves of at least some of the obligations which we have assumed. The matter of the approval of our treaty obligations was within the primary jurisdiction of the Committee on Foreign Relations, not the Committee on Armed Services. Similarly, any change or reduction in our treaty obligations would be within the jurisdiction of the Committee on Foreign Relations, not the Committee on Armed Services. However, as long as these treaty obligations remain in existence, it is the obligation of the Committee on Armed Services, and the Senate as a whole, to recommend the weapons and other resources which are essential to meeting them.

Mr. President, the purpose of my remarks on this subject today is to review the historical development of the situation that we are faced with and to point out the clear authority and responsibility that rest upon the Senate of the United States, and the House of Representatives in this field of jurisdiction, and to suggest the ways they should be met.

Mr. President, I think we are on our way in these directions. We will have a good solid debate, I believe and hope, with reference to the contents of this bill. Substantial reductions were made last year by the committee in spite of the rising cost of weaponry. Additional substantial reductions were made by the committee in the bill we will present next week in spite of rising costs of weaponry and their complicated nature.

I think that these two bills have laid the groundwork for very substantial reductions in the next few years providing that war can be deescalated.

I welcome the time when we can have debate on the bill.

Mr. President, I yield the floor.

Mr. DOLE. Mr. President, I ask unanimous consent that I be permitted to continue for 12 minutes.

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

FAIRNESS

Mr. DOLE. Mr. President, 11 U.S. Senators, whose names appear hereafter submitted a brief today in support of a letter of July 10, 1970, to the Federal Communications Commission in which it was requested that the National Broadcasting Co.—NBC—grant comparable time without cost to present contrasting and opposing views to the May 12, 1970, NBC program which supported the amendment to end the war. It is respectfully requested that this brief be associated and considered in connection with the July 10, 1970, letter request.

REQUEST FOR EXPEDITIOUS CONSIDERATION

As a preliminary matter, we first wish to emphasize the need for expeditious action on this matter. The Senate has tentatively scheduled debate on the Military Procurement Authorization Act—including the amendment to end the war—the week of July 19, 1970. Unless the requested time to present contrasting views is granted prior to final passage of that legislation, the issue will be rendered moot.

STATEMENT OF FACTS

On May 12, 1970, a one-half hour prime-time program sponsored by the amendment to end the war committee was televised by NBC. This program dealt with the general issue of the Indochina war, but, more specifically, sought legislative and monetary support for the so-called amendment to end the war—amendment 609 to H.R. 17123, Military Procurement Authorization Act—and the supportive amendment to end the war committee.

In fact, the purpose for the broadcast was clearly stated at the outset of the program. It was not, as NBC has implied, to make a case against administration Indochina policy; rather, the program was designed, in the words of its sponsors, to provide five of the 20 Senators who cosponsored the amendment to end the war the opportunity "to make a case for this amendment."

In order that the public might be fully informed on this controversial issue and in accordance with the fairness doctrine, a telegram was sent to the president of the National Broadcasting Co., Mr. Julian Goodman, requesting broadcast time to respond to that program. The telegram specifically requested time for Senators who oppose the amendment to end the war to present contrasting views. In its response, NBC rejected this request for comparable, free time to counter the May 12 broadcast. Mr. Corydan B. Dunham, an NBC vice president, cited various televised speeches by President Nixon and news programs which dealt with "many of the issues involved in the war in Southeast Asia." But the network failed to cite one instance where the specific subject of the May 12 broadcast—the amendment to end the war—was discussed by an opponent of the legislation.

On July 9, a second request to NBC for broadcast time to present contrasting views specifically on the amendment to end the war was made. It was pointed out in the telegram that the coverage NBC cited as presenting both sides of the issue did not deal directly with the amendment. It was made clear in the second telegram that the issue was not contrasting views of overall Indochina War policy, but specifically amendment No. 609 to H.R. 17123, and the solicitation of monetary support. Disregarding this consideration, NBC again rejected the request in a telegram from Mr. Goodman, who pointed to an hour-long broadcast on the issue of Cambodia televised on July 9—a program which did not deal in any substantial way with the amendment to end the war.

ARGUMENT

The obligation of NBC to present contrasting views on this important legislation is a basic and fundamental one. In the Commission's 1949 report on "editorializing by broadcast licensees," the Commission stated in paragraph 18:

> Thus, in appraising the record of a station in presenting programs concerning a controversial bill pending before the Congress of the United States, if the record disclosed that the licensee had permitted only advocates of the bill's enactment to utilize its facilities to the exclusion of its opponents, it is clear that no independent appraisal of the bill's merits by the Commission would be required to reach a determination that the licensee had misconstrued its duties and obligations as a person licensed to serve the public interest.

Previously, the Commission in paragraph 9 stated:

> We do not believe, however, that the licensee's obligations to serve the public interest can be met merely through the adoption of a general policy of not refusing to broadcast opposing views where a demand is made of the station for broadcast time. If, as we believe to be the case, the public interest is best served in a democracy through the ability of the people to hear expositions of the various positions taken by responsible groups and individuals on particular topics and to choose between them, it is evident that broadcast licensees have an affirmative duty generally to encourage and implement the broadcast of all sides of controversial public issues over their facilities, over and beyond their obligation to make available on demand opportunities for the expression of opposing views. It is clear that any approximation of fairness in the presentation of any controversy will be difficult if not impossible of achievement unless the licensee plays a conscious and positive role in bringing about balanced presentation of the opposing viewpoints.

It is an equally fundamental concept of the Fairness Doctrine that where a station or network chooses to broadcast a sponsored program which for the first time presents one side of a controversial issue, a presentation of contrasting points of view cannot be rejected on the grounds that paid sponsorship is not available for these views. *Cullman Broadcasting Co., Inc.*, 25 RR 895 (1963). See also *Red Lion Broadcasting Co., Inc. et al.* v. *FCC et al.*, 395 U.S. 367 (1969).

The broadcast of an appeal for contributions at the conclusion of the program to support opportunities by the participating Senators to "speak out" on the war issue raised additional unresolved problems. This appeal for contributions to promote legislation is within itself a controversial issue of public importance, also giving rise to an opportunity to present contrasting views. We note that NBC does not purport to claim that it has presented contrasting views on this matter. We raise the further question whether the real purpose of the broadcast was, as claimed, to present views favorable to the amendment to end the war or whether the broadcast was not, in fact, a subtle and commercial venture to raise money. The appeal for funds was so clearly "interwoven" with the context of the program that a question is presented as to the real purpose of the broadcast. See, FCC Letter to KCOP-TV, Inc., July 1, 1970—FCC 70-685.

CONCLUSION

Accordingly it is respectfully requested that NBC be compelled to afford us comparable time to respond with contrasting and opposing points of view.

Mr. President, the brief was signed on July 16, 1970, by Senators BOB DOLE, EDWARD GURNEY, ROBERT GRIFFIN, PETER DOMINICK, BARRY GOLDWATER, PAUL FANNIN, RALPH SMITH, STROM THURMOND, CLIFFORD HANSEN, CARL CURTIS, and GORDON ALLOTT.

Mr. President, I ask unanimous consent to have printed in the RECORD what I have referred to as attachments 1, 2, and 3.

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

ATTACHMENT NO. 1

Mr. BEN WAPLE, Secretary,
Federal Communications Commission,
Washington, D.C.

DEAR MR. WAPLE: On July 7 a telegram was sent to the President of the National Broadcasting Company, Mr. Julian Goodman, requesting broadcast time to respond to a May 12 NBC program sponsored by the Amendment to End the War Committee. This program was a one-half hour prime time telecast which solicited funds in support of the so-called Amendment to End the War. On July 8, Mr. Corydon B. Dunham, an NBC Vice President, rejected this request for comparable, free time to counter the May 12 broadcast.

Then on July 9, a renewed request to NBC for the broadcast time to present contrasting views specifically on the End the War Amendment was made. It was pointed out in the telegram that the coverage NBC cited as presenting both sides of the issue did not deal directly with the Amendment. Disregarding his consideration, NBC again rejected the request in a telegram from Mr. Goodman, who only pointed to an hour long broadcast on the issue of Cambodia in general which was televised July 9.

We feel that NBC has not presented contrasting views on the issue of the End the War Amendment as required by the Fairness Doctrine. And since the National Broadcasting Company has not recognized the importance of presenting both sides of the specific issue involved in the Amendment to End the War debate, our only recourse is to ask the Federal Communications Commission to compel NBC to grant us comparable time without cost to present the viewpoints of those who oppose the Amendment.

Signed: BOB DOLE, EDWARD GURNEY, ROBERT GRIFFIN, PETER DOMINICK, BARRY GOLDWATER, PAUL FANNIN, RALPH SMITH, STROM THURMOND, CLIFFORD HANSEN, CARL CURTIS, GORDON ALLOTT.

AMENDMENT TO END THE WAR, MAY 12, 1970, NBC TELECAST

ATTACHMENT 2

Mr. GOODELL. Mr. President, a bipartisan group of Senators purchased prime television time to explain the amendment to end the war—amendment No. 609 to H.R. 17123—to the American public and to seek support for it.

The half-hour broadcast marks the first time that a congressional group has produced such a nationwide program.

The program—"The Amendment to End the War"—was broadcast on Tuesday, May 12, at 7:30 p.m. over the NBC television network.

Senators George MCGOVERN, MARK HATFIELD, HAROLD HUGHES, FRANK CHURCH, and I participated in the program.

The amendment to end the war was drafted by Senators MCGOVERN, HATFIELD, HUGHES, and me and was introduced on May 5, 1970. It states that unless Congress shall have declared war, no moneys appropriated under the act to which it is attached, or under any other law, shall be used in Vietnam after December 30, 1970, except for the withdrawal of all American forces. It requires that the withdrawal of American forces from Vietnam be completed—that all American military personnel be pulled out—by June 1971, unless the President of the United States requests and Congress passes a joint resolution extending that deadline.

The amendment provides that no money shall be used for military operations in Laos after December 1970. And it provides that no moneys shall be authorized for any military operations in Cambodia or for military aid for that country 30 days following the adoption of the amendment.

I ask unanimous consent that the transcript of the program be printed in the RECORD.

Mr. President, last week the St. Louis Post-Dispatch carried an excellent editorial commenting upon the Cambodian invasion and the amendment to end the war.

I ask unanimous consent that the editorial and the text of the amendment be printed in the RECORD.

THE AMENDMENT TO END THE WAR: A NETWORK TELEVISION BROADCAST, MAY 12, 1970, NBC

(Participants: Senator George McGovern, Senator Mark O. Hatfield, Senator Charles E. Goodell, Senator Harold E. Hughes, Senator Frank Church)

NARRATION. Today, in the bright springtime of 1970, the United States of America has been ripped apart. Citizens bludgeon each other in the streets of New York. Students die in a campus eruption. Buildings explode. Banks burn. The Nation's colleges are shut down. The population is polarized, and there are parades of protest everywhere. Not since the days of the Civil War have Americans treated each other like this.

At the heart of the trouble lies the war in Vietnam. It is a strange war—a war that we have to keep explaining to ourselves year after year after year. And it is a difficult war to explain—particularly to the people who have to go and fight on its inconclusive battlefields.

But while all the talk goes on, the war goes on, too. It continues tonight, as it has continued for a decade. Tonight, Americans will die in Vietnam. Tonight, Americans will die in Cambodia.

What can we do?

Last week, amendment No. 609 was introduced on the floor of the United States Senate. It was co-sponsored by a bi-partisan coalition of twenty Senators. These Republicans and Democrats call it *the amendment to end the war*. They regard it as a realistic new thrust for peace. The Senate debate on it will begin in just a few days.

In the next half hour, five of these Senators will make a case for this amendment. If the American people can effectively urge its passage upon the Members of the House and Senate, if "the amendment to end the war" is passed, then the traditional right of declaring whether or not we shall commit Americans to battle will be returned to the Congress—where it belongs.

Through protest . . . petition . . . and an act of *law*, we shall have at last ended the Vietnam war.

And now, Senator George McGovern of South Dakota.

Senator MCGOVERN. There is no way under the Constitution by which the Congress of the United States can act either to continue this war or to end it, except by a decision on whether we will appropriate funds to finance the war.

Article I, Section 8 of the Constitution reads as follows: "The Congress shall have power to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years."

Senator HATFIELD. Our amendment to end the war fulfills the obligations that we have under the Constitution. The amendment clearly states that unless the Congress shall have declared war, that no monies appropriated on the act to which we attach the amendment, or any other law, shall be used in Vietnam after December the 30th, 1970, except for the withdrawal of American troops and other provisions.

It provides that no money shall be used for military operations in the country of Laos after December of 1970. It provides that no monies shall be authorized for the use of any military operations in Cambodia, thirty days following the adoption of the Amendment; and that all troops shall be withdrawn from Vietnam, all American troops, by June 1971 unless the President of the United States shall deem that it is important enough to extend that time by requesting the Congress to pass a Joint Resolution authorizing such extension time.

Senator HUGHES. The Amendment to End the War provides continuing funding for full protection of American troops during the total period of our withdrawal. It also provides adequate funding to provide political asylum for all those South Vietnamese and other civilians for which there may be great concern about a bloodbath; and there are adequate provisions that these civilians may be placed in other places for their own protection.

It also provides for a continuing negotiation of exchange of prisoners.

Senator CHURCH. Very soon the Senate will be acting on another Amendment offered by Senator Cooper and myself, which is addressed to the Cambodian situation and sets the limits on that adventure to those declared by the President.

But this End the War Amendment takes the full step, and provides an orderly method for the extrication of the United States from the war in Vietnam, itself.

Senator MCGOVERN. And so what we're looking for is a reasonable way to accomplish that withdrawal, and I think that the principal stumbling block now is that we're somehow worried about losing face. We're worried about embarrassing the policy makers that sent us in there. We're worried about admitting that perhaps we made a mistake.

Actually, I think it would contribute to the greatness of the United States if, as a free people, we could just admit that we're capable of making a mistake; and then do the best we can to put an early end to it.

Senator HUGHES. Vietnamization is not a change in policy at all. It's a continuation of the old, old policy. It is dedicated to war, not to peace. It means that the war will go

on and continue to go on for years to come. It means that there has been no one speaking, in this Administration or the last, of an end to our support commitment in Vietnam.

It means that we can look into the future for at least a decade, in all probability, to a quarter of a million men involved in Vietnam. I think every mother and father in America who has a son right now that's five, or six, or seven years old, or anywhere up to 15 or 16, should well realize that that boy is going to be involved in our future commitment in Vietnam under existing policy.

Senator GOODELL. We have come to the point where we realize, and I think the President realized when he went into Cambodia, that Vietnamization will not work; and it was an admission of the failure of Vietnamization.

I think it's time that the American people recognize that the President doesn't have the power to declare war or make war, alone. He can ask Congress to declare that power; and I think that's why what we are discussing here, and urging support from the American people for, is so important.

Congress can do this, and it's not an irresponsible action; and with the walls all falling down around American prestige and power in the world if we decide we're going to get out, Congress would simply be saying, "Okay, we've fought for seven years, we've bled and died, and we've spent our resources on this; and now the time has come to say to the South Vietnamese, 'take it over. We'll give you time. Over a period of time we're going to be withdrawing and you can go on getting aid if you fight for yourself in your own civil war. We're not going to stay there and fight and bleed and die for you any longer.' "

Senator HATFIELD. But the point is simply this: It's no longer the opinion of Presidents, and no longer the opinion of Senators; it's the evidence of history, of over 40,000 deaths, and this amount of resource expended that has proven each one of those escalations to be wrong. And I say, how many more American men have to be heaped upon that funeral pyre of war to disapprove a theory or a doctrine of military action that has been proven wrong each time that it's been acted upon.

Senator CHURCH. After all, the United States is not going to impose any permanent solution in Asia to settle Asian problems among the Asian people on the Asian mainland. Now, the idea that we are going to do that is—runs against the whole current of history.

Now, what's happening in Asia is that the western powers are moving out, and that the Asians are taking over for themselves; and Vietnamization, as it's been pointed out here, is not the method for extricating us from this morass. It will merely perpetuate our involvement in this war. Half of the troops may come home; the other half will stay indefinitely; and it does not serve the interests of the United States to maintain a permanent military base in Southeast Asia.

Senator GOODELL. The President reiterated the other night that he was going to continue to bring back these 150,000 men in the next 12 months. Now, many Americans may feel that that means they're all going to be coming back, and nobody's going to be going.

Under a policy of bringing back 150,000 men in the next 12 months, we will send to South Vietnam 276,000 men who are not there now, who are now in the military or about to go into the military; and we'll bring back more, 150,000 more than we send, but in the rotation process there will be this 276,000 men go over there to fight, and perhaps die.

Senator MCGOVERN. And what would we have accomplished, or what evidence is there based on past history, to lead us to believe that we would be in any better position, or that South Vietnam would be in any better position, 1 year or 5 years or 10 years hence, after tens of thousands of additional Americans have been killed, than we are now? What would we have gained?

Senator CHURCH. We have created a "crisis of confidence," and a deep disillusionment and an alienation that doesn't just affect a narrow fringe of radicals on campus. Anyone who goes to the campuses knows that this feeling extends to millions of young Americans.

Now, if they grow up without a belief in this system, that, it seems to me, has far greater bearing upon the future of the United States than anything we have now, or have ever had at stake out in Indochina.

Senator HUGHES. I think one of the great, tragic byproducts of all of this has been the spiritual scarring of our own people. The questioning in our own minds of why we're involved in a body-count war with total military supremacy, with indiscriminate bombing and far-ranging effects on the ecology of those nations by spraying chemicals and driving the people off of the land into the cities, completely changing the complex of that little nation involving sixteen to eighteen million people.

And we ask ourselves, can we be happy about the fact that we've killed 10,000 Vietnamese and suffered 300 deaths ourselves and in the process that this complete psychology that we have of destroying life, you know, at any expense, and what the results of it are—

Senator CHURCH. It's brutalizing our own society.

Senator HUGHES. It's brutalizing us internally, and we find our young people turning away from it, fleeing to Canada to avoid a war they consider immoral and attitudes that they consider unrealistic in a time, in an age when we really are questioning ourselves to find national purpose again.

Senator MCGOVERN. What we need to understand is that there is no way to separate the cost of this war in Asia, from the cost of our own society. Now, there were stories in the press recently that some of our poor people, some of the black citizens and other minority groups, have shied away from participating in protests against the war on the ground that their concerns are with hunger and with racism and with poverty.

But what I think all of our fellow Americans need to understand is that the answer to these other problems will not come until we put this war behind us, and the enormous drain that it's taking here in our society. The person who's worried about inflation ought to realize that war is a principal cause of it. The man who's worried about the stock market skidding ought to realize that the stock market jitters are associated, to a great extent, with the war.

And as you've said so many times, the Governors and the city councilmen and the others who are worried about where the money is going to come from for those new schools or new sewage projects or other things, they have to understand that the war is robbing them of those possibilities.

Senator HUGHES. We're talking about 16 to 18 million people in South Vietnam; here are 23 million blacks in America who have not been able to find justice in this great country. Untold thousands of American Indians who have never been brought to their fulfillment. You who have worked so long and so energetically in the field of hunger in America, and poverty, with some 35 million people living in poverty, with the very foundations shaking of every major city in the Nation, with the great, basic, undergirding of this Nation that has always kept it stable, with those minorities is now being drained off and siphoned off in the name of somehow saving face in Southeast Asia, you know.

So when we talk, I think you would agree that there seems to be a great paradox in this.

Senator GOODELL. The cost of the war last year was $23 billion, so you can say in just about specific terms that 1 year's cost of this war would clean up all our waters in the United States.

Senator HATFIELD. The half hour that this program is being telecast to the American people, to reduce that or to translate that into terms of the cost of the war; the Federal Government will be spending $1 million just in this one-half hour period.

Senator GOODELL. In Vietnam.

Senator HATFIELD. In Vietnam. Just in Vietnam.

Senator CHURCH. Mark, you know the argument is made that the world will think we're weak if we withdraw from Vietnam. I think that of all the arguments that are made, that is the least impressive. Actually, the world knows that we have the power to exterminate every living inhabitant of Vietnam. If we unleashed that power we could salt it over the way, Rome salted over Carthage.

It's not our power that's in question out there. It's the wisdom of our policy; and the world sees the biggest, richest, strongest nation dropping more bombs in North Vietnam than we dropped on all Europe in the Second World War. They see this tremendous disproportion of strength and wealth, and that puts us in a very bad light in the world.

In fact, this war has done more to undermine America's moral leadership in the world than anything that's ever happened to us, and the faster we put the matter right in Southeast Asia and end this war, the sooner we will begin to win back again the respect that this country ought to have throughout the world.

Senator HUGHES. What do you say to people who are really concerned, and I know they're concerned, about the fact that we'll lose face in the world, you know, that we'll really not be a first rate power, as has been implied by our Chief Executives in the past and in the present? And the concern of honest Americans who want to get out of the war, who want to stop the killing and the dying, and yet they say this is America's place in the world, that unless we accept this challenge we're somehow failing in world leadership.

I think this is the question in the minds of millions of Americans today.

Senator HATFIELD. What constitutes leadership. Not Just power of armament, but power of ideals. And I say that we are losing in the world today by continuing to be in Vietnam.

It's not a matter of national price. It's a matter of whether we're practicing what we preach. It's a matter of whether our ideals that were embodied in the Constitution, in the hearts of the American people, are really at the center of our policy, or whether we're out here with some peripheral object of face-saving; and so forth. I say, if it's to be humilitated to admit we're wrong and to save lives, then the sooner we do this, the better it's going to be for our nation. But I don't consider it humiliation. I consider it greatness, because only the powerful can take the chance of admitting error, and we're that powerful today.

Senator GOODELL. And most civilizations that have died, have died from within; and that is happening now in the United States of America if we don't get out of this war.

Senator CHURCH. We clothe this war in the sacred words of "justice" and "freedom" and "peace." But justice and freedom and peace aren't at stake out there. You know, the Government that we're supporting is not a democratic government, it's an incompetent and corrupt military dictatorship; and it's involved in a war with another dictator-

ship. This is a war between two dictatorships for control of Vietnam.

So I think we make a grave mistake when we try to clothe such a war in terms of the ideals for which this country should stand. Freedom is not at issue for the people of Vietnam. One way or the other, the kind of freedom that we know is not going to be the gift of this war out there.

Senator HUGHES. I think the gut question, though, Frank, and particularly George, when we're talking about this Amendment to End the War, to most Americans is, how can I support this Amendment and at the same time support my country in an involvement we've had over the last 15 years. And I think if people could resolve this in their own minds, you know, they'd very willingly bring this war to an end through this Amendment.

Senator MCGOVERN. Now, the President said the other night that if we leave Vietnam now, we're going to be through, or I think he said we're going to be finished as a peacemaker in Asia. Well now, I think we ought to quit trying to be the policeman for Asia. Let's quit trying to be a solo policeman and banker and pacifier in Asia alone. How ironic it would be if at long last we succeeded in pacifying Southeast Asia and couldn't pacify our own society.

Senator HUGHES. The invasion of Cambodia, I think, was truly the straw that broke the camel's back. They're writing to me at about 8 to 10 to one against the President's posture right now in Southeast Asia; and in the belief and the hope that the Senate of the United States, will offer leadership, you know, to alter this posture.

Senator GOODELL. Everything we have said here tonight is completely unpartisan. I think we have all been as critical of the Democratic Presidents as we have of Republican Presidents, and we should not be considering this in terms of political or partisan advantage one way or the other. This war transcends partisanship, and I know a great many Republicans as well as Democrats who think our policy now is wrong, and we ought to get out. I think the overwhelming number of all Americans, whatever their political party, believe this.

Senator MCGOVERN. I think what we're trying to do with our Amendment to End the War, is to say that that is too important a decision to place on the shoulders of one man. It's too big a risk to ask one man to decide alone. The President ought not to have to make that judgment alone, and under the Constitution, he's not supposed to make that decision alone.

What we're proposing to do is to share that responsibility, and whatever political risk, whatever opportunity, whatever hazard is involved in making the decision to end this war, we're prepared, as elected officials, to stand up on that question and answer yes or no, and then take whatever blame or whatever credit is involved.

Senator GOODELL. In effect, we're providing a situation where the President can withdraw faster, where he can make a determination the war is going to end by a fixed date, and he will not bear the whole onus, himself. We recognize that when you've made such a tragic mistake, there's no painless way to get out of that mistake. We're saying, "We'll share that pain, we'll share that responsibility. But let's recognize the mistake and get out of it."

Senator HUGHES. What do we say to the American parents who have sons fighting in Vietnam? Is this a patriotic move that we are taking in this Amendment to End the War? Is this support of their sons and of our fighting men in Vietnam?

Senator GOODELL. There is no better way to protect the young men who are fighting over there than to bring them home; and I don't know of any military person in any responsible position, who doubts that if we made our declaration, "we're coming out," that they would be brought home safely then.

As long as we stay there, the casualties are going to go up, and if President Nixon's program works, over the next three years, we are talking about a minimum of 5,000 more American dead, and probably closer to 20,000. Four or five times that many casualties, and four or five times that many Vietnamese deaths in the process. Not to mention the billions of dollars involved.

Senator MCGOVERN. But now what we're proposing is not a disorganized and uncoordinated outcry. We're proposing a specific legislative Act that will have the full force of law, and it will say in effect, no more money for Southeast Asia for any purpose other than arranging for the systematic and safe withdrawal of our forces, for the exchange of prisoners, for asylum for those people that might be threatened by our withdrawal. It's an orderly, Constitutional procedure for bringing about an end to this war.

Senator CHURCH. Now, this brings the Congress back to the role that it should have been playing all along. It asks the Congress to assume its responsibility to the American people, and it brings our democratic system back to life again in a balanced, Constitutional manner; and that in itself is as important in the long run to the life of this Republic as ending the war in Vietnam.

Senator HATFIELD. What do we say to the American people who have been watching, and who would say, "Well, we agree with you, but our voice is not very loud. I'm only one person, I'm just a little person, so-called little person." You hear that many times. Does that voice have a place in this whole great issue of war and peace?

They say, "We're tired of speeches. We want some action." A lot of the young people say this to us. A lot of the older people say, "All right, turn it off. We agree with you, but what have you done about it? What can you do about it, what can we do?"

Senator CHURCH. We're asking people to make their views known responsibly to their Congressmen and we are asking the Congress and the Senate of the United States particularly, to begin to assume its responsibility under the Constitution. For years and years now we've abdicated. We've given all the power to the President when it came to war. We've sat on our hands and done nothing, and hoped that the people would look the other way.

Well, the time has come to reassert our responsibility and to stand up and vote on the question of war or peace.

Senator HATFIELD. You know, we've sort of enshrined silence as the virtue of patriotism in the last year or so; and actually, I think the highest patriotic duty that any citizen has is to speak up, to speak his convictions and his mind. That's the hope that we've got to give to all American people. That there is this method, there is this channel open to them, and that we, and others like us on this end of the power structure, so to speak, are receptive. We're not only receptive, but we're inviting them to participate in this Amendment to end the War.

Senator HUGHES. This is what we must do. We need their help. Even if we had 40 Senators presently on this Amendment, we need the help of the people of the United States. There's no other way that we can succeed; and the voice of the people counts in the final analysis. If I'm to exercise my judgment and to follow my conscience in a position of responsibility, I must tell the people when I think we're right, and I must tell them when I think we're wrong; and expect them to support those positions, or to oppose them. But for Lord's sake, don't be quiet. Write, support or oppose, but do something in this critical time.

Senator HATFIELD. If you want to cast your vote to end the war in Indochina, there is something you must do in the next few days. Write to your Congressman or your Senator, just the simple words, "I vote for the Amendment to End the War in Southeast Asia."

Senator GOODELL. And there's something else you can do. Take a sheet of paper and write on the top, "We, the undersigned, favor the Amendment to End the War." Leave room for names and addresses; and then go out to work, to the church, to the super market, where ever you can collect signatures, and get people to sign who agree with you. Send those petitions to your Congressman and to your Senators.

Senator HUGHES. The President of the United States rightfully can command all media to bring a message to the people of the United States any time he deems he has a message of importance. For those of us who have differing viewpoints, and wish to express those to you, the American people, it requires that we seek your assistance.

Senator CHURCH. Remember that 66 cents out of every tax dollar now goes for war. A dollar for peace could go a long way. So send your contribution, whatever it may be, in order that we can continue to speak out. Make your checks out to "Amendment to End the War," post office Box 1A, Ben Franklin Station, Washington, D.C. 20044.

Senator MCGOVERN. Let me close this broadcast on a very concrete and specific point. What we are proposing here is that for the first time in the long history of this war, the Senate of the United States stand up and be counted yes or no, on the question of whether we wish the war to continue, or to be ended. We propose to do that in a vote that will come in a very short time. We pledge you that that vote will be held. This is not a sense of the Congress Resolution, it is not a debator's point; it is an act of law, which if carried, will put an end to this war in a systematic way. We ask earnestly tonight for your support in that effort.

President NIXON. Strive in every area of the world——

General WESTMORELAND. In 1968, a new phase is now starting.

President JOHNSON. General Westmoreland's strategy is producing results.

General WESTMORELAND. The enemy's hopes are dim.

President NIXON. If, when the chips are down, the world's most powerful nation acts like a pitiful, helpless giant——

Closing NARRATION. In just a few days, debate on the amendment to end the war will begin on the floor of the United States Senate.

If the American people can effectively urge its passage upon the Members of the House and Senate, if the amendment to end the war is passed, then the traditional right of declaring whether or not we shall commit Americans to battle will be returned to the Congress—where it belongs.

Through protest, petition, and an act of law, we shall have at last ended the Vietnam war.

AMENDMENT NO. 609 TO THE MILITARY PROCUREMENT AUTHORIZATION BILL (H.R. 17123)

Sec.—— (a) Unless the Congress shall have declared war, no part of any funds appropriated pursuant to this Act or any other law shall be expended in Vietnam after December 31, 1970, for any purpose arising from military conflict: Provided, That funds may be expended as required for the safe and systematic withdrawal of all United States military personnel, the termination of United States military operations, the provision of assistance to South Vietnam in amounts and for purposes specifically authorized by the Congress, the exchange of prisoners, and the arrangement of asylum for Vietnamese who might be physically endangered by the withdrawal of United States forces: And provided further, That the withdrawal of all United States military personnel from Vietnam shall be completed no later than June 30, 1971, unless the Congress, by joint resolution, approves a finding by the President that an additional stated period of time is required to

insure the safety of such personnel during the withdrawal process.

(b) Unless Congress shall have declared war, no part of any funds appropriated pursuant to this Act or any other law shall be expended after December 31, 1970, to furnish to Laos any military advisers, or to support military operations by the forces of the United States or any other country in or over Laos.

(c) Unless the Congress shall have declared war, no part of any funds appropriated pursuant to this Act or any other law shall be expended, after thirty days after the date of enactment of this Act, to furnish to Cambodia any defense article or any military assistance or military advisers, or to support military operations by the forces of the United States or any other country in or over Cambodia.

(d) For the purposes of this section, the term "defense article" shall have the same meaning given such term under section 644 of the Foreign Assistance Act of 1961.

ATTACHMENT NO. 3

JULY 7, 1970.

Mr. JULIAN GOODMAN, *President, National Broadcasting Company, New York, N.Y.:*

On May 12, 1970, a 30-minute program sponsored by the Amendment To End The War Committee was broadcast on NBC–TV. Since NBC has not broadcast contrasting views, I respectfully request that Senators opposed to the end the war amendment be granted equal time, without cost, so that the public may be informed and the fairness doctrine complied with. Your immediate response will be appreciated.

BOB DOLE,
United States Senate.

Hon. ROBERT J. DOLE,
Senate Office Building,
Washington, D.C.:

In response to your telegram today to Julian Goodman may I point out that the NBC television network has provided many opportunities since May 12 for spokesmen opposed to the views expressed on the program sponsored by the Committee On The Amendment To End The War. In addition to coverage in our regularly scheduled news programs President Nixon addressed the Nation on the subject of Cambodia on June 3 and discussed many of the issues involved in the war in Southeast Asia in a special broadcast on July 1. Many other spokesmen opposed to the Hatfield-McGovern amendment have appeared on the Today program including Senator McClellan, Secretary Laird and Edmund J. Gullion. Secretary Laird and General Earle Wheeler also appeared on a special prime-time edition of Meet The Press on June 4 to discuss issues raised by the incursion into Cambodia. Senator Peter Dominick and General Maxwell Taylor are scheduled to appear on a special program on the same subject to be broadcast from 7:30–8:30 PM on Thursday, July 9. In our judgment those who oppose the amendment to end the war have had full opportunity to express their views and we respectfully decline your request for a special program devoted to this issue.

Corydon B. Dunham, Vice President and General Attorney, National Broadcasting Co., Inc., New York.

JULY 9, 1970.

Mr. JULIAN GOODMAN,
President, National Broadcasting Company, New York, N.Y.:

I renew my request for equal time to respond to statements made by so-called "end the war" Senators on NBC May 12. NBC has not presented contrasting views on the amendment itself. The coverage outlined in the telegram from C. B. Dunham did not in any way deal directly with the so-called "end the war" amendment. Reportedly over one half million dollars has been raised as a result of the NBC program on May 12. Numerous Senators oppose solicitation based on emotion and the amendment itself. Respectfully request NBC reconsider my request of Tuesday, July 7.

BOB DOLE,
United State Senate.

Hon. BOB DOLE,
United States Senate,
Washington, D.C.:

This will reaffirm the reply sent you yesterday at my request by NBC vice president and general attorney Corydon B. Dunham. NBC has afforded ample opportunity for comment by all sides on the issues raised by your two telegrams, and I am sure additional opportunity to comment on the "end the war" amendment will be possible on Tonight's special NBC news program titled "Cambodia—Right or Wrong?" which will be televised over the NBC television network seven thirty to eight thirty p.m. We must respectfully deny your request for reconsideration of the proposal in your telegram of July 7 that you be granted equal time without cost to the thirty minute program broadcast on NBC May 12, 1970.

JULIAN GOODMAN,
President, National Broadcasting Company Inc.

Mr. DOLE. Mr. President, the brief that was filed today with the FCC was submitted by the junior Senator from Kansas (Mr. DOLE), the junior Senator from Florida (Mr. GURNEY), the junior Senator from Michigan (Mr. GRIFFIN), the junior Senator from Colorado (Mr. DOMINICK), the junior Senator from Arizona (Mr. GOLDWATER), the senior Senator from Arizona (Mr. FANNIN), the junior Senator from Illinois (Mr. SMITH), the senior Senator from South Carolina (Mr. THURMOND), the junior Senator from Wyoming (Mr. HANSEN), the junior Senator from Nebraska (Mr. CURTIS), and the senior Senator from Colorado (Mr. ALLOTT).

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ADDITIONAL STATEMENTS OF SENATORS

IMPORTANCE OF THE FARM PROGRAM

Mr. ELLENDER. Mr. President, we are again hearing reports that our Nation cannot afford to continue our farm price support and supply stabilization programs. In my opinion, this is a mistaken, short-sighted view.

Although the number of people living on farms has declined a third in the last 10 years, three out of every 10 jobs in private employment in our country today are related to agriculture.

Agriculture's assets total $307 billion, equal to—

About two-thirds of the value of current assets of all corporations in the United States; or

About one-half of the market value of all corporation stocks on the New York Stock Exchange.

Capital investment in agriculture is approximately $50,000 per farmworker double the investment for each manufacturing worker.

About 55 percent of the Department of Agriculture expenditures, in the 1970 budget, are for services which are of primary benefit to the general public. Only 45 percent goes for price support and related programs in which farmers are the primary but not the only beneficiaries.

These farm program expenditures have maintained net farm incomes 25 percent or more above what they would otherwise have been in recent years. However, the effects of farm program expenditures go far beyond their income benefits to farm families. The stabilization of market supplies and prices of major farm products has stimulated farmers to adopt new technologies and improved practices, and made it possible for young farmers to obtain credit for modernization and farm enlargement.

Although cotton, feed grains, wheat, tobacco, rice, and peanut producers benefit most directly from these programs, they have contributed to the stabilization and improvement of livestock, dairy, and poultry producers' incomes. Federal marketing agreements and orders also have improved and stabilized incomes for most fruit, vegetable, and milk producers.

Agriculture's progress, made possible in part by these programs, has been dramatic. Since the early 1950's the annual increases in farm output per manhour has been two to three times the rate of increase outside of agriculture.

The number of workers released from the farm work force equaled one-fourth the growth in civilian nonfarm employment during this period.

Even though the number of farmers and farm workers declined sharply and the acreage of harvested crops was reduced, farm output increased by almost one-third.

The high level of efficiency of American farmers is reflected by the fact that consumers are spending only 16.5 percent of their disposable income for food today as well as by the fact that only 5 percent of consumers disposable income is represented by the farm value of domestically produced food. In Western Europe consumers spend 25 percent of their income for food; in Russia they spend nearly 50 percent, and in many areas of Asia they spend as much as 75 percent.

Farmers in no other country of the world produce such a high proportion of its citizen's food and receive such a small fraction of the consumer's income for their products.

This magnificent performance of American farmers and agribusiness is a direct result of the research and development programs largely authorized and financed by the Congress, beginning about 100 years ago, together with the credit, price, and income stabilization programs of the past 37 years.

In relative terms farm program costs are small—not large, and on a relative basis they are becoming even smaller as national income and other Government expenditures grow.

In recent years expenditures for market supply, price stabilization, and related programs represented less than 2 percent of total Federal Government budget expenditures and about one-half of 1 percent of the disposable income of consumers.

If one added the entire cost of Department of Agriculture expenditures to consumer expenditures for food they would still be spending only 6 percent of their disposable income for farm-produced foods, including the costs of all Department of Agriculture activities.

No other industry gives consumers as great a bargain.

Mr. President, I am concerned that time is running out for the renewal and extension of the programs which have meant so much to farm families in recent years. I can understand farm leaders' reluctance to give up tried and tested programs and shift to new set-aside provisions which analysts tell us may result in increased farm program costs and lower farm income.

In my opinion, we should improve and extend the programs that have demonstrated their effectiveness in improving farm families' incomes, expanding exports, and strengthening our balance of payments, while liquidating the surpluses built up in the late 1950's. We do not have any serious crop surpluses in government warehouses now and we do not want to acquire any more in the next few years.

People living on farms now receive only three-fourths as much income as nonfarm people and we cannot with good conscience allow their incomes to decline further. While remaining competitive in world markets, we must continue programs which will stabilize market supplies and prices, an essential condition for a progressive agriculture.

When I addressed the Senate on this subject on January 27, I went into some detail regarding the economic consequences of failing to extend or replace the Food and Agriculture Act of 1965 before the 1971 crops are planted. Unless the 1965 act is extended or replaced the continuing legislation enacted in the 1930's, 1940's, and 1950's will become effective.

Analysts are generally agreed that farm income would fall by a billion dollars or more in 1971 if we fail to enact new legislation. Wheat producers probably would fail to approve a marketing quota referendum as required and lose all their wheat certificate payments which amount to $900 million in 1970. The second year, wheat acreage allotments probably would be reduced even further because loans at 50 percent of parity, now required in the continuing legislation, would cause stocks to pile up again.

Although cotton producers might receive higher incomes in 1971 under the continuing legislation if the 1965 act is allowed to expire, unmanageable stocks of cotton would be piled up. New legislation would be almost imperative the second year.

Feed grain producers would be most adversely affected the first year. They would lose all their current payments which will total about $1.5 billion in 1970 and market prices would rest on the 50 percent of parity price support level provided in the continuing legislation. This will be about $.90 a bushel for the 1971 crop of corn.

Although feed grain producers would incur the most serious income losses in 1971, if the 1965 act is not renewed or replaced, cotton and wheat growers may incur the greater income losses over a 3- to 5-year period. Farm income losses would surely reach $4 to $5 billion a year—a fourth to a third of the net income now realized by farmers.

After the first year or two lower prices of grains, soybeans, cotton, and livestock products would result in lower values for all agricultural assets. Cattle breeding value for a year or two but, they too, would decline after that.

The decline in agriculture income and farm assets would adversely affect all rural financial institutions and all public institutions in rural areas.

In addition to the economic chaos in the rural communities resulting from the return to the continuing legislation, the Commodity Credit Corporation would again acquire surplus stocks of cotton, feed grains, wheat and wool, adding to Government costs and creating more problems for future years.

In closing this brief statement on our most important domestic industry, I want to call the attention of my urban colleagues to the fact that although industrial prices and wages are continuing to rise farm prices have been declining in recent months. Farm prices in 1969 were only 2 percent higher than in 1947–49. They reached a 5-year high in February of this year only a little above 1947–49 levels and have been declining since. Farm prices declined slightly in March with price declines in hogs, eggs and milk contributing most to the decline. In April farm prices declined 3 percent with price declines for hogs, eggs, cattle and oranges accounting for most of the price drop. In May farm prices held at their April level but the statistical reporting service reported still lower prices for eggs, cattle and hogs. Although retail food prices in May were 7½ percent higher than a year earlier, farm prices were up only 1½ percent.

Even though existing farm programs are continued, farmers are facing their most severe cost-price squeeze in recent years. In the past 5 years increases in the prices farmers paid for production items, interest, taxes and farm labor have been 1½ times the increase in farm prices. Farmers face the prospect that their costs will continue to rise even though farm prices decline in the months ahead.

If existing programs are ended abruptly with the expiration of the Food and Agriculture Act of 1965, many farmers and many rural financial institutions face bankruptcy.

If consumers are to continue to be supplied with ample quantities of a wide variety of high quality foods at all times at moderate prices, an efficient progressive agriculture must be maintained. Existing programs which stabilize market supplies and prices are an essential part of today's modern, efficient agriculture. Their continuation will benefit consumers as well as producers in the long run. With no farm program, a food shortage may follow, our economy will sag, and the small amount paid farmers under existing laws will pale into insignificance compared with the additional cost to consumers in the event of a food shortage.

CHAMPION OF THE INDIAN

Mr. MANSFIELD. Mr. President, the New York Times of July 11, 1970, contains a very interesting and captivating story on the wife of our distinguished senior Senator from Oklahoma (Mr. HARRIS). The article, entitled "Champion of the Indian," describes the work, the attitude, the integrity, and the desire of LaDonna Crawford Harris, the wife of Senator HARRIS.

I know personally, of her great and primary interest in the welfare of the Indians ever since she and her husband came to the Senate. I know of the long hours she has put in in their behalf while her husband, in the Senate, has put in long hours and contributed great knowledge to the cause of good Indian legislation. They make a great team, and the first Americans of this Nation are fortunate to have as their champions, Senator FRED HARRIS in the Senate, and LaDonna Crawford Harris outside the Senate.

I ask unanimous consent that the article on LaDonna Crawford Harris be printed in the RECORD.

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

CHAMPION OF THE INDIAN—LADONNA CRAWFORD HARRIS

WASHINGTON, July 10.—LaDonna Crawford Harris has never been the tea party sort of Senate wife. "When she gets ahold of a cause she's like a terrier," says one friend, "she just won't let it go." This week, the White House spoke on the cause that Mrs. Harris most fiercely champions—Indian rights—and the wife of the former Democratic National Chairman, Senator Fred R. Harris of Oklahoma, was quick to respond with cautious praise.

"Indians have been the victims of fine rhetoric, followed by inaction or worse for two centuries," said Mrs. Harris, who is a member of the Comanche tribe. "I only hope the President will employ all the resources of his office to see that his excellent and sensitive recommendations are actually carried out."

Mrs. Harris testified today before a Senate subcommittee in favor of the Administration-endorsed bill that would return 48,000 acres of federally owned land in New Mexico to the Taos Pueblo Indians.

Tomorrow, she will be raising funds on Long Island for the Americans for Indian Opportunity, a private organization modeled after the Urban Coalition that she founded in February.

NATIONAL CLEARINGHOUSE

Mrs. Harris was one of the six original Indian members of the National Council on Indian Opportunity, the White House panel appointed by President Johnson in 1968. She later quit the council, complaining that Federal agencies were responding sluggishly to proposals to help Indians.

Her own new organization, an aide said yesterday, is designed to be a clearinghouse for national lobbying efforts for Indian causes. It will aid Indian self-help projects, advise foundations on which programs merit funds, and provide legal services.

Americans for Indian opportunity set up a political action council last month, borrow-

ing an organizational device from the Urban Coalition on whose national steering committee Mrs. Harris serves.

Friends and co-workers speak of Mrs. Harris's "emotional commitment" to the minority-group causes she champions. Most attribute a good part of her energy and intensity to a strong identification with her own Oklahoma background.

Born Feb. 15, 1931, to an Irish father and Indian mother, she was raised by her Indian grandparents on a farm in Walters, Okla. Comanche was the family's primary language.

She and Fred Harris were high school sweethearts (he unsuccessfully managed her candidacy for Cotton County Turkey Queen), and they were married as he entered the University of Oklahoma.

Mrs. Harris worked in the university library while her husband became Phi Beta Kappa in his junior year and later went on to rank first in his law school class.

PART OF THE CREDIT

A political associate gives Mrs. Harris some of the credit for Mr. Harris's defeat of J. Howard Edmondson and Charles (Bud) Wilkinson in 1964 to become a Senator at the age of 33.

The Senator and his wife could be placed in separate rooms and asked the same question and they would most often give the same answer, Mr. Harris has said. "They really grew up together," an associate said, "and that means they have a great deal of common purpose."

The Harrises have three children—Kathryn, 20, Byron, 12, and Laura, 8. Despite the pace of Mrs. Harris' public activities, the couple frequently entertain in their home in McLean, Va.

Referring to the crusader for Indian rights the other day, a friend in Washington said: "She's young and vibrant and doesn't try to come on as a stodgy Senator's wife."

THE INTERNATIONAL TRAVEL ACT

Mr. SCOTT. Mr. President, the Senate's passage of legislation to encourage national efforts to increase foreign travel to the United States could not come at a more opportune time than now. The American Revolution Bicentennial Commission has just recommended that Philadelphia be selected as the principal site for an exposition during our bicentennial celebration in 1976. The relevance between the conference report on the bill that was adopted yesterday and the anticipated exposition lies in the importance which the former will mean to the latter. For example, the bill will encourage foreigners to visit our country in greater numbers than ever before. The bicentennial exposition is expected to draw 51 million visitors to Philadelphia, who will then spend over a billion dollars. So we see how well these two things complement each other.

My interest in promoting tourism in America is not new. In fact, I sponsored the legislation creating the U.S. Travel Service back in 1961. Since that time, foreign travel to our country has increased more than 188 percent, a fact I brought out during my testimony on this bill, which I cosponsored nearly a year ago. As reported by the conferees, H.R. 14685 authorizes appropriations of $15 million for the U.S. Travel Service for each of the next 3 fiscal years. It would also establish a 15-member National Tourism Resources Review Commission which will, among other things, determine the domestic travel needs of our citizens and foreign visitors alike and will then determine what we must do to meet those needs. Last, the bill creates, within the Commerce Department, an Assistant Secretary for Tourism to administer the U.S. Travel Service.

The travel situation within the United States is paradoxical. On the one hand, we earn more money and receive more visitors than any other nation in the world, yet so many Americans travel abroad that we register a huge travel deficit. For every two tourist dollars leaving the United States, only $1 returns. As I have mentioned in the past, travel restrictions on U.S. citizens are certainly not the answer. We must use existing means to promote foreign travel to our country, and I believe the enactment of the legislation we are considering will aid in that effort.

A study by the Industry-Government Special Task Force on Travel also supported the objectives of the pending bill. In its report, the task force recommended four general approaches to encourage foreign visitors to see the United States. The legislation before us implements this report and assures a more dynamic and coordinated approach to our travel policy and encourages the development of its full potential.

First, the report says that we should provide reductions and discounts to lower the cost of travel by foreign visitors to the United States. Clearly, foreigners do not usually spend as much per capita in the United States as we do in their countries. Monetary incentives are, indeed, very much in order.

Second, we should have a concerted national effort to stimulate foreign travel to the United States. This would include the promotional efforts of U.S. industries and the news and entertainment media.

Third, the task force recommends that we make some very routine adjustments enabling the foreign visitor to avoid a great deal of redtape and delay. Such suggestions as simplifying and consolidating entry procedures would help.

Fourth, we should expand the role of the U.S. Government in promoting travel to our country. As similarly recommended in the pending bill, there should be increased Federal spending for travel promotion and a more dynamic national travel policy.

Mr. President, with but 6 years to go until the American Revolution bicentennial observance, we must redouble our efforts to bring foreign visitors to our shores. Philadelphia and our entire Commonwealth will benefit immensely from the more than 50 million visitors in 1976. I am personally going to redouble my efforts to assure that citizens of other nations will be encouraged to travel to the United States and to tour the Commonwealth of Pennsylvania. The conference report adopted yesterday is a positive step in that direction.

PRIVILEGE AND POISON: SERMON BY CANON MICHAEL HAMILTON

Mr. PELL. Mr. President, Canon Michael Hamilton presented a strong, striking sermon at the Washington Cathedral on Sunday, July 5.

I found his sermon so compelling that I thought it might be of interest to Senators. I, therefore, ask unanimous consent that the sermon be printed in the RECORD.

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

PRIVILEGE AND POISON

(Sermon preached at Washington Cathedral on Sunday, July 5, 1970, by Canon Michael Hamilton)

Once upon a time, a king decided to crush a rebellion in a distant land. He called together the captains of his army, told them his will and sent them on their way. After some months, one of the captains returned to report that the rebels were in retreat but that they were still dangerous. The king commended the captain for this progress and ordered his army to continue fighting until the rebels sued for peace. After many more months, another captain returned to report that the war was not yet over, that the rebels had taken refuge in a fortified city, and that the king's army still suffered occasional casualties. Upon hearing this the king became angry and demanded to know if there was any way the enemy could be defeated. The captain replied that if the king wished for a speedy victory he would permit the river which brought water to the city to be poisoned. The suffering caused by this would surely bring peace. The king pondered his nation's great traditions and the dishonor of winning a war by such means; he thought about the continued killing of hundreds of his own soldiers, and he considered the many thousands of women and children who would surely die if the poison were to be used. Then he spoke to the citizens and said "In love and mercy we must act to save the lives of our soldiers. Their lives are privileged—let the poisoning begin!"

What do you think of such a king? Did he do right or did he do wrong? Did he act in love and mercy or did he not. While I do not make a one to one relation between that story and the state of our nation, the story does raise questions for us to ponder. If the mark of a great nation is a willingness to face up to issues, then clearly to fulfill our own heritage we must do so, especially on a weekend when we celebrate our independence and the high principles then espoused. This week the President and others in Congress have discussed the merits of the Indo-Chinese war, and I do not wish to speak on that vast subject. However, there is an aspect of the war not as often reviewed, and this morning I invite you to examine with me the morality of its conduct.

When we first intervened in the Vietnamese struggle we did so by using conventional weapons and tactics. After six years of our participation in that war, reflect for a moment to what degradation we have come. We now view as ethical the creation of thousands of refugees by forced evacuation, and we have yet to supply them with adequate food, shelter or medical services in their new locations. We view the torture of prisoners as normal, and some of our soldiers have been involved in massacres of women and children. We drop napalm and fragmentation bombs, and contrary to the Geneva Protocol of 1925, we have used tear gas and herbicides. Tear gas has been released not only to immobilize enemy troops as first claimed, but also to force them out of hiding so that they may be killed by either small arms fire or bombing from aircraft. It is true we have withdrawn some of the poisonous defoliants from current use, but only after they have been shown to cause genetic defects in animal offspring. The extent of long-term ecological damage is still unknown.

The greatest single cause of suffering has probably been the bombing of areas inhabited by civilians suspected of being sympathetic to the enemy. Anything that moves

in so-called "free zones" is a target, even if it turns out later to be a child running across a village square. The continued practice of high-level area bombing of Viet Nam has aroused the disapproval and disgust of statesmen all over the world. Now it has been extended into yet another unfortunate country—that of Cambodia. The irony of such bombing is that while it weakens the enemy's military strength, it also alienates more civilians whose eventual acceptance of our stated political goal of democratic self-determination is essential to peace.

Poison returns to the poisoner and the violence that we have practised abroad has come to brutalize us here at home. Many Americans have come to believe that all is fair in love and war: but as Christians we must disagree. Some have hoped that the end justifies the means: but as Christians we must dissent. Our leaders have neglected that humanitarian concern which should penetrate all wartime decisions: as Christians we must protest.

It is hard to preach on these matters in a service of Eucharist, hard again in times of war to criticize the policies of one's leaders. However, it is also a duty to speak the truth as we are given to know it.

The conduct of the Indo-China war brings discredit on both sides. The enemy has also used inhumane weapons and tactics, they too, have tortured and massacred civilians. But by what authority can we excuse our acts by the sins of another? Not by the God of the Bible, not by the God of Abraham, Moses and the prophets. This call to your conscience is not, of course, a lone one, for many voices in our land have been raised in dissent. Last month our Presiding Bishop, John Hines, joined by other denominational leaders, appealed to Churchmen to view the war with humanitarian perspective, not national pride. The Executive Council of the Episcopal Chuch has demanded the total withdrawal of all American forces from Southeast Asia now, and an end of the war.

The final moral issue which I wish you to consider this morning is the increasing tendency of our Administration to justify its policies by saying that they will save or protect the lives of American soldiers. Everyone wishes desperately to save those lives—but we must also honestly ask what will be the cost of such salvation to others. To undertake drastic military action which promises peace and saves lives may well be warranted. But to take an act that saves the lives of one's own soldiers, while bringing great destruction on enemy civilians, has never been honored amongst men. How much privilege shall we extend to ourselves? To save one American life may we kill ten Cambodian women? Or a hundred Vietnamese children? Or a thousand? To what ghastly new massacres will we be led? This strategy, unless re-defined by humane considerations, is immoral and should be discarded. Is a cause is worth espousing, if it is in our national interest, then we ourselves must be prepared to defend it. There is something deeply wrong about our being willing to shed the blood of others for a cause which we will not risk our own lives. The importance of facing up to this moral issue will increase as our combat troops withdraw, but our bombers continue their devastation.

God is the Father of all people. He values Vietnamese, and Cambodians just as much as he loves Americans. The hairs of all his children, whatever their political persuasion, are numbered. God is no respecter of persons and no self-assumed privilege will withstand His judgment. This is part of our witness as we gather round this table to remember Jesus Christ, He who died for all men. As we drink His blood, and eat His body, and recall sacrifice, may we also thankfully accept His forgiveness and pray for His guidance in our national and personal affairs.

SENATOR PERCY DISCUSSES OUR NATO COMMITMENT

Mr. GRIFFIN. Mr. President, the senior Senator from Illinois (Mr. PERCY) has written for the June issue of Washington Monthly Magazine a penetrating article on our commitment to NATO. I ask unanimous consent that the article be printed in the RECORD.

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

PAYING FOR NATO

(By Charles H. Percy)

Today, a quarter of a century after the end of World War II, it is time for a thoughtful and comprehensive reassessment of the American commitment to NATO. In terms both of total costs and manpower the United States is bearing an unfair and staggering burden in the defense of Europe. If the European nations are not getting a free ride, they are at the very least traveling at an absurdly low fare.

At present, there are about 1.2 million American troops stationed overseas. About 25 percent of them, or 300,000, are located in Europe, with 220,000 in West Germany alone. Moreover, along with our troops in Europe are 242,000 dependents and 14,000 civilian employees—a total of 556,000 Americans in Western Europe. This constitutes a longer American presence than the United States ever has deployed in Indochina, where a war is being fought. The cost of the vast American military presence in Europe places a tremendous drain on the U.S. budget. Each year, it costs the American taxpayers $14 billion to support our troops in NATO. There is also a $1.5 billion balance-of-payments deficit directly tied to our military commitment; $1 billion of that deficit is in Germany alone.

At a time when the United States must turn its resources to an unprecedented array of domestic problems, it is apparent that not even the wealthiest nation in the world can afford to continue its present commitment to NATO. The litany of this nation's internal maladies is by now familiar—a deteriorating environment, racial discord with all of its ugly ramifications, inadequate health care, poverty that touches more than 25 million Americans, cities on the verge of economic and social collapse. If we are to reduce our disproprortionately large commitment to NATO to permit us to marshal our resources for the domestic battleground, two possible approaches are open.

The first, a unilateral withdrawal of a portion of our troops from Europe, has the virtue of simplicity and its effects would be felt almost immediately. Sentiment is growing for this approach in the Congress and with the public at large, and if no satisfactory alternative is implemented within the next few months, I am prepared to help lead the fight in the Senate for troop reduction.

But I believe that another option is available—one which will insure that the cost of defending Europe will no longer be primarily an American responsibility, but which also will permit the question of troop commitments to be resolved on military and strategic grounds, not out of economic necessity. I call my approach "burden-sharing" and it simply means that the Europeans will begin to carry a fair share of the expenses of their own defense. It requires no special perception to observe that Europe today is not the rubble-strewn continent it was 25 years ago, or that its reconstructed, thriving economies can bear a much larger defense burden than was possible in the immediate post-war years. Changing conditions demand changing responses. If the European nations do not accept their new responsibilities, and do so quickly, reductions in American troop levels will have passed the point of debate; they will become inevitable.

The immediate goal of the U.S. should be the cutting of its NATO expenses by $2 billion. If this country found it possible to pare its own annual space expenditures from over $6 billion to $3.3 billion, it should not be difficult to devise ways to trim $2 billion from a total outlay of $14 billion. With the U.S. facing severe economic pressures, with every American aware of the need for budgetary belt-tightening, it is ludicrous for us to continue to shoulder expenses that rightfully should be borne by Europeans. There are several identifiable areas in which Europeans could pick up the cost burden from the U.S.:

(1) Salaries of the 74,000 local nationals employed by U.S. forces. These people are working for NATO and just happen to be servicing Americans. In Germany, for example, where 62,000 of the local nationals are employed, we are now paying German citizens—service help, not mercenary soldiers—about $250 million. Why shouldn't the local government assume these costs?

(2) Construction costs. Buildings built in Europe for American forces obviously are not going to be brought back to the U.S. when American troops leave, nor are we likely to be reimbursed for them. They should be paid for by the host government.

(3) Materials and equipment purchased in the local economy for use in that country.

(4) Transportation, power, and various other services. Why should we pay the cost of transporting our troops around Europe when the means of transportation are owned by the local government? And why should we be paying a German government-owned power company to supply us with electricity?

(5) NATO infrastructure expenses. Certainly structures like runways and roads cannot be carried back to the U.S.

Just these five categories, if picked up by the European governments, could save the U.S. about $1 billion a year in budgetary costs, about half of it in Germany.

Moreover, it is scandalous that the U.S. government continues to pay millions of dollars annually to its NATO partners in taxes—real property taxes, local and municipal taxes, business and trade taxes, excise taxes, and import taxes. We do not pay taxes to the states and communities in our own country where we have military installations; yet our European allies, the nations we spend billions to protect, have no compunction about adding those surcharges to our costs for our mutual defense. The General Accounting Office, in a detailed report of our tax payments in NATO countries abroad, found taxation to be particularly high in the United Kingdom and Germany, but it is also prevalent in Italy and Belgium. Clearly, U.S. military involvement in NATO should be tax exempt, and I intend to work with the General Accounting Office toward the elimination of this example of an intolerable burden.

Our foreign exchange position has deteriorated not only because of the many unjustifiable expenses we bear due to our NATO commitments, but also because of the unsatisfactory agreements we have negotiated in an attempt to offset our balance-of-payments deficits. In the early 1960's, offset arrangements took the form of military purchases by European countries in the U.S., but these purchases have diminished in recent years as European nations began equipping themselves. Since 1967, Germany has offset part of the U.S. balance-of-payments drain by buying $1 billion in bonds from the U.S. Treasury.

But a loan, which must be repaid, cannot be considered a true offset; it merely postpones the agony. Beyond that, the U.S. must repay its offset loans to Germany with interest, which puts this nation in the incredible position of paying money to Germany for the privilege of defending Germans. And

finally, as the ultimate insult to our fiscal intelligence, the German Federal Bank—the Bundesbank—called in $500 million worth of offset bonds three years ahead of time. It did so in utter disregard of the comparative economic conditions of our two countries—as measured by the relative stability of the mark and the dollar, the size of our national debt measured against theirs, or any other major indicator—and with no seeming concern for the possible fracturing of our political relationships. Moreover, because of the 9.3 per cent revaluation of the mark, the U.S. will have to repay not $500 million, but $545 million. And, should the Bundesbank wish to cash the remaining $500 million in offset bonds ahead of time, it can do so under the terms of the existing agreements.

These offset arrangements strain credulity to the breaking point. Our troops and dependents are hostages in Europe, designed to insure the credibility of our deterrent, and we are paying money to the nations that are benefiting. Fortunately, however, the current financial arrangement run only until June 30, 1971, at which point I trust they will be terminated. Chairman Arthur Burns of the Federal Reserve Board, Secretary of the Treasury David Kennedy, and Budget Bureau Director Robert Mayo concur in my conclusions that the agreements never should have been made.

In an effort to devise a better plan to cover military expenditures within NATO, I have been working with the NATO North Atlantic Assembly since 1968. I presented my plan, which was developed with the cooperation of the U.S. Treasury, to the NATO governments last October and invited them to make suggestions for its improvement. While I am not wedded to every detail of the proposal, I believe its basic concept is sound. It would provide that a clearinghouse be set up by NATO to identify the balance-of-payments gains or losses to each NATO country as a result of its commitment to the common defense and would create a structure for the adjustment of these gains and losses. I have urged that this structure take effect as soon as possible, in order that balance-of-payments adjustments could begin on a multilateral basis on July 1, 1971. This date would coincide with the conclusion of the existing bilateral arrangements between the United States and the United Kingdom and Germany.

This past January, I attended a privately-sponsored meeting of legislators and other prominent Americans and Germans in Bad Godesberg, Germany, at which the financing of the NATO alliance was a prime topic of discussion. Predictably enough, many of the German delegates' initial reaction to my burden-sharing proposals was that it would be politically and economically calamitous. I was often chided for being stubborn. Yet after prolonged discussion, I believe my colleagues and I were successful in reaching a consensus with the German participants. We agreed that a reevaluation of the manner in which the U.S. and Europe share the cost of the defense of Europe was needed and that a full range of proposals should be thoroughly examined—including a multilateral arrangement for automatic adjustments in the financial burden, such as the plan I had been working on in the NATO North Atlantic Assembly. During my visit to Germany, I also consulted with Chancellor Willy Brandt, who agreed in principle to the concept of burden-sharing, although he stressed that it would have to be carried out on a multi-national basis. I assumed that his qualification was based on internal political considerations and regarded it as an understandable device.

Our European allies have thus been slowly moving toward recognition of the financial inequities within NATO. Indeed, the NATO defense ministers agreed in June to commission a thorough review of budget responsibilities, with the clear intention of lightening the U.S. load. But no specific dollar commitments have been made, and current plans envision no reforms at all until fiscal 1972.

Having observed the understanding German atttiude at the Bad Godesberg conference, I returned to the United States considerably encouraged. As I had learned from my experience in business—during which, as a manufacturer of photographic equipment, I was in direct competition with them for 25 years—the Germans are hard-headed, tough negotiators, but above all they are realists. And they quite clearly understood that the only alternative to some form of burden-sharing would be a major American troop reduction in Europe.

Regrettably, however, European realism does not mean that the road to redistributive action will be easy. Chancellor Brandt, in a subsequent appearance on "Meet the Press," offered two unimpressive arguments to explain why the American commitment to the defense of Europe must be expressed in the present number of troops. First, he said, is the political and psychological factor—in some parts of Europe, a major unilateral withdrawal of American troops from Europe would be regarded as a step toward Soviet hegemony. Secondly, he suggested a chance exists that during the next few years NATO might be able to enter into serious negotiations on mutual balanced force reductions (BFR) with the Warsaw Pact nations; a precondition to these talks would be an important American presence in Europe.

To Chancellor Brandt's initial argument, I would reply that there are also serious political and psychological problems in the United States, and these must be my paramount concern. A majority of the Senate and growing numbers of the American people are disturbed by our sending billions of dollars overseas at a time when we are enduring a domestic crisis, particularly in view of the conspicuous prosperity of Europe. In my view, if Europe does not offer some tangible evidence that it is willing to make minimal sacrifices to pay for its defense, the public demand for troop reductions in Europe will grow in this country to a point at which no other response will be possible.

The Chancellor's references to BFR are little more than a red herring. American officials with whom I have consulted see virtually no chance of mutual troop reductions in the foreseeable future. They have been mentioned for years, but always in the conditional, as something that "may" or "might" occur sometime years from now. The reason for the conditional tense is a complete lack of interest to date on the part of the Soviets. Late in May, the NATO foreign ministers invited the Soviet Union, other Warsaw Pact powers, and other interested governments to explore mutual and balanced reduction of forces in Central Europe. While the proposal sparked some interest in the smaller countries of Eastern Europe, it was, as usual, promptly rejected by Moscow.

If anything, the public remarks of Helmut Schmidt, the Defense Minister of West Germany, have been less persuasive than the arguments of Chancellor Brandt. Defense Minister Schmidt blithely notes that it appears to be a "law of postwar history" that every 10 years a great debate arises over the relationship between U.S. and Europe. The debate he sees "in the offing" revolves about "America's future political position in Europe" and "the number of American troops that will have to be kept in Europe to maintain the credibility of the American commitment to the defense of the Old World." Mr. Schmidt, I suspect, has not been listening; the debate is already several years old. A resolution was introduced in the Senate three years ago calling for substantial reduction of U.S. forces permanently stationed in Europe. But it was much earlier, in an interview with former President Eisenhower in the October 26, 1963, issue of *The Saturday Evening Post*, that the debate began in earnest. At that time, General Eisenhower said:

"Though for eight years in the White House I believed and announced to my associates that a reduction of American strength in Europe should be initiated as soon as European economies were restored, the matter was then considered too delicate a political question to raise. I believe the time has now come when we should start withdrawing some of those troops."

Mr. Schmidt argues that Germany is not "sitting idly on its haunches, satisfied to leave its defense to Americans." To support this thesis, he states that the West German defense budget for 1970 represents an increase of 6.8 per cent over the previous year. I submit that Mr. Schmidt is neglecting more pertinent statistics, which put the German defense effort truly in context. He fails to mention that, according to the latest figures available, 8.7 percent of the men of military age in the U.S. are in the armed forces, compared to four per cent in Germany. He slights the fact that in 1969 defense expenditures per capita were $396 in the U.S. and $93 in West Germany; the German figure was lower than those of the United Kingdom and France and the same as that of Norway. He also ignores the fact that in 1969 the portion of American gross national product devoted to defense was 8.7 per cent, compared to 3.5 percent of the GNP in Germany—a percentage lower than those of the United Kingdom, France, Greece, the Netherlands, Norway, Portugal, and Turkey.

Mr. Schmidt concludes his disconcertingly frank presentation with a statement that further offset agreements to balance some portion of the foreign exchange costs the U.S. incurs because of the level of our commitment in Europe will be "difficult." Presumably not even Mr. Schmidt is enchanted with the interest-bearing loans. Budgetary contributions, the defense minister says, "would have to come out of the German defense budget; we would mend one hole by opening up another." In effect, he throws up his hands, saying, "I doubt strongly that we can come up with any solutions." His lack of solutions is the basic problem; it is completely unrealistic. It may be true that neither Germany's friends nor her enemies want a significantly larger West German army, and the German public probably would agree. But to argue that the most affluent nation in Europe can neither continue to offset American balance-of-payments losses suffered because of our troops in Europe nor pay a greater share of the budgetary cost of our military presence is not calculated to satisfy either the American Congress or American public opinion. And it should not, at a time when there are so many valid claims on our tax dollars.

Nothing in the foregoing should suggest that the United States will abandon its NATO partners; we have pledged to assist in the defense of Europe, and we will honor our treaty commitments. This country values highly its close friendship with West Germany and with the other nations of Western Europe. But legitimate friendship is based on equity and mutual self-respect. The American burden in the defense of Europe is patently inequitable and, were we to permit it to continue, it would reflect poorly on our judgment and leave our claim to world leadership open to serious question.

The Nixon Administration accepts the concept of Europeans sharing more of the costs of the NATO common defense. Some action will almost certainly be taken before the expiration of the current agreements in the middle of next year, whether it be troop withdrawals or the implementation of a burden-sharing plan. In saying this, I do not wish to appear to be threatening West Germany or the other European nations; I

am merely stating the economic facts of life. The time has passed when the United States could afford to devote $14 billion to the defense of Europe. That amount represents $560 annually for each of the approximately 25 million people now living below the federally-defined poverty level in the U.S. Our government would be remiss if it did not appreciate what this money could mean to countless Americans if a substantial part of it were invested in food, housing, education, and medical care for our own citizens.

I can envision no formidable obstacle to a shared responsibility in NATO if there is good faith on both sides. Certainly, if this country can Vietnamize the war in Southeast Asia, it should not be impossible to Europeanize the defense of Europe.

Europe, then, should be our first target in the campaign to return the primary burden for their own defense to the other nations of the world, but it should by no means be the only one. Japan, another highly industrialized, economically self-sufficient nation, now spends less than one percent of its gross national product on defense, far lower even than the West German figure of 3.5 per cent. Yet Japan profits from the American nuclear umbrella as well as from our vast military establishment in Asia. Equity demands that Japan become a primary candidate for burden-sharing in the years immediately ahead. Though perhaps my stubbornness on this matter of equitable burden-sharing can be traced to my own German heritage, I intend to be equally persistent with Japan and other nations in saying, "There is a limit to American resources. We have a job of nation-building here at home. We do not intend any longer to be the policemen for the world."

ANNOUNCEMENT ON VOTE

Mr. JACKSON. Mr. President, last Friday, July 10, on rollcall vote No. 238, the Senate passed Senate Joint Resolution 173, authorizing a grant of $20 million to defray a part of the cost of expanding the United Nations headquarters. At the time of this vote, I was necessarily absent from the Senate. I ask unanimous consent that the permanent RECORD reflect that if I had been present and voting on this rollcall, I would have voted "yea."

CRITICISM OF ARBITRARILY IMPOSED SCHOOL PLANS IN THE SOUTH

Mr. ALLEN. Mr. President, I have received numerous letters from concerned parents and public officials in Mobile County, Ala., in criticism of school plans arbitrarily imposed upon local school boards, parents, and school children of Mobile County, Ala., by agencies of the Federal Government.

The mayor of the city of Chickasaw, Ala., has written me on this subject, and his letter is typical of thousands I have received in the same vein. I think that Senators would want to be aware of the consequences of irresponsible actions by the Department of Health, Education, and Welfare, acting in consert with Federal courts, in actions which have the effect of destroying public support of education in Alabama and in the South.

Mr. President, I become incensed when agencies of the Federal Government resort to treating children as mere ciphers or quantitative units to be manipulated by formula to meet arbitrary requirements of a Socialist theory of equality.

Mr. President, I intend to continue to call the attention of the Senate and the public to examples of what I consider complete irresponsibility on the part of public officials in dealing with school children in the South.

Mr. President, in order to illustrate the substance of this complaint, I ask unanimous consent that the letter to me from the Honorable J. C. Davis, Jr., mayor of the city of Chickasaw, and an article written by Dixie Wright, press staff reported for the Mobile Press Register, be printed in the RECORD.

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

CITY OF CHICKASAW,
Chickasaw, Ala., July 2, 1970.

Hon. JAMES ALLEN,
U.S. Senate,
Washington, D.C.

DEAR MR. ALLEN: The United States Fifth Circuit Court of Appeals rendered on June 8 this year a decree demanding further desegregation steps of the Mobile County School System, of which the City of Chickasaw is a part. The Board of School Commissioners is quite disturbed regarding the plan, stating that it is impossible to carry it out.

We in Chickasaw are deeply concerned regarding the changes that will be made in our local schools. While there is sufficient space in our existing schools to handle all the pupils in this area, a substantial number at all grade levels will be required to attend classes in Mobile, Prichard and Whistler. These students will be forced to travel distances of almost five miles each way daily. The Mobile County School Board has told us that they will not be able to provide buses, and there is no public transportation available in our city.

The attendance zones are severely gerrymandered, with no regard to the accessibility of schools to students, community patterns or traffic hazards. There is no doubt that the only benefit to ensue from such a plan is the "ideal" of racial balance. Such important factors as the welfare of students and teachers—in fact, the process of education itself—are totally disregarded.

We firmly believe that our children are entitled to equal treatment and protection under the law. They should not be manipulated like pawns in some manic chess game.

The Mobile County School Board has filed an appeal, but past experience leaves us with doubt that this will be of any value. We hope you will give your earnest consideration to our problem, and use your influence with the Department of Justice and HEW, bringing about the adoption of a reasonable and workable plan for our schools. Without your intervention, we fear for the stability of our public school system.

Yours sincerely,

J. C. DAVIS, Jr.,
Mayor.

SCHOOL ACTION SAID IMPOSSIBLE

(By Dixie Wright)

Implementation of a June 8 court order which will extensively change the Mobile public school system in Mobile, Chickasaw and Prichard has been called a "physical impossibility" by the Mobile school officials.

The attorney for the Mobile County School Board has filed a petition with the U.S. Circuit Court of Appeals in New Orleans for a rehearing on the court order which school officials say has numerous mistakes and statistical inaccuracies making it impossible to implement.

The administrative staff yesterday said changes required by this most recent order "are so extensive as to amount to a totally new and different desegregation plan for . . . the system. Virtually every attendance zone is changed, at all three grade levels, elementary, junior high and senior high."

Magnifying the School Board's problems is the fact that the board will not be able to provide additional transportation to the students who will be affected by the decree.

J. A. McPherson, associate superintendent, emphasized at a news conference yesterday that there will not be any additional buses available for these students because (1) the board was not able to purchase more buses, and (2) even if they want to, there is not any money in the capital outlay budget to provide for this.

The court has required no changes in the rural portion of the system, slight changes in that part of the city portion of the system lying west of Interstate Highway 65 and very drastic and sweeping changes in all of the system lying east of I–65.

In general, the court order, which follows a plan submitted Jan. 27 by the U.S. Justice Department, calls for pairing of schools and the creation of senior high school complexes, the closing of a school, the reopening of another school closed March 20 and the gerrymandering in other school districts to achieve racial balance.

The court order further requires that teachers be assigned in each school on a 60 per cent white and 40 per cent Negro basis.

Asked whether this could be accomplished, Dr. Cranford H. Burns, superintendent, said a meeting is scheduled today but he did not know what the outcome would be and if the 60–40 ratio could be accomplished.

Also required by the order is application of the majority to minority policy. Under the policy, students can be transferred from a school where their race is in the majority to a school where their race is in a minority and they must be granted transportation if they desire it.

Abram L. Phillips, attorney for the board, in his petition to the court, said the plan "is an incompetent travesty which cannot be implemented because of sheer physical impossibility."

He said the Justice Department plan was "conceived in stupidity."

Phillips said the only hope the board has is that the court will give serious consideration to the appeal. "If the court takes only a superficial look, then it will all be out the window. If they take a serious look, then they are the only ones who can help with the situation."

Phillips also said the current plan being forced upon the school system is one which the district court rejected as "unworkable."

School officials said that many schools, under the new court order, are assigned overloads, and many others are under-utilized.

Of 60 schools in the area concerned, 34 are overloaded and 25 are under-utilized. Sixteen have overloads of 125 students or more, three have overloads of 500 or more, and one, Prichard Junior High, has an overload of more than 900 students.

On the other hand, 17 schools have been underutilized by 100 students or more, and 10 of these by more than 250 students each.

OVERLOADED SCHOOLS

Some schools overloaded are: Phillips-Washington Junior High, 674; Shaw High, 534; Dickson Elementary, 429; Rain Junior High and High School, 387; Central Junior High, 312; Dunbar, 303, and Toulminville, 252.

Major under-utilizations are: Mobile County Training, 899; Murphy, 486; Council, 341; Scarborough, 336; Dodge, 313, and Caldwell, 301.

Major problems associated with the new court decree outlined by school officials with the use of maps are:

Elementary:

The lines between Dodge and Dickson Elementary schools have been changed, leaving

313 vacant spaces at Dodge and creating an overload of 429 at Dickson. This will necessitate the use of seven portables, in addition to the seven already at Dickson.

Children in the north end of the Whitley Elementary zone (grades 1–5) must travel about a mile to their school.

Emerson School is ordered closed, when in fact, it was already closed by a previous order. The decree sets out a specific apportionment to other schools of 450 students from the Emerson area when there are only 192 students in existence.

There is a pairing of Chickasaw Elementary and Robbins. The Chickasaw attendance zone extends into Prichard requiring some students to walk at least three miles. The school will serve grades 1–5.

Gorgas becomes a very small district. Black students are the ones affected and there is no increase in desegregation in this area. Also affected in varying degrees are Crichton, Fonvielle, and Old Shell Road.

Mertz students attending Woodcock will have to be transported about two miles away from the Mertz zone.

Craighead was gerrymandered. Students have to walk 2½ to 3 miles to school.

Indian Springs, serves grades 1–5 but provides no place for the sixth grade.

Eight Mile grades 1–8 go there according to the map but decree says grades 1–6, no provision is made for grades 7–8.

The only elementary zones remaining the same are Barkley, Morningside, Brazier, Williams and Grant.

MIDDLE SCHOOLS

Middle schools:

Trinity Gardens becomes a middle school for grades 6–7.

Prichard serves grades 6–7. Provides for 1,500 students when the capacity of school is 588.

In the Mobile County Training area, the court says there are 1,200 students. The school board says 300.

K. J. Clark, serves only grade 8, for a large geographic area.

In some cases, the board pointed out some students will have to attend at least five different schools.

Scarborough—The decree indicated that it was left as is but the maps show different. According to the board, the school will be only 50 per cent filled.

Washington-Phillips, another pairing situation with grades 7–9 served. This would result in students traveling as far as 6–7 miles.

Central is changed to a middle school. The zone extends all the way to U.S. Highway 90. Students would have to be transferred seven miles. At present there is no transportation provided the school.

Dunbar is overloaded.

Eanes and Hall are paired for grades 6–9. Students in the Navco area would be sent to Hall, a distance of about 7–8 miles.

B. C. Rain, grades 7–12, is left as is.

SENIOR HIGH SCHOOLS

Senior high schools:

Williamson, expanded to include the Navco area.

Murphy, expanded to take care of the Central students.

Toulminville, varying changes with discrepancies between the map and the decree.

Davidson, left as is except with ninth grade in the Spring Hill area to go to Phillips-Washington.

Mobile County Training is used for grades 6–7.

Closed Bienville as an elementary school to provide for the Vigor-Bienville senior high complex.

Blount paired with Carver for another senior high complex.

According to figures of the pupil personnel office, there will be four all white and four all-black schools. The all white schools would be Scarborough Middle School, Westlawn, Morningside and Forest Hill Elementary schools. The all-black would be Brazier, Fonvielle, Owens and Council Elementary schools.

But, according to the court plans, Fonvielle and Caldwell would be all black, and Westlawn, Morningside and Forest Hill would be all white.

Under the plan, Arlington, closed March 20, would be reopened, Emerson would remain closed and Howard would be closed.

BACKGROUND OF THE KENT STATE TRAGEDY

Mr. BYRD of Virginia. Mr. President, I have just read an interesting article in the July issue of the American Legion magazine.

The article presents background on the tragedy at Kent State University as excerpted from the annual digest of the House Committee on Internal Security.

I ask unanimous consent that this article be printed in the RECORD.

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

THE BACKGROUND OF THE TRAGEDY AT KENT STATE UNIVERSITY

The Students for a Democratic Society got what it wanted on Monday, May 4, 1970, when four students were killed and eleven others injured in a confrontation with the Ohio National Guard at Kent State University. It wanted martyrs and had been seeking an event like this on many campuses, including Kent.

Though not well known nationally until May 4, Kent is a big university, the second largest in Ohio with 21,000 students. The SDS and related organizations—whose objectives follow the world Communist line to the crossing of the last tee and the dotting of the last eye—have striven to make martyrs on American high school and college campuses for many years. They were successful at Kent within less than two years of their opening effort.

Even with the spotlight on Kent since May 4, it is still a sort of well-kept secret that the Kent tragedy was the culmination of a two-year concerted effort, led by SDS, to create a "major confrontation" on the Kent campus.

On May 5, the day after the tragedy, the New York Times reported that ". . . until recently the school's most serious demonstration was a 1958 panty raid on two women's dormitories . . . since then, except for some rowdy Friday nights, the students, mostly middle class . . . maintained peace with local residents and in fact had a distinct reputation for apathy. . . ." The Times headline said that the shooting shattered "60 years of quiet at Kent State."

And if we can believe the New York Times' choice of witnesses and quotes, not even the sanest students at Kent seem to relate the sad events of May 4 to the steady drive of campus and non-campus militants to bring on a violent event there. On May 11, the New York Times published a lengthy interview with eleven students at Kent who *seemed* to have some sense. But if one of them said that they saw any connection between the tragedy of May 4 and the two-year effort of SDS to bring it about, the Times didn't publish it. Nor, in interviewing them, did the Times report any question it put to the eleven students that related the two-year drive of the SDS at Kent to the sad showdown. The tenor of the interview seemed to point to President Nixon as the guilty party.

The Kent Stater (the student newspaper at Kent) had done better a year earlier. On April 21, 1969, it spelled out, point by point, the SDS's stated strategy for whipping the Kent students into a mob state of mind whose goal was "a major confrontation." *The Kent Stater* then showed the students at Kent how events that had already happened by then fitted, step-by-step, into the SDS plan for a coming violent showdown.

If anything hovers over the deaths at Kent State it is those SDS words "major confrontation." It happened at Kent and four students paid for it with their lives. In the weeks that have elapsed since the tragedy, with the country groping to understand it, there has been amply time for all the media—newspapers and major networks—to have told the public, from the beginning, the carefully organized plan from the outside that led to May 4. The silence has been fairly enormous. In spite of all the words published about Kent, a country that needs to know what led up to the shooting has been pretty well shielded by its media from what is an open story.

It was on June 24th and 25th, 1969, that the Committee on Internal Security of the U.S. House of Representatives held hearings on SDS activities at Kent State during the 1968–69 school year. The hearings themselves fill a volume larger than this magazine, but in its annual report, the committee digested its Kent hearings into shorter form. Here is the digest, in full, reprinted from pages 43 to 52 of the annual report of the committee:

Students for a Democratic Society was involved in four disturbances—two of them marked by violence—on the campus of Kent State University in Kent, Ohio, during the academic year 1968–1969.

functions. The committee also heard testiceive testimony regarding the activities and demands of SDS which culminated in attempted and actual disruptions of university

The Committee on Internal Security held public hearings June 24 and 25, 1969, to remony on the procedures followed by the university in response to those activities and demands.

Appearing as witnesses were: Dr. Robert I. White, president of the university, accompanied by his assistant, Richard A. Edwards, and Dr. Robert Matson, vice president for student affairs; Margaret A. Murvay, student who attended SDS functions as a reporter for the campus radio station; Lt. Jack R. Crawford of the university police deportment; Chester A. Williams, university director of safety and public services, accompanied by Security Officer Donald Schwartzmiller and Investigator Thomas Kelley; and Committee Investigator Neil E. Wetterman.

Testimony showed that SDS emerged as an organizational force on campus in the spring of 1968 when individuals who had been operating for several years under the aegis of the Kent Committee To End the War in Vietnam decided they would become "more well known" under the name of SDS.

In response to the group's petition for approval of an "innocuous" constitution that spring, the student government employed the customary procedure in acting on such petitions by granting the Kent State chapter of SDS "provisional" status as a campus organization. This was enough to give SDS access to university facilities. (This status of temporary recognition continued until the university suspended the SDS charter on April 8, 1969.)

Although its constitutional provided for a roster of officers and a membership based on payment of dues, there were no known officers and no dues payment. Local SDS'ers could pay $5 to the national office for a "national" membership and subscription to the officials newspaper, *New Left Notes*. They might also receive a membership card from the national organization, as one Kent Stater did. The Kent State chapter had no membership applications or membersip cards.

The SDS membership locally, therefore, was described as consisting of (1) its leaders and recognized spokesmen and (2) a larger number of individuals who were sympathetic to the movement, supported SDS

demands, and participated in SDS activities advocated by the leaders.

University officials estimated that the "hard core" of the Kent State SDS comprised no more than 15 to 25 members in a student enrollment of 21,000. However, this relatively minuscule group of hard-core activists could count on support from 150–200 students for meetings and for most of the incidents on campus. The number of supporters would fluctuate with the issues and the nature of the action. A seasonal fluctuation was also observed, with about 200 students likely to participate in an SDS-sponsored activity in the fall quarter and only about half the number in the spring quarter as "freshmen see that there are other activities on the campus besides SDS."

Members of the staff of the Ohio regional SDS, located in Cleveland, some 30 miles from Kent, also made frequent appearances on the Kent State campus. The staff was identified during the hearings as consisting of Corky Benedict, Lisa Meisel, Terry Robbins, Bobbi Smith, and Charlie Tabasko. This staff engaged in supplying "educational" pamphlets and films to chapters such as Kent's, as well as sending out mimeographed newsletters and directives aimed at getting local SDS members to carry out programs developed by SDS national officers and the national council.

During the 1968–1969 academic year, initial SDS activity revolved around "rap" (discussion) sessions in Kent State dormitories, together with rallies and film showings.

Key attraction at a public affair for which the SDS reserved the Kent State auditorium on October 24, 1968, was Mark Rudd. Rudd as chairman of the SDS chapter at Columbia University won notoriety as a leader in the seizure of campus buildings in the spring of 1968. Rudd also returned for a Kent State SDS rally and march protesting the national elections on November 5, 1968.

At least seven films, made available from the SDS regional office in Cleveland, were offered to Kent State students by the local SDS chapter. The films were among those listed in the catalogue of "Newsreel," a film company with main offices in New York City. Newsreel is engaged through several outlets coast to coast in the acquisition, production, and distribution of films propagandizing the causes of the radical minority and New Left movements. A witness who viewed two of the films—one dealing with the Black Panther Party and another simply titled "Weapons"—testified both reflected unfavorably on law enforcement officers.

The Black Panther film was effectively utilized prior to a sit-in on November 13, 1968, by the combined forces of the SDS and another campus organization, Black United Students.

In the course of several days of propagandizing, SDS had achieved an alliance with the BUS for the purpose of preventing recruiters from the Oakland, Calif., Police Department from conducting interviews on campus on November 13. On the eve of the scheduled appearance of the recruiters, SDS sponsored a meeting in the campus education building attended by members of BUS. A film on the Oakland-based Black Panther Party was shown. The presentation was highly emotional and "geared to make the police look bad," according to an eyewitness.

Oakland police officers portrayed in the film were berated as "racists" by a speaker at the SDS meeting. The speaker further exhorted the audience to action on the following day to insure that no campus recruiting would be conducted by that law enforcement agency.

On the afternoon of November 13, approximately 150 SDS supporters joined with some 200 members of BUS in occupying the student activities center. While nonviolent, the 5-hour sit-in nevertheless forced postponement of some interviews of potential recruits by the Oakland Police Department. The three demands of SDS on this occasion were: a ban on campus recruitment by the Oakland Police Department; the disarming of campus police; an administration agreement not to "infiltrate" organizations in order to keep an eye on them.

The university administration had made an unsuccessful attempt, prior to the sit-in, to establish an on-going communication with the local SDS chapter. Dr. Matson testified that the SDS leadership refused an invitation to meet in his office and demanded instead that he journey to the SDS meeting place. When the official agreed, he found that the SDS leaders had no specific concerns to discuss with him, although their sit-in occurred only 4 days later. One SDS member at the meeting, in fact, derided the official for expecting the organization to keep the administration informed of its plans.

The sit-in failed to accomplish a single SDS demand. It did, however, impel the administration to plunge "into the task of adjusting our student personnel and administrative staff assignments, procedures, and policies in dealing with major student disruptions and disorders," according to Dr. White.

Throughout the winter quarter, the president recalled, meetings were held involving the president's cabinet, the student affairs staff, and the safety and public service division, as well as outside law enforcement agencies on city, county, and State levels. The combined efforts led to the formation of "confidential emergency procedural guides" which set forth "who does what" in the event of further attempts to start campus disruptions.

Concurrently, the administration consulted with the faculty and sought to improve communication with the rest of the student body. University policy, as described by its president, was to protect dissent while rejecting coercive or violent actions and to institute change to meet legitimate student grievances. Cited by the administration in this connection was the fact that the Black United Students ended their alliance with SDS after the November 13 incident and thereafter worked with administration representatives through the normal process of consultation. The BUS has obtained administrative support for developing educational programs with particular relevance for black students.

Kent State officials were alerted during the winter quarter to expect planned disruptions during the spring quarter, which would begin officially on March 30. "The signals coming from the SDS," the president explained, "were so clear that tensions and concerns were evident throughout the entire campus, even to the most casual observer." One of the clearest signals was a 10-page, mimeographed *Organizers' Manual for the Spring Offensive*, copies of which were piled on a table at a campus lecture sponsored by the local SDS chapter.

The manual, which was introduced as an exhibit during the committee's hearings, was an avowed attempt by the SDS regional office in Cleveland to help local chapters implement a spring program to "Smash the Military in the schools." The Ohio region of SDS claimed that its inspiration was a two-part program of the same name adopted early in February at a regional SDS conference at Princeton, N.J., with SDS National Secretary Michael Klonsky serving as one of the authors.

The manual, written by Ohio regional staffer Terry Robbins with assistance from activists in the Kent State SDS chapter, proposed issues and called for a series of escalating actions in their behalf on the campus and in the community. Proposed demands included (1) immediate withdrawal of American military forces from Vietnam and support for the Vietnamese Communist forces; (2) an end to ROTC; (3) an end to counterinsurgency and police training on campus; (4) an end to draft assemblies and tracking in high schools; and (5) open admissions for so-called Third World, black and white "working-class" people.

Demands were to be pursued through a series of "escalating actions" described in the manual as follows:

"During the course of the struggle it will probably be necessary and helpful to carry out a series of escalating 'mini' actions to help build consciousness and dramatize the issue. Beginning with guerrilla theater actions in dorms we can escalate to disrupting classes, street marches, quick assaults on buildings, etc., before moving to the major confrontation of the struggle."

The objective of such actions was also spelled out in the manual. SDS did not seek reforms but creation of a so-called revolutionary class consciousness among students which would enable them to identify with struggles in Vietnam and Cuba while struggling against "capitalism" and "imperialism" at home. SDS members were expected to hold themselves ready "to move, to desanctify, to confront, to escalate, and ultimately to defeat the system we live under."

University officials sought to counteract the proposed SDS "spring offensive" in a number of ways. In addition to the previously described confidential guidelines for procedures in the event of campus disruptions, the university administration on March 7, 1969, issued a statement of policy which warned students, among other things, that: (1) the university would not respond to proposals for change advanced by force or threats of violence; and (2) the university would not tolerate disruptions of university activity.

During a recess at the end of the winter quarter (March 22–26) the administration conferred with State and local legal authorities and set in motion the machinery for issuance of temporary restraining orders when needed.

When students returned to class for the spring quarter on March 30, they were also informed that a new system of immediate suspensions might be applied to those who attempted to disrupt university processes. Before the spring quarter was ended, the university would have an opportunity to test the efficacy of its newly adopted procedures.

Witnesses supplied a detailed account of three disruptions of Kent State University operations planned by SDS and executed with varying effect during the spring quarter.

The first attempted disruption occurred on April 8, 1969, in behalf of demands raised only a day or two prior to the actual demonstration. The demands reflected all of the campus issues proposed in the aforementioned *Organizers' Manual for the Spring Offensive*, with the exception of the manual recommendation on "Open Admissions."

Recommendations in the manual on the subject of the Vietnam war, ROTC, and counterinsurgency and police training on campus were reworded, and the following local SDS demands were then mimeographed in leaflet form and circulated on campus:

(1) abolish ROTC because it supplies leaders for an alleged "imperialist" American action in Vietnam.

(2) abolish the Liquid Crystals Institute (Engaged in cancer research, the university institute also held a research grant from the U.S. Defense Department, which led SDS to charge it with involvement in a Government counterinsurgency program.)

(3) abolish the Northeast Ohio Crime Lab (an agency of the State of Ohio assigned space on campus).

(4) abolish the Law Enforcement School (a university curriculum which produces professionally trained law enforcement officers).

Events of April 8 began with a rally called by the SDS chapter to advertise the four demands. A spokesman for the university

administration offered to meet with three SDS representatives to discuss their complaints, but the offer was rejected. SDS reportedly viewed its demands as nonnegotiable. Its announced intention on April 8 was to organize support for a mass march on the Administration Building for a symbolic nailing of the demands on the door to the meeting room of the board of trustees.

Following the speechmaking in front of the Student Union, 35 to 40 SDS supporters marched through various campus buildings to the chant of "Ho, Ho, Ho, Ho Chi Minh." They disrupted some class sessions as they handed to other students literature spelling out SDS demands. The demonstrators (numbering about 50) continued on to the Admininistration Building in an attempt to tack their demands to a door. Efforts by the demonstrators to force their way into the building were thwarted by the university police. Police officers, however, were struck by demonstrators. The 15-minute confrontation ended only after SDS leader Howard Emmer ordered the students to "quit for now." The coordinated action of the law enforcement agencies in the area thus foiled SDS's first attempted disruption in its "spring offensive."

The university reacted quickly and firmly. First, it suspended the SDS chapter, pressed assault and battery charges against six demonstrators for attacking police officers, and imposed immediate suspension upon a number of students involved. (All of the charges were still pending at the time of the committee's hearings, with exception of those against Alan DiMarco, who entered a plea of *nolo contendere* and received a fine and jail sentence.) It also obtained temporary restraining orders barring from the campus five demonstrators whom the administration viewed as leaders of SDS activity. They were students, Howard Emmer, Colin Neiburger, and Edward Erickson, and nonstudents. Jeffrey Powell and George Gibeaut.

One of the nonstudents identified as being present on campus April 8 was Terry Robbins of the Ohio regional SDS in Cleveland. This marked the first of several appearances by Robbins during the "spring offensive" at Kent State. He was later joined by other regional staffers. The liaison maintained between the local and regional SDS was also illustrated by the record of telephone toll calls between the Cleveland office and the Kent residence of Edward Erickson. Erickson was identified as a Kent State student, eventually suspended for participation in the campus disorders, whose Kent home had been the base for most of the SDS activity off campus. Toll charges showed a total of 36 phone calls had been made from his residence to the Cleveland regional SDS between February 21 and April 24, 1969.

A university disciplinary proceeding on April 16, involving two students suspended after their participation in the attempted disruption of April 8, provided the issue for another, more violent SDS demonstration.

SDS had sponsored a series of rallies after the April 8 incident and engaged in dormitory "raps" in an acknowledged effort to violate "as much as possible" the administration's ban on SDS's use of university facilities. When the university set the date for its closed disciplinary hearings stemming from the April 8 affair, the SDS chapter added a fifth demand to its original four—"open and collective hearings for all those suspended"—and promised to "open up" the hearing on April 16.

Mimeographed leaflets, headed "Open It Up, or Shut It Down!" were distributed by the Kent State SDS to explain the organization's expanded demands and to solicit supporters for an SDS rally and march on campus April 16. "Open the Hearings!" and "Free All Political Prisoners!" were the slogans for the rally and march.

By the time the SDS rally had concluded, the organizers had garnered some 100 supporters for its march on the music and speech building where the disciplinary hearing was underway before the student judicial council. The demonstrators stormed through two sets of locked and chained doors with the aid of such improvised instruments as a 7-foot iron bar from a dismantled coatrack. When SDS supporters reached a third-floor corridor, they were confronted by university police and sheriff's deputies who forestalled any entry into the actual hearing room. The accompanying din nevertheless served the purpose of disrupting the disciplinary proceeding.

In accordance with prearranged procedural guides, Ohio State police were summoned to the campus, at which time 58 demonstrators were arrested. Charges filed against them on the same day, which were still pending at the time of the committee's hearings, included trespass, inciting to riot, participating in riot, and malicious destruction of property. Temporary restraining orders had been lifted to permit the five SDS activists barred from campus to appear as witnesses at the disciplinary hearings. As a result of their behavior during the demonstration, they were subsequently found guilty of contempt of court and sentenced to fines and jail sentences, which were being appealed at the time of the committee hearings.

The confrontation between demonstrators and police and the ensuing mass arrests involved no injury to SDS activists, their supporters, or the police. A representative of the Kent State police testified that, in addition to breaking through the barricaded doors, there were oral threats to "kill" directed at the police by SDS members during the confrontation in the third-floor corridor.

The Ohio regional SDS was represented in the April 16 events by Lisa Meisel, who joined in the march on the music and speech building. During scuffles between the demonstrators and some of the approximately 200 students who opposed the SDS march at the door to the building, Lisa Meisel was observed to grab a student by the back of the shirt. Another outsider on campus that day was Jim Mellen, a guest speaker at the rally preceding the march on the discplinary hearing. Mellen was introduced as a representative of the Radical Education Project at Ann Arbor, Mich., a New Left research and propaganda organization. University officials also discovered that 10 of the 58 demonstrators arrested on April 16 were not actually enrolled at the school.

Subsequently, regional and national SDS officials and other outsiders put in appearances on the Kent State campus during a series of rallies and other public events avowedly aimed at drumming up support for additional militant SDS actions on the campus.

The organization's strategy was outlined in a pamphlet. "The War Is on at Kent State," which was circulated during campus speechmaking by SDS officials, defining the organization's strategy.

The pamphlet, coauthored by Terry Robbins and Lisa Meisel of Ohio Regional SDS, explained that SDS at Kent State had shown tactical flexibility by using rallies, dorm "raps," etc., geared to "increasing the possibility" of struggle. It announced that SDS was working on more elaborate explanations of its demands because the struggle would continue despite the mass arrests of April 16.

Robbins and Mellen were on hand for an SDS rally held in a campus park the day after the mass arrests. The theme of their speeches on April 17 was the immediate need for some kind of militant action to show the university that the SDS was "strong" and was not going to be stopped by "racism," "imperialism," or "political repression." Of the 200 persons attracted to this rally, at least one half were classified as merely curious onlookers.

Another outdoor rally and march on April 20 involved use of the services of Ohio regional staffer Corky Benedict. Benedict returned to join three national and local SDS representatives in a speechfest in Williams Hall on campus on April 28. Handbills gave top billing to Bernardine Dohrn, the organization's national interorganizational secretary, who was to discuss "repression" and SDS demands. Speakers for the banned organization obtained use of a university facility by appearing under the sponsorship of a local Yippie group.

According to testimony from a committee investigator who attended the session Miss Dohrn told the 125 individuals attracted to the meeting that SDS recognized a necessity for an organized revolution to destroy a power structure by which a wealthy few repressed the majority in America. Miss Dohrn justified violence directed at police officers and forecast that both blacks and whites fighting "oppression" would have to carry weapons for the purpose of self-defense.

Speeches by Corky Benedict and SDS member Rick Skirvin, a former student at Kent State, emphasized that they expected power to be wrested from the "ruling class" in America only through the application of force and that an element of revenge would enter into revolutionary violence.

Although the April 28 meeting marked the only known appearance of a current national SDS official on the Kent State campus, local activists maintained telephone contact with the national office in Chicago, according to an examination of toll charges from the Kent residence of the previously mentioned SDS activist, Edward Erickson. Eleven phone calls were made from the Erickson residence to the SDS national office in the period February 21 to April 24, 1969.

Also at the meeting April 28 was Joyce Cecora, local SDS activist and former Kent State student, who spoke on Kent State SDS demands. Her militant observations at another rally May 6 were publicized in the campus newspaper. This rally was sponsored by a campus committee that had been organized to protest the earlier arrests of SDS demonstrators. An eyewitness testified that the following account in the *Kent Stater* was an accurate rendition of Miss Cecora's position:

"Earlier, a Students for a Democratic Society (SDS) spokeswoman called for armed rebellion on the Kent State campus.

"Joyce Cecora, SDS member, speaking to approximately the 200 persons sitting under the searing post-noon sun called for the use of arms to end what she called the 'repressive actions of the administration.' 'Sitting on the grass in front of the Administration Building is not fighting!' she emphasized. As she spoke, several of her male counterparts stood beside her holding two red SDS banners aloft.

" 'They used guns at Cornell, and they got what they wanted,' she said. 'It will come to that here!' "

A similarly aggressive position was taken by Joyce Cecora in a talk at a Kent State dormitory the previous February 27, witnesses informed the committee. Aroused over the arrest of an SDS activist for distributing literature on campus in violation of State obscenity statutes, Miss Cecora reportedly declared that the SDS would burn and level the campus if the university did not discontinue "politically repressing" the organization.

The strident tone of SDS speakers continued up to May 22, when another SDS rally set the stage for what was to be the final "action" in the spring offensive at Kent State.

A witness testified that speechmaking in front of the Student Union included a declaration by SDS member Rick Skirvin that: "We'll start blowing up buildings, we'll start buying guns, we'll do anything to bring this—[obscenity for school]—down."

SDS was able to muster only about 15 persons, however, for the ensuing march aimed

at disrupting an ROTC Review Day ceremony on the campus. The demonstrators invaded a chalked-off area on a field where the ROTC cadets awaiting review were standing at attention. Chanting slogans, they pushed their way through the cadet ranks. A university official warned the demonstrators over a public address system that they had entered the equivalent of a classroom area and were subject to university discipline as well as civil arrest. SDS supporters continued demonstrating for another 10 minutes without arousing retaliatory action on the part of the cadets and finally marched off the field.

Warrants were subsequently issued for the arrest of 15 individuals on a charge of disturbing a lawful assemblage.

The demonstration was cited as an example of the special problem which the university administration faced as a result of an influx of organizers and other outsiders. Of the group of 15 individuals who unsuccessfully sought to disrupt the ROTC review on May 22, the university president testified, five had been identified as students, five had definitely been established to be nonstudents, and the others had yet to be identified.

The university administration came to view Students for a Democratic Society—in the words of President White—as "an enemy of democratic procedure, of academic freedom, and of the essential university characteristics of study, discussion, and resolution." At the same time, SDS was classed as only one part of the problem of student unrest.

The dual approach of (1) being prepared to resist proposals for change advanced by force while (2) remaining responsive to change pursued through legitimate procedures had the following positive results, according to witnesses representing the university administration:

(*a*) Incidents provoked by SDS actually "de-escalated" and campus support waned in spite of an SDS program for a series of "escalating actions."

(*b*) Faculty, students, and citizens of the Kent community expressed spontaneous support for university policy, and all major parts of the campus commended the performance of the university's police force.

(*c*) Personal injury and major destruction of university property were avoided.

(*d*) The university completed the academic year "free and unfettered with no shameful compromise and with increased mutual respect among the parts of the campus."

Testifying on the basis of her personal observations at SDS meetings and demonstrations, Student Margaret Murvay stated that the arrests and immediate suspensions of SDS supporters on April 8 and April 16 weakened and, in fact, crippled the Kent State SDS chapter. Many supporters dropped out of SDS activity thereafter in fear of future arrests or the possibility that their parents would learn of their activity. Many other SDS members were deflected from other action by the necessity to raise bail, Miss Murvay reported.

SDS confirmed the findings of Miss Murvay. The previously cited pamphlet, circulated on campus after the mass arrests of April 16, and bearing the title "The War Is On at Kent State," acknowledged that . . . "The repression has clearly hurt us: over sixty of our people have been banned from the campus, at least 11 face heavy charges, with total bail exceeding $120,000, and the Administration has succeeded to some extent in scaring a lot of people and obfuscating our original demands . . ."

That is the end of the House Committee digest of its Kent hearing of June 1969. It seems to end on a promising note of a restoration of the university's function to get on with teaching. No such account exists of events in the 1969–70 school year. There will undoubtedly be hearings in Congress covering agitation for violence at Kent from last September on. Since the news media seem to have no inclination to put such connected stories together the country will probably have to wait for new hearings, and then for someone with an interest in publishing them.

Obviously, the inclination of a nucleus of Kent students to precipitate mob actions with their senseless consequences did not die with the 1969–70 school year. But the public record is vague up to Friday, May 1, 1970. On that day a band of "students" (that's what the press calls them, though invariably non-students and faculty members often seem to be among the leaders) went on a window-smashing, stone throwing spree in the town of Kent, with the military campaign in Cambodia as the excuse, pretext or reason, according to how you look at it. On Saturday, May 2, the ROTC building on the Kent campus was burned to the ground by arsonists.

Students threw rocks at the firemen and chopped the firehoses. Townspeople said that college mobs had terrorized them in the weekend rioting. These events led to the calling out of the National Guard. On Monday, just before the shooting, college mobs taunted and hemmed in Guardsmen, threw large rocks at them. The Guard used tear gas until it was exhausted. One Guardsman said some collegians had come at them with coathangers in their fists, hooks out. A tape recording, the Guard reports, indicates a lone shot fired some 10 or 11 seconds before the Guard opened fire. After the event, numerous arms were found on the student's premises and one gun was reported found thrown in a stream.

There you have two backgrounds at Kent State to choose from. You have the version of an idyllic, peaceful, pantyraiding campus invaded by brutal authority, Or you have the record.

SENATOR JAVITS ANSWERS MAJOR OBJECTIONS TO RATIFICATION OF THE GENOCIDE CONVENTION II

Mr. PROXMIRE. Yesterday I quoted several replies made by the Senator from New York (Mr. JAVITS) to arguments against ratification of the genocide convention. Today I wish to present another series of objections to the treaty and the corresponding answers given by Senator JAVITS in a statement submitted to the Committee on Foreign Relations during hearings on the Genocide Convention.

It has been argued that the only reason for ratifying the Genocide Convention now is that it would improve the image of the United States in the eyes of Russia and other totalitarian parties to the convention. In reply, Senator JAVITS points out:

The Convention should be ratified because the United States is unequivocally opposed to genocide. As the President in his message pointed out, U.S. ratification would be the "final convincing step that would reaffirm that the United States remains as strongly opposed to the crime of genocide as ever." U.S. ratification is long overdue. In addition, many of the arguments against ratification have since 1950 been clearly shown to be invalid. For example, it is now clearly established that the crime of genocide is a legitimate subject for an international treaty. Seventy-five nations have already become parties to the Genocide Convention.

Second, it has been argued that the treaty is deficient in that it does not embody the real meaning of the term "genocide." Further, it is unclear exactly what the term means as defined in the convention.

Senator JAVITS points out that:

It is entirely legitimate that the term "genocide" be defined in the convention for the purposes of the convention. "Genocide" was a new term and the definition in the convention represented the international consensus on its meaning. It seems futile to look beyond that for the "true" meaning of the term.

Mr. President, I believe these answers to some of the major objections to ratification of the Genocide Treaty are excellent. In the next few days I shall summarize the remaining objections and Senator JAVITS' replies.

FOLKLIFE FESTIVAL

Mr. FULBRIGHT. Mr. President, earlier this month some 700,000 persons visited the fourth annual Festival of American Folklife on the Mall. The 5-day event, sponsored by the Smithsonian Institution, was a huge success and has received considerable favorable publicity.

I was particularly pleased with the success of this year's festival because, as everyone knows by now, Arkansas was the featured State. We had a delightful group of Arkansans here who entertained and educated people in the traditional folk music and folk crafts of the State.

Every newspaper article and editorial I have seen on the subject has commented favorably on the festival. Everyone I have talked to about the festival has felt that we should have more of this kind of activity. I have received a number of letters and phone calls from persons who were enthusiastic about the folklife festival and who support more activities and programs of this nature.

Running through nearly all the comments I have read and heard has been a common strain. An editorial in the Washington Evening Star expressed it well, saying that the festival "succeeded in bringing people of diverse origins and persuasions together in cheerful sharing."

As the Star pointed out:

Staid middle America and hippies, urbanites and country folk, and even a few Panthers were packed together and nobody was troubled.

Jimmie Driftwood, the noted folklorist from Arkansas, said during the festival:

Look at those college kids out there. They're looking for the roots of our society and where can you find them more than in our folk traditions and folk music. You could learn more here in an afternoon than in a semester of college.

A woman from Bethesda was quoted in the Washington Post as saying the festival was "more like an old Fourth of July than what Billy Graham has planned."

A correspondent of the Christian Science Monitor wrote:

The folk festival was in fact a kind of truce where the factional emotions in the patriotic and political demonstrations of that morning were laid aside. Everyone just had a good time learning about life on the Southwestern plains, and especially among the original Americans, and coming to know a part of their country better.

Columnist Kevin Phillips had some highly favorable comments about the

festival and suggests that such activities should be a major part of the Nation's bicentennial celebration in 1976.

Mr. Phillips said "Americans genuinely honored their Nation" at the festival, which "for 5 short days in Washington started to bring us together again."

Mr. Phillips wrote:

Not a few visitors found the Festival of American Folklife a better window on America's heritage than the noisy, star-studded "Honor America" rally.

Martin Weil wrote in the Washington Post:

Those who attended Honor America Day observances yesterday morning and those who smiled at the very idea both came happily to the Mall yesteday afternoon for the Smithsonian Institution's Festival of American Folklife.

Wearers of "Love It or Leave It" buttons and bearers of the peace symbol met without friction as they enjoyed the sights, sounds and smells representing aspects of the American past for which both groups feel affinity.

The five-day annual folklife festival, which ends today, this year features ethnic cultures of Arkansas and the life styles of the southern plains Indians.

Handcraftsmen demonstrated their skills in booths set up on the mall, bluegrass musicians played on small platforms under shady elms, Indian tribesmen danced and Arkansas rodeo cowboys roped.

Yesterday, at these exhibits the audience itself provided a display representative of some of the emerging political and social subcultures of modern America.

Yet, despite differences in dress and belief, peaceful coexistence prevailed.

The success of the previous folklife festivals and the obvious potential of these events—certainly borne out by this year's program—were major factors behind the introduction by Senator YARBOROUGH and myself of S. 1591, a bill to create an American Folklife Foundation.

I am hopeful that action will be taken soon on this propose legislation. I quote, once again, the editorial from the Washington Evening Star of July 7:

The festival demonstrated anew that the country's folklore and music having strong contemporary relevancy. They are part of the glue that holds the society together. Senators Fulbright and Yarborough are co-sponsoring a bill to establish an American Folklife Foundation, which would take the lead in preserving this heritage and in keeping it before the public, with events like the festival here. The measure, which received wide-scale acclaim in committee hearings this spring, should be expedited.

Mr. President, I ask unanimous consent that several of the recent newspaper articles and editorials and one of the many letters I have received commenting on the success of the folklife festival be printed in the RECORD.

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

[From the Evening Star, July 7, 1970]

BRINGING THE "FOLKS" TOGETHER

There can be no disputing that one event, at least, on Washington's Mall last week succeeded in bringing people of diverse origins and persuasions together in cheerful sharing. They were drawn by sounds from the dawning of America—by the high whine of the mountain fiddle, the ring of the banjo, the delicate strumming of dulcimers under the elms. Mixed in the traffic din along Constitution Avenue could be heard ballads once sung by the earliest settlers in the deep folds of the Ozarks, and if one had driven past at the right moment he would have seen the unbelievable—Senator McClellan of Arkansas doing a hill-country jig.

Arkansas, where the Ozarks grow tallest, was the featured state at the fourth annual Festival of American Folklife, and officials of the sponsoring Smithsonian Institution estimate that about 700,000 persons attended the five-day affair. It was a mighty testament to the ameliorative powers of folk music; staid Middle America and hippies, urbanites and country folk and even a few Panthers were packed in together and nobody was troubled.

Probably the mountain music got inside them, with its transfixing magic. That was some of the same music—some of the same tunes both light and tragic—to which Henry Clay and Daniel Boone vibrated. The viewers were reminded by the mischievous fiddles (in which one can hear the skirl of pre-Revolutionary bagpipes) and the flying feet of the jiggers (ranging from preteens to septuagenarians) that doing one's thing is nothing new in this country. Maybe the fiddle and banjo, which brought life to the weary spirit on the lonley frontier, can do the same for the lonely crowds of today.

The crafts displays were a welcome reminder that many Americans still work pridefully with their hands, and performances of the Southern Plains Indians, also featured at the festival, were impressive. Unforgettable were the Arkansas urban Negro and white rural singers belting it out joyfully onstage together, with Governor Winthrop Rockefeller keeping time. The country needs scenes like that, South *and* North.

The festival demonstrated anew that the country's folklore and folk music have strong contemporary relevancy. They are part of the glue that holds the society together. Senators Fulbright and Yarborough are cosponsoring a bill to establish an American Folklife Foundation, which would take the lead in preserving this heritage and in keeping it before the public, with events like the festival here. The measure, which received wide-scale acclaim in committee hearings this spring, should be expedited.

[From the Washington Post, July 7, 1970]

PRESIDENT SHOULD CONSIDER FESTIVAL OF U.S. FOLKLIFE AND HISTORY FOR '76

(By Kevin P. Phillips)

Even as the ballyhoo of Washington's massive Fourth of July "Honor America" rally was going on last weekend, another less publicized but better-attended event was taking place just a few blocks away: the July 1–5 Festival of American Folklife sponsored by the Smithsonian Institution. President Nixon, who is considering plans for the celebration of the nation's 200th anniversary in 1976, ought to keep this concept in mind.

This year's fourth annual festival featured traditional craftsmen and musicians from Arkansas, as well as Indians from Oklahoma's Southern Plains tribes—Osages, Poncas, Kiowas, Kickapoos, Choctaws and Comanches and others. Whereas the "Honor America" events drew 300,000 people, the folk festival appears to have drawn nearly half a million. By any standards, it was a great success.

Young and old alike were fascinated by the Arkansas craftsmen, most of whom hailed from the rural, little developed Ozarks. One man carved turkey-callers, another whittled episodes in the life of an Arkansas razorback hog. One artisan demonstrated how to make straightback chairs with no glue—just carefully planned shrinkage of green wood. Another made barrels by hand.

To younger visitors, the craftsmen provided a glimpse at a way of life few remembered—or indeed had ever seen. Older festival-goers found it a chance to think back on a rural or small town past.

The hundred or so Oklahoma Indians present corrected many cultural misconceptions among urbanites whose Indian lore was gleaned from movie or television screens. Care was taken to make the program of dances and craft demonstration genuinely representative of Oklahoma Indian life styles.

Young tribe members discussed how they were maintaining powerful cultural loyalties even as they moved toward full participation in American society. But the most popular attraction were culinary: a stall where three Kiowa sisters dispensed golden-fried biscuit dough, plus eating facilities which featured a menu of barbecued buffalo, fried bread, fried meat pies and grape dumplings. As so often proves true, food was the best ambassador.

Of course, the great merit of the Folklife Festival does not lie in the peculiar attraction of Arkansas craftsmen or Oklahoma's Southern Plains Indians. Substitute Vermont maple sugarmen, Swiss cheesemakers from Wisconsin and Latin Americans from Miami, and the moral, if not the exhibits, would be the same. Americans need to know one another and to comprehend the many cultures that make up our nation. The melting pot, in short, hasn't melted. This is true in the cities as well as the countryside. It is time to put aside the pretense of one melting pot for a realization that this cultural diversity can be a source of strength rather than weakness. But first Americans must come to know each other. Events like those of July 1–5 are steps in the right direction.

Not a few visitors found the Festival of American Folklife a better window on America's heritage than the noisy, star-studded "Honor America" rally. As Arkansas fiddler Jimmy Driftwood put it: "Look at all those college kids out there. They're looking for the roots of our society and where can you find them more than in our folk traditions and folk music?" A suburban women observed that the "festival was more like an old Fourth of July than what Billy Graham has planned."

Be this as it may, the cultural confrontation that marred "Honor America" day was nowhere present at the folk festival. Wearers of "Love It or Leave It" buttons mingled in friendly fashion with long-haired hippies as they enjoyed the sights, smells and sounds of the past they share.

At the festival, Americans genuinely honored their nation in a way that President Nixon can greatly stimulate over the next few years. Righ now, the program of the U.S. bicentennial celebration is up in the air. The President has before him the usual pompous, commission-like proposals, including a nebulous one that regions, cities and organizations be encouraged to undertake a project "that to them is an embodiment of their contribution to the future of America." He ought to ask himself, why not scrap most of this bureaucratic boondoggling in favor of a nationwide Festival of American Folklife and History, the type of thing that for five short days in Washington started to bring us together again?

[From the Washington Post, July 3, 1970]

COUNTRY FOLK AND THE CITY

(By Tom O'Brien)

Despite the heat they gathered yesterday in front of Ira Tillmann's open stove where boiling cane sent country smoke and Arkansas smells into the city's smog.

And they listened as the hot blues of the Joe Willis Wilkins Blues Band coalesced into the morning's swelter.

These were only some of the 90,000, according to 4:30 p.m. police estimates, who gathered yesterday at the living museum of folk history and rural technology at the Smithsonian's Festival of American Folklife.

Most of "them" were urbanites who came to the festival, as Arkansas fiddler and banjo player Sherman Ward said, "to get as close to the old-time folk world as they can. They can 'live it' here for a couple of days."

It was the second day of events at the festival, a cross-roads of rural and metro America.

For most craftsmen and performers from Arkansas, the festival is the occasion of their first visit to Washington.

For many children visiting the festival, it is their first chance to look closely at a way of life their culture is rapidly losing sight of. "I didn't know anyone worked with their hands anymore," said one young girl observing Ben Harris making barrels.

For many older visitors the festival stirs memories, as one Washington woman put it, "of those old country fairs where little ladies brought their homemade pure preserves."

"The only thing missing here is a good dry-fly trout stream," declared another city resident as he listened to the music at the afternoon's "Fiddlers Convention."

"I served in the Army Air Corps in Arkansas and I used to snicker at that music," he continued. "Now I find it enchanting."

The fiddlers' convention was visited by Sen. J. William Fulbright (of Fayetteville) who was greeted by fiddler Jimmy Driftwood (of Timbo), "a genuine hillbilly if there ever was one," according to Fulbright.

"He knows all us fiddlers," Driftwood confided.

"This is the surest antidote for what ails America down deep," Fulbright declared. "People here are trying to be creative. Too bad there isn't more of it. Too bad there isn't much consciousness of it. When you live in a city you forget so easily."

Fulbright had his picture taken by a festival photographer with Claude Phillips (of Dog Branch), who has been busy building a log cabin since the festival began. Claude wanted his own pictures, though, grabbed an instamatic camera out of his cabin, put his arm around the Senator, and told the photographer to shoot away.

When Fulbright was leaving Claude's mule began hawing, but Phillips explained, "It's because he's a country mule, not a city mule. He's not used to all these crowds."

Claude and all the Arkansas people have been enjoying the crowds. "They're just like the folks back home, just more of them."

"The hospitality has been grand," fiddler Dean Hinsley (of Stone County) added. "People are so friendly and well mannered. I heard a lot of talk and read a whole deal about trouble in the cities, but I've never met nicer people before. For country boys we're just amazed."

And the "nice people" included everybody: government officials in blue suits, servicemen in uniforms, tourists in bermuda shorts, and young people in dungarees, American flags and Indian robes. Some were hardly distinguishable from festival Indians."

"Look at all those college kids out there," Jimmy Driftwood declared. "They're looking for the roots of our society and where can you find them more than in our folk traditions and folk music. You could learn more here in an afternoon than in a semester of college."

"I was fascinated at the number of long-haired people here," Sherman Ward added, "but they all love music and that's fine by me."

Whether the good mood at the festival will prevail over the weekend is questionable. Many visitors said they had come early in order to avoid "Honor America Day" and one Bethesda woman said the festival was "more like an old Fourth of July than what Billy Graham has planned."

[From the Arkansas Democrat, July 8, 1970]

SEVENTY-TWO ARKIES: THEY WEREN'T BASHFUL ABOUT THEIR DRAWLS

(By Bob Lancaster)

WASHINGTON.—Most of us Arkies have a variety of hang-ups about the Arkansas "image" we grew up with—that of the barefoot and slurping ignoramus with hay in his hair. It never helped me much to thank God for Mississippi, and I've often thought with pleasure about how I'd like to wrap that blasted bazooka around Bob Burns' neck.

The trouble with being so image-conscious is that it can sour you on some of the best and most unique things about Arkansas' distinctive cultural heritage.

Fortunately, the 72 Arkies who performed at the national folklife festival here last weekend weren't worried about their image. They weren't embarrassed about being different. They obviously were dropouts from the effort toward a national conformity in which everyone will talk alike, sing the same empty songs, cook the same insipid dishes, and amuse themselves with the same dulling pastimes.

Most of them seemed to be self-sufficient people who were too contented to be particularly self-conscious. They brought their drawls and Big Smith overalls and whittling knives and home-made guitars to the Washington Mall. And 600,000 people dropped by to watch them cook up fried blackbird, sing uncorrupted songs, take unbarked logs and turn them into log cabins and rocking chairs, and turn corn shucks and hickory chunks into works of art.

The 600,000 people included government bureaucrats, hippies, Ivy League college kids, housewives from the Maryland suburbs, and a variety of vacationing refugees from the Silent Majority. And they seemed charmed by the Arkies because the Arkies were up to something different and weren't trying to put them on.

They could tell, for example, that Bookmiller Shannon was playing the same stuff on his banjo that he'd be playing if he was back home on his Stone County front porch. And that the jig Caroline Rainbolt was doing (and teaching them to do) was not something they could just as easily stay home and catch on a rerun of the Ed Sullivan Show.

Senator Fulbright put his finger on it one day when he dropped in for one of the many rousing hillbilly hoedowns. "This is the surest antidote for what ails America deep down," he told a gang of metropolitan reporters. "People here are trying to be creative. Too bad there isn't more of it. Too bad there isn't much consciousness of it. When you live in a city you forget so easily."

For a few days here, 72 folks from back home helped a few hundred thousand of them remember.

[From the Washington Post, July 6, 1970]

OUT ON THE MALL

For a little while out under the trees on the Mall, we watched Mrs. Violet Hensley, the "Whittlin' Fiddler" from Arkansas, carve the bottom piece of a violin with skill and love. She had learned fiddle whittling from her daddy, she said. And if she worked at one continuously, which she doesn't, what with her many other chores, she could finish one instrument in 15 or 16 days, she added. Occasionally she will sell one for $200, a price that obviously doesn't stand up very well in a cost-benefit analysis on which, nowadays, we seem to base most of the American Way of Life—the way we build and rebuild our place to live, or "environment," as it is now fashionably called. Nor could any of the many and varied other activities that went on at the 1970 Festival of American Folklife, the annual Smithsonian event that concluded its week-long run on the Mall yesterday, bear the scrutiny of cost-benefit analysis. Human care in toy making, cookie baking, butter churning, copper hammering, silhouette cutting and the many other skills and wonders the folks from Arkansas showed us at this year's festival, are not what accounts for our standard of living. The Park Policemen on horseback who helped to give the festival its Currier and Ives atmosphere would undoubtedly be more efficient on noisy motor scooters. The hay provided for the small kids to romp and roll in, could probably be more economically replaced by foam rubber. And, for all we know, a machine-made fiddle may well be not only cheaper but also more nearly perfect than one whittled by Mrs. Hensley. But in the end, we think, these wonderful folklife festivals "cost out," as the engineers say. For a mere $100,000 a year, or thereabouts, the Smithsonian's Bureau of American Ethnography gives us an enjoyable reminder of what culture is all about. That is a benefit even a computer couldn't put a price tag on.

SILVER SPRING, MD., *July 12, 1970.*

Senator WILLIAM FULBRIGHT,
Senate Office Building,
Washington, D.C.

DEAR SEN. FULBRIGHT: I've wanted to write you for a week, but kept forgetting or was occupied with something else. Tonight I was reading a book on American ballads, by John Lomax, and it reminded me that I hadn't dropped you that line.

I just want to say that I haven't enjoyed anything so much in years, as I enjoyed the program and exhibits set up by the people from Arkansas at the recent Smithsonian Folklore Festival down on the Mall. The barrel making, blacksmithing, jelly and sassafras tea, furniture and fiddlemaking and cabin building were all great to see, and I don't think I ever was in a big crowd which was so fascinated and pleased with what was going on. Many of them had never seen any of this; many more, like me, had seen only some of it and the memories it brought back of the past were a great tonic. But most of all I enjoyed the music and singing.

I listened all Friday afternoon to the music and ballads, and was really turned on by the dancing. I went back Sunday with a little tape recorder and preserved about 3 hours worth; listened to it all the way home and again that night. Next day I played it for my car pool riders, for several people at the office including the fellow who ate lunch with me, and they all enjoyed it. A Yugoslav friend said the music and ballads took him back to Serbia; he said, after the first few seconds of listening, "that music is the guts of the people". He expressed my feelings exactly.

Will you please thank those people, and everyone who helped to organize the show, for giving me and all the other city dwellers a chance to see, hear, and touch a vital piece of America that is all but lost in the hubbub of an increasingly industrial, bureaucratic, and citified society. It was a wonderful tonic, and I won't forget it. It showed me where my roots are.

Sincerely yours,

F. L. KLINGER.

SULFUR MINING INDUSTRY

Mr. TOWER. Mr. President, one of the basic and essential industries of the United States, the sulfur mining industry, is under increasing economic stress. Unless this stress is relieved, the sulfur producing capacity of the United States may be irreparably impaired.

Since 1968, the market price of sulfur at the mine in Canada has declined from approximately $38 per ton to the present level of approximately $11 per ton. This drastic decline in the market price has caused six U.S. sulfur mines to be closed down, five others to be on the verge of closing, and others have been forced to lay off workers, restrict production, and reduce dividends to stockholders. Unless the situation is relieved, additional mines may have to be closed.

The cause of this economic harm to the domestic sulfur industry is the direct result of large and increasing imports of sulfur from our good neighbor to the

North, Canada. Since 1968, this imported sulfur has been consistently priced below our own sulfur. The Canadians were attempting to capture our domestic markets by selling their sulfur at prices below the U.S. prices.

How could the Canadians consistently price their sulfur below our price? For the answer to this question, we must examine the differences between the processes by which the two countries extract the sulfur and ready it for market.

In the United States, the Frasch process is employed to extract most of our sulfur. This is the process by which superheated steam is injected into the raw sulfur deposits under the ground. The steam melts the sulfur which is then brought to the surface and stored.

The Canadians, on the other hand, extract their sulfur from a certain kind of natural gas produced there which contains a high percentage of hydrogen sulfide. In order to prepare this "sour" gas, as it is called, for the market, the hydrogen sulfide must be removed. This leaves the "sweet" gas which can then be sold. Once the hydrogen sulfide is removed, it is converted into pure sulfur. The process of extracting hydrogen sulfide from the "sour" gas and converting it into pure sulfur is performed at much less cost than our own Frasch process.

Further, it can be seen that the amount of sulfur produced in Canada is directly related to the amount of demand for Canadian "sour" gas. Since there is no cost which can be allocated to the sulfur, it is not related to the market demand for sulfur.

The Canadians normally allocate the cost of extracting the hydrogen sulfide to the cost of purifying the "sour" gas. This cost is not borne, and is, therefore, not reflected in, the price which the Canadians must charge for their sulfur.

So, as the demand for Canadian "sour" gas increased, as it has since 1968, the amount of sulfur extracted from the "sour" gas increased accordingly. The Canadians attempted to seize U.S. and other sulfur markets in order to sell their less expensive sulfur and could do so at prices under those existing in the United States.

The Canadians are succeeding in capturing our markets. Prior to 1969, the United States was a net exporter of sulfur. We are now a net importer. The 1965 through 1967 imports of sulfur from Canada to the United States averaged 703,000 tons per year. On the basis of the first 4 months' imports of 1970, the projected imports of sulfur from Canada into the United States for the entire year of 1970 will be approximately 1,117,000 tons. This is a substantial increase.

Mr. President, in order to prevent further disruption of our own sulfur industry, immediate steps must be taken.

S. 4075 was introduced on July 10, 1970. That bill, if enacted, would accomplish the desirable result of stabilizing the domestic sulfur industry from imports of sulfur from all foreign sources by limiting the amount of sulfur which can be imported. Since the Canadian flood of byproduct sulfur represents the more serious threat to the domestic industry, I will use those import figures in explaining how the bill would operate.

Imports would be limited by a two step process:

First. For the calendar year 1971, the amount of sulfur which could be imported from Canada would be reduced to the 703,000 ton level. This was the average quantity of sulfur imported into the United States from Canada for the years 1965 through 1967.

Second. For subsequent years, the amount of Canadian sulfur which would be allowed to be imported into the United States would vary from this 1971 base figure. It would vary either up or down by the same percentage as changes in domestic consumption varied during the previous year. For example, if the U.S. domestic consumption increases by the expected 4 percent in 1972 over the consumption in 1971 base year, then, the amount of sulfur which could be imported from Canada and sold in the United States would be 4 percent more than the 1971 base figure of 703,000 tons.

Mr. President, this is a fair and equitable method for protecting our own industry and, at the same time, allowing the Canadians to participate in our markets.

This industry contributes substantially to the prosperity, health, and security of this Nation. Sulfur is a basic and necessary ingredient of many vital products.

Since 1969, the United States has become a net importer of sulfur. Hence, our balance-of-payments problem has become further aggravated by these large and increasing imports of sulfur from Canada.

Mr. President, I ask careful consideration of S. 4075.

WAR AND PEACE AND CONGRESS—GULF OF TONKIN RESOLUTION: ACTION TO REPEAL

Mr. GOODELL. Mr. President, on June 24, the Senate voted on an amendment to the Foreign Military Sales bill to repeal the 1964 Tonkin Gulf Joint resolution. I voted for repealing the resolution. The amendment was agreed to and is now before House-Senate Conference Committee on the controversial Foreign Military Sales bill. If Congress can resolve a variety of House-Senate differences in this bill, a most significant one being the Senate passed Cooper-Church provision limiting U.S. involvement in Cambodia, the bill will then go to the President for signature.

Last Friday, the Senate again took action to repeal the Tonkin Gulf resolution. Repealing action was taken on a concurrent resolution requiring only a majority vote by the two Houses of Congress, without requiring Presidential action for the legislation to be effective.

The Senate took this additional legislative action in terminating the Gulf of Tonkin resolution in order to focus specifically on the issues which the 1964 resolution has raised in terms of congressional-Executive rights, responsibilities, and respective areas of jurisdiction regarding warmaking powers. Action was also taken to place on record legislative history developed by the Committee on Foreign Relations regarding the warmaking powers of Congress and the Executive.

Although I was unable to be present in the Senate Chamber last Friday due to prior commitments in New York State, my position on the repeal of the 1964 resolution has been clear, and I asked to be recorded that, if present, I would have voted for the repeal of the Gulf of Tonkin resolution. I am pleased to note that the measure to repeal passed by a large margin, the vote being 57 to 5.

The author of the legislation to repeal the Tonkin Gulf resolution, the distinguished Senator from Maryland (Mr. MATHIAS), has referred to the 1964 resolution as an enactment of abdication—an abdication by Congress not of power but of constitutional duty regarding questions of war and peace, including the use of U.S. troops in a foreign country. I agree with his observation and would add that it presents a clear warning as we face other important decisions on war and peace during this session.

Repeal of the Gulf of Tonkin resolution is significant for at least the lesson it has taught us, namely, that confidence in Congress will not be attained through issuance by the two Houses of a blank check of authority to the Executive. Confidence in Congress will not come by transferring decisionmaking responsibilities to the Executive. Confidence in Congress will come with independent judgments and independent thinking on policies recommended by the Executive and with independent initiatives by Congress when Executive policies are found wanting. Beyond Executive policy recommendations, Congress has a role to play in forging its own policy directions as to where this country should be moving now and for the future.

In this 91st Congress the Senate has taken several significant steps toward the reassertion of its decisionmaking responsibility on questions of warmaking and peacekeeping.

There is the national commitments resolution, adopted by the Senate on June 25, 1969 by a vote of 70 to 16. This resolution defined "national commitment" as the use of American troops in a foreign country or the contingent promise of such use. It further resolved that it is the sense of the Senate that such a national commitment requires affirmative action by the executive and legislative branches of the U.S. Government by means of a treaty, statute, or concurrent resolution of both Houses of Congress specifically providing for such commitment.

There is the Cooper-Church amendment on Laos and Thailand, agreed to by the Senate on September 17, 1969, by a vote of 86 to 0, restricting the use of U.S. ground troops in Laos and Thailand.

There is the recent Cooper-Church amendment on Cambodia, agreed to by the Senate on June 30, 1970, by a vote of 58 to 37 setting limits to U.S. involvement in Cambodia.

There is the most recent action to repeal the Gulf of Tonkin resolution.

Mr. President, I have supported all of these measures because I think that they are sound courses of policy and because I think these congressional actions are

necessary if Congress is to function as a meaningful branch of Government.

I have, in addition, authored legislation, the Vietnam Disengagement Act, which I introduced last September, calling upon Congress to face squarely the issue of the Vietnam war and vote it "up" or "down." My legislation set a timetable for complete U.S. troop withdrawal from Vietnam and called upon Congress to use its power to withhold funds to implement this policy.

My bill, the Vietnam Disengagement Act, was the first bill in Congress that would require, as a matter of law, that all American military personnel be withdrawn from Vietnam by a specified date and that funds would be cut off for the maintenance of a continued U.S. presence in Vietnam after that date.

A timetable for U.S. troop withdrawal and the use of congressional power over the purse—these two provisions which I put into legislation last September for the purposes of ending Vietnam engagement and of catalyzing congressional attitudes into action to end the war—are now incorporated in the current amendment to end the war which I have coauthored with Senators McGOVERN, HATFIELD, CRANSTON, and HUGHES. We will call up our amendment to end the war when the Senate debates the military procurement bill.

Mr. President, throughout our history, there have been periods of congressional government when Congress was the predominant branch of Government; and there have been periods of Presidential Government when the Executive has been the most powerful branch of Government.

Such concentrations of power in one branch of Government or the other can be, have been, and are dangerous to the proper functioning of our system of Government.

Today we are still in what has been a long period of Presidential Government. With the National Commitments Resolution, with congressional efforts to restrict U.S. military engagement in Vietnam and Southeast Asia, and with the action to repeal the Gulf of Tonkin Resolution, we are participating in a movement to restore the constitutional balance between Congress and the Executive branch on matters of war and peace.

Steps taken so far in congressional reassertion of responsibility in questions of warmaking and peacekeeping are only a beginning. They only start the approach to attaining a proper balance between the use of the powers of Congress and the use of the powers of the Executive. There is much more to do, that we must do, if we are to achieve the real essence of our governmental system which is constitutional Government.

SURVIVAL OF FHA SECTION 202

Mr. MOSS. Mr. President, as chairman of the Subcommittee on Housing for the Elderly, of the Senate Special Committee on Aging, I have been in a unique position to measure the housing needs of our senior citizens.

At the present time the general housing picture across the Nation is more than dismal. The present high-interest rates have brought construction virtually to a standstill. And if the problem seems acute for youthful and middle-aged adults it is even more devastating for our senior citizens.

While most of our senior citizens own their own homes, they continue to be "house poor" in that they cannot afford to repair their homes which tend to be old and in areas of the central city that constantly face escalating real estate taxes. At a time when their incomes have been reduced markedly in retirement they continue to pay an unreasonable share of their income on housing.

A few years ago Congress reacted to this dilemma and provided in the housing act a section No. 202. This section provided FHA direct loans to nonprofit sponsors providing homes for the elderly and handicapped.

The 202 program has been one of the most effective and efficient of our housing programs. In fact, some people say its very success might have been its undoing. Nonprofit sponsors had learned the procedures and had begun to develop a sizable volume of projects until the program was sharply interrupted by HUD policies announced by the Nixon administration.

The administration has been consistent in its opposition to direct loans issued by the Government. The rationale is that through direct loans the Government is placing itself into competition with private lending establishments.

The results, Mr. President, are history although little, if any, information has been given by HUD on this score. The fact is that this most successful Federal Housing program has been phased out in favor of the FHA section 236—interest subsidy—program.

This was possible by seizing on langauge in the 1968 Housing Act which made possible the transition by nonprofit sponsors from section 202 to section 236 on a voluntary basis. HUD directives under Secretary George Romney make this transition mandatory.

In the Housing Act of 1969 the Congress authorized $150 million for extension of section 202. The committee reports of the Banking and Currency Committee of the Congress reflect congressional contempt for HUD directives which misinterpreted congressional intent. As the committee reports make clear, it was not congressional intent that section 202 be phased out in favor of section 236. The contrary is true.

Mr. President, I would think the action of the Congress in authorizing $150 million for the continuation of section 202 would be a clear indication of the depth of congressional concern and commitment. Secretary Romney knew of the congressional action on the 1969 housing bill but justified his exclusion of section 202 from his scheme of reorganization for HUD by saying that there were no appropriations for section 202.

Since no funds were requested last year for section 202 by the administration and the Bureau of the Budget, it is logical that no funds were appropriated.

This year the Independent Offices Appropriation bill which passed the Senate on July 7 does contain an appropriation for FHA section 202. It should be made clear that for the second year in a row the administration did not request funding. It should also be made clear that the $25 million in the Senate passed bill reflects the diligent work of the chairman of the Senate Committee on Aging, the Senator from New Jersey (Mr. WILLIAMS). I should like to commend Senator WILLIAMS for keeping section 202 alive.

At this point, Mr. President, it would be appropriate to point out that there have been no failures or foreclosures by the Government under 202. It is appropriate to point out that there is a backlog of some 728 section 202 applications and it is appropriate to talk about the sizeable volume of mail that has been received by the Special Committee on Aging on this subject. Likewise I could detail the results of our June 8 hearings on "Sources of Community Support for Federal Programs which Serve the Elderly." The plea of nonprofit sponsors at our hearings and through the mail was: Restore Section 202.

Thanks to Senator WILLIAMS and the Senator from Rhode Island (Mr. PASTORE), the chairman of the Appropriations Committee Subcommittee on Independent Offices, the Senate has acted. What is important now is that the Williams amendment survive the Senate-House conference. In the name of the thousands of elderly who have been well served by the 202 program and in the name of nonprofit sponsors who seek to provide additional 202 housing for the elderly and handicapped, I urge that the Senate insist on its amendment.

Since the House of Representatives last year committed itself to a $150 million authorization for section 202, I consider it logical that the House would agree to the minimal $25 million appropriation to keep the 202 program functioning. The intent of Congress was underlined with authorization last year and now this appropriation by the Senate.

If the House agrees to the Senate amendment and provides funds for section 202 it would be inconceivable to me that the administration would still refuse to continue the program. Let me underline that the 202 program must be continued as it functioned before the 1968 Housing Act. Sponsors should be free to transfer to section 236 after application on a voluntary basis but in no case should such transfer be made compulsory.

There are many excellent examples, Mr. President, of the results of section 202. I need only point to the Council Plaza constructed by the International Brotherhood of Teamsters in St. Louis, Mo., or to Springvale Terrace, in Silver Spring, Md. Both are delightful places to live featuring excellent food services and recreation facilities at very modest rental rates. It has been my experience that invariably there is a long waiting list of seniors who would like to reside in these facilities.

I implore the conferees from the Senate and the House to act with courage to make this kind of facilities available to our thousands of elderly and handicapped who are so badly in need of decent housing at a reasonable price.

GEORGE FRIEDMAN: AN ASSET TO THE SOCIAL SECURITY ADMINISTRATION

Mr. TYDINGS. Mr. President, the efforts of the many civil servants in our Government often go unnoticed, but without these men and women, the wheels of Government could hardly function at all.

One such civil servant is George Friedman. Winner of the First Civil Servant Award of the year for Maryland in the scientific area, Friedman has made an exceptional record with the Social Security Administration.

A Social Security employee since 1935, George Friedman is accredited with having saved the Government over $5 million during the current fiscal year.

I ask unanimous consent that an article from the News American of May 1, 1970, concerning this award be printed in the RECORD.

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

FEB HONORS CIVIL SERVANTS

(By Ned Young)

The recipients of the first Civil Servant of the Year Awards for the State of Maryland to be sponsored by the Federal Executive Board in Baltimore are George Friedman of Social Security and Harold Brager of the Internal Revenue Service.

Presentation was made by Senator Charles McC. Mathias (R-Md.) and Colonel Paul R. Cerar, president of the FEB, at a luncheon attended by some 250 civil servants of the Baltimore District in the Statler-Hilton Hotel in Baltimore.

Friedman and Brager were selected from among seven finalists that had been picked by a special committee from a large number of nominees sent in by various federal agencies.

Senator Mathias, who was guest speaker, noted that there are some 63,000 federal employes working in Maryland.

Nominees were divided into two categories, nonscientific and scientific.

Brager, winner in the nonscientific category, joined the Internal Revenue Service July 1, 1963 as an intern and within a three-year period progressively advanced to become a senior revenue officer.

In nominating him for the award, the IRS states in part as follows:

"The Taxpayer Delinquent Accounts assigned to our nominee are consistently difficult or sensitive. He can be relied upon to initiate effective collection measures as well as dispose of troublesome collateral investigations.

"He effectively manages and utilizes his work schedules and consistently applies tact, patience and investigative abilities which result in the successful closing of a large number of cases."

Brager is also cited for extensive involvement in activities for the prevention of children's diseases.

The scientific winner, Friedman, is an assistant bureau director of the Social Security Administration at the agency's national headquarters near Baltimore.

A native of New York City, Friedman began his federal career with the Justice Department in 1935 and transferred to Social Security the following year.

The agency credits him with developing a cost reduction plan that will save the government more than $5 million during the current fiscal year alone.

The plan, declares Social Security, will also result in considerable savings to other federal and state agencies.

Senator Mathias arrived late for the luncheon and explained he had been detained at a meeting of the Senate Judiciary Committee of which he is a member.

"You know what we were doing, and this time I think we've got one," he asserted, referring, of course, to Judge Harry A. Blackmun, the latest candidate for the Supreme Court.

In his talk, the senator paid tribute to the entire federal family.

"The President of the United States is a human being, the same as the rest of us. However, he can depend upon some three million persons for advice and help in achieving the nation's aims. The image of the government worker having it easy is wrong. We owe the Civil Service a debt of recognition," he declared.

United States Marshal Frank Udoff was chairman of the luncheon. Co-chairman and toastmaster was C. Temple Thomason, deputy director of the Veterans Administration Hospital in Baltimore.

CAPTIVE NATIONS WEEK

Mr. GOODELL. Mr. President, this week we mark the 11th annual observance of Captive Nations Week. Every year since 1959, when, by Presidential proclamation, Captive Nations Week became an annual national event, we have taken this opportunity to rededicate ourselves to the ideals of freedom and self-determination for all people. It is a week in which we reflect upon our own gifts of liberty and feel keenly the plight of the over 1 billion individuals of the captive nations who exist under forms of government not of their own choosing.

This week, parades and celebrations all over the United States will give testament to the alliance that exists between our own citizens—many of whom trace their heritages to the captive nations—and those men and women whose battle for liberty is not yet won. We are aware in this country that the people of the captive nations look to us for encouragement in their fight for freedom and basic human rights. I welcome the observance of Captive Nations Week as an opportunity to speak out on my personal dedication to the principles of self-determination and my support for policies which will someday lead to freedom for the peoples of the captive nations.

We mark this observance with a reaffirmation of our commitment to liberty and an end to oppression for all people.

CHESAPEAKE BAY OIL SPILL

Mr. HOLLINGS. Mr. President, the distressing news that over 67,000 gallons of oil have been spilled into the Chesapeake Bay from an oil barge while its captain slept, highlights once again the importance of the coastal zone to us. The oil has spread 10 to 15 miles from the barge in Baltimore Harbor, over a populous area used for commerce, recreation, and important for the sea life it supports. And if there are fish and shellfish in the area, the oil will be poisonous to them. All oil is toxic to all living marine resources. And the most poisonous parts are those that are water soluble. No matter what cleanup procedures are followed now, the most poisonous parts of the oil spill have been irretrievably spread in the waters of the Chesapeake Bay.

Action has been begun to clean up the spill by Clean Water, Inc., and the Humble Oil & Refining Co. has agreed to accept responsibility for the cleanup. A five-point plan for the cleanup has been invoked. It appears to me that the cleanup will be effective to remove the unsightly mess, but the real damage has probably already been done by those parts of the spill that cannot be recovered.

Mr. President, we must redouble our efforts to prevent such spills from occurring, and provide increased support for improving our ability to recover oil spills with the least possible damage to property, lands, waters, and natural resources in the range of such spills when they occur.

Mr. President, I ask unanimous consent that the latest Coast Guard report on the Baltimore oil spill be printed in the RECORD.

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

BALTIMORE OIL SPILL

At 0530 Sunday morning 12 July 1970 Humble Oil reported a spill of No. 6 fuel oil from the barge *Shamrock* loading in Baltimore Harbor. At 0532 a Coast Guard investigator was dispatched to the scene. The tug and barge had departed but a spill estimated at 6,000 gallons was located and a CG utility boat was sortied to deploy booms at the scene. All appropriate agencies were notified by 0720 in accordance with the Maryland Subregional Contingency Plan. This plan is one of the component elements of the National Contingency Plan published by the President in June 1970 in compliance with the Water Quality Improvement Act of 1970. At 0800 containment had been effected and it was thought that 95 percent of the oil had been contained. The MD port authority skimmer vessel *Port Service* was effecting recovery on the scene. By noon on 13 July several calls had been received reporting small deposits of oil in various areas in and around Baltimore. Since no other source was known and there was a strong similarity between this oil and the oil at the spill site it was felt that this was oil that had escaped before containment was effected. At this time Humble Oil Co. was not willing to accept responsibility for the additional cleanup. During a conference between the CG on-scene commander and Maryland Port Authority, it was determined that additional response would be required. The on-scene commander conferred with Mr. Preus, president of Clean Water Incorporated on availability of material and the possibility of conducting containment and recovery operations. It was decided to go ahead with response efforts and if Humble was not willing to assume the cost we would underwrite such cost.

On the 14th Humble Oil agreed to accept responsibility for cleanup and restoration and also to accomplish it through Clean Water Incorporated. Surveillance was conducted by CG helicopter and it was determined that there were extensive moderate to heavy oil slicks in numerous areas of the harbor area and light to moderate slicks in the surrounding waters and some light beach deposits. At that time the plans of Mr. Preus were reviewed by the on-scene commander and concurred in. These consisted of:

1. Remove oil in and near Humble Terminal and nearby piers.
2. Remove oil in or approaching creeks.
3. Clean private craft on site.
4. Sweep harbor of slicks with sorbent boom.
5. Clean affected beaches.

Late on the 14th helicopter surveillance and other investigations resulted in a revised estimate that the original spill consisted of at least 40,000 gallons. Humble would not confirm this figure.

During a hearing on the morning of the 15th held by the MD Department of Water Resource Humble advised that 67,000 gallons had been spilled. Cleanup continued by Clean Water Incorporated with the CG monitoring. The MD Department of Water Resources was also assisting by providing surveillance in the affected areas. The Port Authority vessel had recovered 8,000 gallons of oil water emulsion. Clean Water Incorporated had about 50 men involved in the operation and by the end of the day about half the material had been recovered.

Coast Guard monitoring continued today including helicopter surveillance. Cleanup is continuing and it is felt that Clean Water Incorporated is taking all appropriate action to combat the situation. The CG will continue to monitor the case through its on-scene commander but no Federal response is anticipated at this time.

CAPTIVE NATIONS WEEK

Mr. WILLIAMS of New Jersey. Mr. President, this week the 12th anniversary of the founding of Captive Nations Week is observed, as we focus world attention on the fall of over 25 nations to Communist domination. It is particularly distressing to note that these once-autonomous countries collapsed within the last 50 years, a period of renewed drive toward national independence.

Today I join all Americans in reflecting upon the courage and conviction shown by those patriotic citizens who sacrificed so much in an effort to maintain freedom within their borders.

It is a privilege to share with Senators this tribute to millions of people throughout the world who continue to resist foreign control in a common struggle for liberty.

IRS LIBRARY INVESTIGATIONS

Mr. GOODELL. Mr. President, I ask unanimous consent that a statement on the IRS library investigations be printed in the RECORD.

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

Senator Charles E. Goodell, speaking on the Senate floor, noted that he was "deeply disturbed" to learn of the nation-wide investigations that are allegedly being conducted by agents of the Internal Revenue Service, aimed at identifying readers of library books on explosives and any other subjects that agents consider to be "militant or subversive". The Senator cited news accounts appearing in the Washington Post and The South Today, the publication of the Southern Regional Council, that reported complaints from librarians in several cities of the United States who have been asked by IRS employees to open their files of borrowers' names for investigation. These reports also indicated that IRS agents have threatened to subpoena official library records when librarians have refused to cooperate.

"Clearly," the Senator said, "if such reports are true, the Department of the Treasury is engaged in a fearful and repressive practice that violates the constitutional rights of all American people. None but a totalitarian government would attempt to supervise the reading habits or intellectual curiosity of its citizens." He stated that, "The Bill of Rights assured all citizens of the right to freedoms of inquiry and expression, and, under the Constitution of the United States, no government agency has the power to deny the people these freedoms."

The Senator announced that he had asked the Secretary of the Treasury, David M. Kennedy, to institute an immediate and thorough investigation of these alleged programs, and to provide him with answers to the following questions:

(List of questions.)

Senator Goodell also announced that he had sent a letter to Senator Sam Ervin, Chairman of the Senate Subcommittee on Constitutional Rights, commending the Senator on his prompt response to the reports of these programs, and expressing full support for the Subcommittee's study of the alleged investigative practices.

The Senator concluded that, should these reports prove accurate, he was prepared to "wage a relentless battle against such an ominous invasion of privacy and deplorable intrusion upon our most fundamental freedoms."

THE FREE PRESS IN WASHINGTON

Mr. CRANSTON. Mr. President, the District of Columbia took a major step toward protecting a free and effective press yesterday.

The District's police department announced it will no longer allow its officers to pose as newsmen.

The announcement came after Washington reporters complained that undercover police officers were attending press conferences disguised as newsmen.

Washington's press corps brought the complaint to District officials in a responsible and forthright manner. And officials responded with admirable speed and sensitivity. Both groups should be congratulated.

The District's new policy was announced in a story in this morning's Washington Post. I ask unanimous consent that it be printed in the RECORD.

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

POLICE ACTING AS NEWSMEN RULED OUT

Washington police will no longer pose as newsmen, a police spokesman said yesterday.

The new policy resulted from complaints by Washington media, most of them referring to an incident last Friday in which a policewoman identified herself at a news conference as a "free lance writer."

"It shall be against the policy of the department for any of its members to represent himself in any way as a member of a news gathering organization," said Paul Fuqua, police information officer.

However, he said, policemen will continue as necessary to pose as citizens engaged in other occupations, except when this is prohibited by law (such as masquerading as a doctor or lawyer).

Fuqua explained that plainclothes police attending public events, including news conferences with cameras, pens, or pencils will not be prevented from otherwise falsely identifying themselves. "We're doing nothing to prevent a policeman from identifying himself as, for instance, a telephone man," Fuqua said. "We're not closing that option."

Recently more than two dozen Evening Star reporters signed a pledge that henceforth they would announce at any new conference the presence of any police agent masquerading as a journalist. "We will try to identify the agent, get photos of him if possible, and complain to the (police) department," they said.

Managing Editor Eugene Patterson of The Washington Post asked in a letter Monday to Police Chief Jerry V. Wilson that the practice be stopped.

POLLUTION OF THE ENVIRONMENT

Mr. GOODELL. Mr. President, our young people have become increasingly concerned with pollution of their environment. And, with the enthusiasm and vitality of youth, they turn their concern into action.

I am particularly proud of three young constituents of mine in Albany County. Brian Stankovich, Joseph Sacca, and Lorren Elkins designed and sold an anti-pollution button, donating the proceeds to buy additional equipment for anti-pollution study.

I ask unanimous consent to have printed in the RECORD an Albany Times-Union column by Jeff Cahan describing the efforts of these three boys and a letter they wrote me in response to a request for one of the "Don't Destroy Tomorrow" buttons.

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

THREE GLENMONT PUPILS MOUNT CREATIVE ANTIPOLLUTION CAMPAIGN

(By Jeff Cahan)

Three Glenmont Elementary School pupils have designed and distributed an anti-pollution button to enter their plea for a clean environment.

"Don't Destroy Tomorrow" is what Brian Stankovich, 10, Joseph Sacca, 12, and Lorren Elkins, 11, ask of their fellow men.

The slogan was created to fit the letters of the infamous DDT insecticide, a colorless, odorless, poisonous chemical used in harvest fields against agricultural pests and at home against mosquitoes, flies and body lice.

After ordering 1,000 buttons from an Albany advertising aids agency, the boys have sold 900 buttons to children, teachers and administrators at Glenmont Elementary. They have recently ordered 1,000 more buttons to be sold throughout the Bethlehem community. Each button sells for 25 cents. The boys have earned $193, $100 of which they paid back to the Glenmont Parent-Teachers Association for an initial capital loan.

The boys will donate all profits to the Atmospheric Sciences Research Center at Albany State University, where, they have been promised, their money will buy additional equipment for anti-pollution study.

With the aid of Glenmont PTA member Robert Tage as financial advisor, the boys are processing copyright forms in Washington, D.C. to make formal claim to their creation.

Against an orange background, the pin's colors are blue, for sky and water, and yellow for the sun.

What originally sparked their interest in environmental preservation was a recent fifth-grade teach-in at Glenmont under the guidance of teachers Ruth Doyle and Julia Esmond.

The boys were particularly inspired by the visit of Albany State University Professor Raymond Sarotsky, who spoke to the fifth grade about major polluters of society.

DEAR SENATOR GOODELL: We thank you for taking the time to write to us. We appreciate it very much.

Why we got into this project is that we

are very much concerned about our future.

Enclosed please find the button that you requested.

Sincerely,

BRIAN STANKOVICH.
JOSEPH SACCA.
LORREN ELKINS.

THE THREAT OF FOREIGN IMPORTS

Mr. THURMOND. Mr. President, there are many reasons why the United States should protect domestic industry from the threat of foreign imports. In statements on the Senate floor I have discussed these reasons from a military, economic, and business viewpoint. My primary concern has been, and still is, that, unless the American textile industry is protected, people will lose their jobs.

Mr. President, it is people we are talking about. When we talk about balance of payments and balance of trade and flooding the marketplace we are talking about people, no matter what the terms we may use.

I received a letter from a Miss Marie Franks of Laurens, S.C., who is one of the people whose well-being we must protect.

Mr. President, I ask unanimous consent that a portion of the letter of Miss Marie Franks, dated July 12, 1970, be placed in the RECORD at the conclusion of my remarks.

Mr. President, statements made by this lady constitute an eloquent plea for protection and, in my mind, give complete justification for the enactment of legislation which will curb excessive textile and apparel imports.

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

LAURENS, S.C.,
July 12, 1970.

Senator STROM THURMOND,
Washington, D.C.

DEAR SENATOR THURMOND: I know that you are doing what you can about the bill to curb Japanese imports. But, sir, I thought you would want to know that more has happened—and things are going to get worse.

The plant that employed my sister was closed yesterday, July 11, 1970—with the exception of the first shift.

She, her sixteen-year-old son and I live together—I recently purchased this house in which we live. And if this plant doesn't reopen soon, we will lose it.

There is another plant here that has also layed off some of its employees—and there are rumors that three more plants will go on a 3 or 4 day work week.

I read in the papers and hear on the TV news about plants all around us, either closing completely or laying off employees.

I feel, as many others do, that the situation is very serious—and if something isn't done very soon it will become critical—This affects the black as well as the white—because we have many blacks employed in the textile plants.

I am employed in a department store as a sales clerk in men's and boys' wear. Sir, we have shirts from Korea, Malaysia, Singapore, Hong Kong, Taiwan, etc. It would take me a few minutes to find a shirt in our department made in the United States.

Sincerely,

(Miss) MARIE FRANKS.

MEMORIAL OF LEGISLATURE OF NEW YORK LABOR-MANAGEMENT LAW FOR AGRICULTURAL EMPLOYMENT

Mr. JAVITS. Mr. President, the problem of establishing a labor-management program covering agricultural employment deeply concerns me. The Subcommittee on Migratory Labor of the Committee on Labor and Public Welfare has held a number of hearings with respect to this problem. The Senator from California (Mr. MURPHY) has introduced a bill, S. 8, to bring agricultural workers under the National Labor Relations Act. Secretary of Labor Shultz has proposed the creation of a separate Farm Labor Relations Board to regulate the right of farmworkers to organize and bargain collectively.

Mr. President, in my own State of New York, agriculture is the No. 1 industry, generating directly or indirectly, jobs, products, and services having a total value of $3,500,000,000 per year.

In New York, farm labor contractors, growers and food processors in their capacity as employers are subject to the Labor and Management Improper Practices Act which prohibits payments made to any person for the purpose of interfering with employees in their right to collective bargaining. However, the need for Federal legislation is apparent to us in New York.

I ask unanimous consent that a concurrent resolution of the Legislature of the State of New York memorializing the President of the United States and the Congress to enact appropriate laws relating to the establishment of a labor-management program covering agricultural employment be printed in the RECORD.

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

RESOLUTION 128

Concurrent resolution of the Legislature of the State of New York memorializing the President of the United States and the Congress to enact appropriate laws relating to the establishment of a labor-management program covering agricultural employment

Whereas, Agriculture is the number one industry in New York, and generates, directly or indirectly, jobs, products and services having a total value of three billion, five hundred million dollars per year; and

Whereas, New York agriculture directly employs more than three hundred fifty thousand workers, most of whom depend primarily upon agricultural wages for income; and

Whereas, The products of New York agriculture move widely in both national and international commerce, and must compete with agricultural products originating in other states and countries where labor standards and labor costs are lower than those in New York; and

Whereas, A percentage of the New York farm labor force also seek farm employment or maintain residence outside of the state during a portion of the year; and

Whereas, The problems of labor-management relations law in agriculture are truly national in character, and can be appropriately dealt with only through federal legislation; now, therefore, be it

Resolved (if the Senate concur). That the Legislature of the State of New York, respectfully memorializes the President and the Congress of the United States to promptly enact legislation establishing labor-management relations laws, separate from the national labor relations act, covering agricultural employment; and be it further

Resolved (if the Senate concur), That the Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from New York in the Congress of the United States.

In Senate, April 19, 1970.

Concurred in, without amendment by order of the Senate.

ALBERT J. ABRAMS, *Secretary.*

By order of the Assembly.

DONALD A. CAMPBELL, *Clerk.*

CHARLES VILLAGE—A HEARTENING EXPERIENCE

Mr. TYDINGS. Mr. President, with vast sections of our central cities being turned into blighted "gray areas" of deteriorating housing, poor schools, and dying communities, it is heartening to note that, in Baltimore, one such gray area, the Charles Village section near the Homewood Campus of Johns Hopkins University, has reversed the onslaught of decay.

There, the efforts of one woman, Miss Grace Darin, have led to a rebirth of a once blighted neighborhood. A copydesk girl in the city room of the Evening Sun, Miss Darin launched a campaign to rejuvenate her community by calling informal meetings of other neighbors dedicated to revitalizing their community. With the skill of a high-powered real estate promoter, she changed the community's name, organized her neighbors to get improved city services, published a local newspaper to keep the neighborhood informed and to help build community spirit, and coaxed older residents to write out their memories of the neighborhood history—resulting in two published histories that now sell well in local bookstores.

Charles Village today is a vibrant, diverse community that maintains a small-town self-awareness and unity. It has scholars, professional people, emigrants from Appalachia, artists and blue collar workers, whites and blacks, orientals and Indians, students, young married, and oldsters.

It still has problems. Schools need improvement, financing for home buying and rehabilitation is hard to come by, factions quarrel about the direction the community must take. But it is alive today, its residents are vitally concerned about its future.

Mr. President, I believe that all of us who are concerned about revitalizing the Nation's cities can be encouraged by the success of Miss Darin and her neighbors. She and her fellow organizers, Mrs. O. David Homes and Dr. John Neff, a pediatrician on the Hopkins staff who was instrumental in upgrading the neighborhood's educational programs, deserve our admiration.

I therefore ask unanimous consent that an article published in Baltimore magazine of July 1970, describing the efforts of this community to rebuild itself, be included in the RECORD so that others may read of their success and gain an appreciation of the problems they face.

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

CHARLES VILLAGE

(By James F. Waesche)

With some effort, a plump white-haired lady in her 70's pulled herself aboard a Number 3 bus at Mt. Vernon Place. She was wrapped in a mink stole that had seen far happier days, but her matching fur hat and her lizard shoes and bag marked her as a woman who hasn't stopped trying to keep up appearances. With her was a younger woman, hatless and tweedy, perhaps in her late 50's. As the bus lurched and fumed up Charles Street, the two talked genealogy, each trying to out-ancestor the other. When it approached North Avenue, however, the conversation abruptly changed.

"*My* I'm glad I live in the county!" the younger woman exclaimed, looking out the window. Then, realizing she may have blundered, she hesitantly asked her companion where she lived.

"On St. Paul near 28th," came the feared reply.

"Oh . . . I see . . . Well . . ."

The white-haired woman interrupted the incipient apology. "It's really very nice," she said. "It's like a small town. They've started something new they call Charles Village and lots of lovely young people are moving in and fixing up the houses. And" . . . her enthusiasm mounted . . . "they have *children*. It's so wonderful to go to the market and see all the young, cultured-looking girls with their lovely babies."

"But aren't you being overrun by those students?" the unconvinced countyite persisted, obviously visualizing bands of unkempt sex fiends rampaging down Charles Street brandishing Molotov cocktails and syringes filled with evil drugs.

"Oh, there are lots of them, but they're really not so bad."

"But all that hair . . ."

"You get so you don't look at their hair," the elderly Charles Villager said. "They're just people, just like the rest of us."

They've started something new they call Charles Village . . . The woman didn't realize how accurate her vague-sounding statement really was, for in no way has Charles Village "just growed." It is the product of a deliberately conceived, carefully nurtured PR campaign calculated to transform a teetering, critically-located chunk of mid-city into a colorful, viable residential community. That the campaign seems to be succeeding is a tribute to the inspiration and perseverance of one woman and an indication that her ideas were not sown on exhausted soil. Moreover, Charles Village is freshly painted proof that a new breed of home-owner is weighing the suburbia in which it was born, finding it wanting, and testing the city as an alternative.

To long-time Baltimoreans, Charles Village might be more familiar as Peabody Heights: the blocks immediately east and southeast of the Johns Hopkins University's Homewood Campus. Starting at 25th Street on the south, the Village extends to 33rd Street on the north, to Howard and Charles Streets on the west, and to Abell and Guilford Avenues on the east. Only a century ago the area was rural, a crazy-quilt of cornfields, dairies, pastures, wooded streambeds and private estates. Not until the 1870's did developers start to lay their lots and street-grids over its brooks and gentle hill. By the turn of the century, North Baltimore had its last pre-automobile neighborhood.

The homes that were built were mostly three-story brick. Halls were long, ceilings high, walls thick. Although they had central heating, most retained fireplaces—and the atmosphere of graciousness they impart. The scale of the houses is "human," as architects say; from the sidewalks they appear large enough to bespeak roominess and comfort, but small enough so as not to overwhelm. Shallow plots of lawn and shrubbery and, in some cases, porches, cushion the houses from the streets. Back yards are deep.

Put up before the concept of free-flowing interior space caused rooms to dissolve into ambiguous "living areas," the houses contain well-walled, well-defined chambers that permit privacy and quiet. Built before the age of plastic and plasterboard, they are mines of marble, heavy dark wood, and ceramic tile.

But well-built though they were, they could not escape the gnawing of time. Paint peeled. Plaster cracked. Homes fragmented into apartments—or fraternity houses—and the neighborhood's population density increased. City services began to slide. Along many an alley concrete was poured and green back yards became barren parking slabs. Traffic increased as Charles, St. Paul, and Calvert Streets became one-way commuter arteries. Dismayed, many residents left and gradually Peabody Heights took on the coloration that is symptomatic of impending death: gray.

"That whole are has gone through a transition," one of the city's assessors recently observed. "A lot of one-family houses have been converted into multiple family dwellings. Because of this overcrowding, and because of the increase of traffic and parking in the area, it's in a condition where the bottom could fall out. Values are holding on Maryland Avenue because they've gone commercial there, but Guilford Avenue has changed for the worse. The values have definitely come down. Barclay has come down. Abell has come down. Those streets are getting a shotgun blast from the Waverly area, and Waverly is shot now because of the influx of the colored." Values in the Charles, Calvert and St. Paul blocks are holding, the assessor said, adding:

"The Charles Village Association is trying its damnedest to educate the people up there to keep their properties in good condition. It's only a matter of time before we see what's going to happen. Right now, it's in a state of flux."

The Charles Village Association is indeed working to turn aside the forces of blight. But underlying its activities—fueling them, as it were—is a concept, an attitude that Charles Village is a community of dynamic individuals committed not merely philosophically, but also actively, to the ideals of urban revitalization and in-town living. That concept is the brainchild of one woman, Grace Darin.

By workday an inconspicuous copy desk girl in the frenetic city room of the Evening Sun, the private Miss Darin has sparked Charles Village ever since its birth some three years ago. It was she who realized that it was imperative for Peabody Heights to have a zippy new name—and a zippy new image—if it were to survive. And it was Miss Darin who knew that, once renamed, the old neighborhood would have to be promoted just as intensively as brand new developments are. To that end she has more than once injected into the columns of The Evening Sun stories mentioning Petunia Lane (the alley behind her 26th Street house) and Little Georgetown (the attractive detached houses in the 2600 block of St. Paul Street) and art galleries and shops that have "served the carriage trade in city and valley for over half a century." At image-building she is a pro.

An earlier attempt to rejuvenate the area had been made, Miss Darin relates, by some of the older residents. Themselves finding the Peabody Heights label dull, they formed what they called The University Heights Improvement Association.

"They did originate the 26th Street Art Mart, which began in 1959," Miss Darin said, "but otherwise they were a bunch of old people sitting around remembering how things used to be. The president kept talking about how they had to get rid of all the Negroes, hillbillies, prostitutes, students and intellectuals. And I think the students and the intellectuals were at the top of their list."

Miss Darin and a neighbor, Mrs. O. David Holmes, had more realistic ideas. They called an informal meeting of a few likeminded neighbors, dreamed up the name Charles Village, and formed a steering committee. (The committee later matured into The Charles Village Neighborhood Association, which then absorbed the moribund University Heights Improvement Association.)

The committee's first job was to announce to the public that the city had a new neighborhood. It began by contacting the Real Estate Board, which agreed to sanction the use of the name in real estate listings.

"The first time I saw an ad saying that a house was for sale in Charles Village," Miss Darin recalled, "I thought: They must be kidding! They're falling for this phony gag!" But others noticed it too. The owner of the Playhouse Theater phoned to ask if he could use the name in his theater ads. That prompted the committee to ask other neighborhood businesses to use it. Several did, especially the restaurants. Miss Darin's Evening Sun features began to appear. So did a chatty, home-town newsletter called The Charles Villager—written, published and distributed by, naturally, Miss Darin.

Attracted by the big houses, the low prices and the propaganda broadcast by Miss Darin ("the area is popular with artists, librarians, teachers, newspapermen, professors and students," she wrote . . . it is "lively and friendly as opposed to expensive, exclusive and aristocratic") young couples with children began to buy in the area. With their coming Charles Village became a reality.

Sensing the new vitality around them, some of the older residents withdrew their names from golden age establishments' waiting lists and decided to remain in the homes of their memories. New gardens were dug. Shrubbery was planted. Flower boxes began to appear. New sidewalks have been laid; steps repaired. A few gas lamps have been installed, and some of the dismal, algae-green and inky brown paint that darkens the doorways of so many Baltimore rowhouses has been covered with lighter, happier shades of moss, white, mustard and aqua. The demand for apartments has risen, and asking prices for homes have begun to rise.

"Real estate people are now taking listings whereas even two or three years ago they would have told owners to skip it and sell to speculators," Miss Darin said. Although houses on the eastern and western edges of Charles Village can still be bought for $5,000 ("in need of remodeling," as the ads read) those along the central spine straddle the median of $11,000.

One of the neighborhood's most acute problems before its reincarnation was the deterioration of municipal services. "We'd read about the prize-winning hokey cart men in Bolton Hill when we didn't even have a hokey cart," Miss Darin said with a little pout.

Making the city bureaucracy aware of their existence was the Villagers' first major accomplishment. They did it by yelling with a single voice that was loud enough to penetrate the thick walls of City Hall. Shortly thereafter City Council President William Donald Schaefer and Housing Commissioner Robert Embry toured Charles Village and pronounced it savable. Services rapidly improved.

Realizing that the city would now back them up, certain residents started little spruce-up campaigns of their own. Along the Guilford Avenue border, where conditions were shakier than elsewhere, Mrs. Frank Rock last September organized a Shape Up Or Ship Out Committee with five or six other women. Her committee now can call on the support of some 60 neighbors.

"No one had even been sweeping up," Mrs. Rock said. "They had a tsh-tsh attitude. You know: Tsh, tsh, what a nice neighborhood this used to be. Well, we took an inventory and started our cleanup campaign and got people involved. When they're involved they're more aware and now there are a lot of good things happening around here, so you know that people really did care all along. I think everyone realizes now that it's up to each of us to save the city."

One of the committee's most significant accomplishments was the enlistment of the aid of the housing inspection office of the city's Department of Housing and Community Development. Even though HCD hasn't enough inspectors to go around, its officials decided that the Charles Village effort was worth encouraging. Consequently, an accelerated but unofficial house-to-house inspection program has been launched there.

How does HCD decide which of the city's neighborhoods rate special attention? "We evaluate the need and the objectives and what we can hope to achieve in a given area, and we weigh that against our manpower," explained Charles E. Noon, chief of the district in which Charles Village is located.

Yet the phenomenon of Charles Village involves much more than the stabilization of bricks and mortar, as important as that is. Charles Village is a state of mind; a young, highly self-conscious community with its own enthusiasms, goals, and activities. Scout troops, homemakers' and boys' clubs—even two chapters of Alcoholics Anonymous—meet at St. John's Methodist Church on St. Paul Street. Informally, neighbors rendezvous at numerous natural gathering points: in, say, the new antique shop on Charles just above 25th, or in one of the art galleries that abound in Lower Charles Village, or, perhaps, in the outdoor flower arcade whose blossoms brighten the shopping center in the 3100 block of St. Paul Street. (Faith in Charles Village was recently demonstrated when a $250,000 two-story bank and office building was constructed in that block.)

Village activities are legion. It continues to hold the 26th Street Art Mart. Just this spring it hosted its first house and garden tour. A neighborhood committee has sponsored a ballet for Village children. Residents troop to City Hall together when matters like zoning changes threaten. Miss Darin, of course, continues to publish her newsletter, and she and Mrs. Francis W. Buschman, another long-time resident, have compiled two histories of the neighborhood.

The histories' performance in bookstores has surprised everybody, because they were not really written to be best-sellers. "One of the first things we had to do when we started this," Miss Darin said, "was to devise something for the older residents to do, to keep them busy so they wouldn't sit around and worry—you know, about the hippie next door. So we got them to contribute to the Village the one thing only they can contribute: their memories."

So far, 36 pages of mimeographed memories have been published. As does any collection of tradition and lore, the compilations have helped unite the community. They have created a common heritage with which the individuals who collectively comprise one of Baltimore's most heterogeneous neighborhoods can all identify.

Diversity, indeed, is a Village hallmark. Many of the younger residents come from small towns. Most of the older folks are veteran urbanites. The Village has scholars, professional people, emigrants from Appalachia, artists and blue collar workers; whites and blacks; Orientals and Indians, many of whom are graduate students at Hopkins. It contains probably the largest concentration of liberal organizations in the city. It harbors at least one commune. There are Union Memorial Hospital nurses and interns and a host of undergraduates from colleges and universities all over the city. There is an increasingly large population of young marrieds, and there is what must be the biggest colony of elderly widows in the metropolitan area. Drug stores which in other parts of town would mount displays of suntan lotion and paper party packs instead stack arrangements of canes and bedpans.

"This is probably the only area in the city that could accommodate such diversity," noted William Robinson, the 29-year-old Village bookseller who has published the Buschman-Darin memory compilations. "There is such a strong sense of community that even though people disagree there remains a definite identification with Charles Village." And people *do* disagree.

"What we had here some years ago," recalled Miss Darin, "was a peace and quiet, an attitude of live and let live. It was the peace of the graveyard, but it wasn't neighbor-against-neighbor like it was in Bolton Hill. But as I told my sister: If we succeed in waking this neighborhood up, we will sacrifice its peace. If we get rid of apathy, we'll get factionalism in its place. But at least instead of having a dead human situation we'll have a living human situation."

Neighbor has now faced neighbor on a number of issues. One of the first confrontations came when Chip House, a halfway house for alcoholics, sought to establish itself in the Village. (The question, fought fervently, was resolved in favor of Chip House after one of its residents risked his life to save a relative of one of the most violent opponents from a burning building.) Villagers have also differed regarding the still-undetermined height of a low-to-moderate-income public housing tower for the elderly which HCD intends to build on the corner of Howard and 29th Streets.

Opposing positions are now being taken on the question of just how many houses can be converted to apartments without jeopardizing the Charles Village concept. Some residents feel the neighborhood will choke of overpopulation if many more homes are converted. Others are themselves accumulating houses and sectioning them as investments, realizing that as long as Hopkins has a dearth of dormitory space there will be a demand for nearby apartments.

(Fortunately, two of the four or five biggest owners of apartments live right in Charles Village and show a resident's concern for their properties. Two others live nearby and make Charles Village their offices during the work-week, overseeing their units personally. Real estate investment in the Village seems for the most part to be of the long-term development variety rather than the short-term "bleed it for all it's worth" type that has sucked the life from so many of Baltimore's rows.)

In another area, there is a difference of opinion concerning the Village's racial "problem."

"A lot of people are concerned with keeping it white," Mr. Robinson said. "They're afraid that if Negroes move in property values will drop, which may be the case. But many of us don't think that should be the primary consideration."

"There is a feeling among many Villagers that the blacks are unwanted," added the Rev. D. B. Lowe, minister of St. John's. "But they would feel that I am biased in thinking that they don't want them here."

Actually, it is questionable whether the Negroes in the Charles Village area identify with the Village at all. Concentrated in the lower blocks of Guilford and Abell Avenues, they recently formed their own neighborhood organization, The Guilford Avenue Association. W. C. McCaine is its president. Asked if his members felt themselves part of Charles Village, Mr. McCaine's reply left a lot unsaid: "Well . . . uh . . . in a way yes; in a way no."

The two associations have worked together on some issues—particularly on the as yet unresolved question of zoning changes which would permit higher densities. "But it would certainly improve the community if both would work more closely," Mr. Lowe stated.

Although the factionalism Miss Darin predicted has occurred, it seems to have occurred without any attendant animosity. "One of the remarkable things about the Village is the tremendous diversity of people who are communicating well with each other," she now says.

One of the reasons they are communicating well is the "we're all in this together" feeling that prevails in the Village. With such an attitudinal catalyst at work, residents can band together to counter the common problems that face them. One of the most pressing is the school situation.

Two elementary schools serve the children of Charles Village: P.S. 53 (Margaret Brent) and P.S. 54 (Barclay). Neither scored too well on a recent city-wide measurement of reading achievement. Both fell just below the city median. Both are racially balanced, but both are overcrowded. Both have unwieldly pupil-teacher ratios—over 30 students for each teacher; and Barclay, although a relatively new school, has one of the smallest teacher-aide staffs in the city. Everyone realizes that something must be done about the schools if Charles Village is to continue to attract young, middle-income couples who are concerned about the education of their children. Something is being done.

There exists an active education committee headed by Dr. John Neff, a pediatrician on the Hopkins staff. The parents of three young children, Dr. and Mrs. Neff chose to move to Charles Village because, as Dr. Neff explained, they discovered there "people like ourselves who were looking for a place to move into and help develop, help create. In part it was an anti-suburban move on both our parts. We disliked the ethnic and socio-economic homogeneity we found in suburbia.

"I think," he added, "that living in the city will broaden our children's horizons. As far as their understanding of their fellow human beings, it is terribly important for them to learn that there are people of many different types and backgrounds." But there remain the weaknesses of the Village's public schools.

In its efforts to upgrade the quality of Village education, Dr. Neff's committee (which is structured as a corporation for fund-raising purposes) has encouraged the program of tutorials being conducted at St. John's for youngsters with reading problems by neighborhood volunteers. It is working to transform Barclay into a community school, and it is trying to raise money for the installation of a creative playground at Margaret Brent which will feature a climbing apparatus that can be transformed into a stage.

What Dr. Neff sees as a giant step in the improvement of the two schools has been made by The Johns Hopkins University. Recently the university announced that it would offer tuition-free courses leading to masters degrees to Brent and Barclay faculty members.

"We hope that the program will serve as an incentive for good teachers to stay at our schools—and for them to come here," Dr. Neff said. "About a third of the teachers at each school are taking advantage of the program now."

That move on the part of Hopkins, even

though the idea was generated within Neff's committee, has been greeted with hallelujahs by Charles Villagers. It has been taken as a sign that the university, for the first time in almost a century, may be preparing to leave its hill and involve itself with its community. They see it as an initial attempt on the part of Hopkins to prevent upper Charles Street from going the way of Broadway.

Hesitant indication of just such an intention came four years ago when Hopkins begat The Greater Homewood Community Project to investigate what a project spokesman called "an obvious deterioration of the area." Greater Homewood as then defined included Guilford, Tuscany-Canterbury, Homewood, Charles Village, Remington, Hampden, Wyman Park, and parts of Roland Park and Waverly—neighborhoods that obviously share little except proximity to Homewood Campus. Nonetheless, after many meetings of neighborhood and university representatives, it was agreed to continue the amalgamation in the form of a corporation. The Greater Homewood Community Corporation was announced last year.

"It is a model program that is being looked at all over the country," boasted Mrs. Dea A. Kline, who served as director of the project and who is watching over its offspring, the corporation, until an executive director is hired.

"We are very concerned about Charles Village," she said. Charles Village is on the firing line, facing pressures to go commercial and to increase in density. We are concerned with those pressures because they tend to erode the very solid residential base that Charles Village does now have. We look upon it as a very important community in relation to the university. After all, so many of our students do live there."

At the moment there is a good deal of mutual back-slapping on the part of the university and some Charles Villagers. Dr. Neff, for instance, points out that his education committee originated within the Greater Homewood Project. He notes too, that the university was gracious enough to allow his committee to use Shriver Hall for its benefit ballet. Mrs. Kline, in turn, praises the Village as a "valiant effort" and "a concept for an intellectual revival."

But to a contingent of Villagers who see the GHC as a token effort and little more, Hopkins still has to prove its sincerity. Said one, indignantly, "It just kills us to see all that money being spent for nobody knows what. [Hopkins is granting the corporation $20,000 a year.] If they'd put it in the schools, the sky would be the limit. Charles Village is Greater Homewood's real source of enthusiasm and action, yet Dea Kline is up there acting like Lady Bountiful. Do you know what she did last year? She had the Guilford Garden Club come down to St. John's to teach *us* how to make Christmas greens! And they want us to get a neighborhood mayor's station, or whatever you call it. That just assumes that we don't have sense enough to pick up the telephone and dial City Hall!"

It has been suggested by some Villagers—and by some frustrated would-be Villagers as well—that if Hopkins really wants to contribute to the rooting and nurture of Charles Village, it could start by using its influence and perhaps some of its money to make it easier for people committed to the Village concept to buy homes in the area, something it is now almost impossible to do without down payments of 40 per cent or more.

Charles Villagers are caught in an ironic sort of pinch. To the north of them, in areas where incomes are considerably higher than theirs, down payments are lower and F.H.A. insured mortgages are relatively easy to get. Beside and to the south of them, closer to the inner city, there are houses in dire need of rehabilitation, just as there are in Charles Village itself. In many of the inner city areas, three per cent federal loans—and, in some cases, out and out grants—are available to property owners who wish to rehabilitate. Few do. In Charles Village, however, where people of moderate means are trying both to buy and to rehabilitate, no federal monies are available, F.H.A. insured loans are extremely hard to come by, and conventional mortgage money is painfully expensive. ("If lending institutions are going to discriminate against the city, that's their prerogative," one local realtor stated matter-of-factly.)

The condition has thwarted a number of families. "It seems like it's easier to buy an expensive new Cadillac than a cheap antique Ford you want to fix up," grumbled a young decorator who, frustrated in his attempts to get an F.H.A. loan for a Charles Village house, bought instead—and quite easily—a more costly but smaller home a few blocks north.

Of course, many people attracted to the Village sweat through the difficulties and manage to buy anyway. "You just expect to have to make a big down payment," one young homeowner said. "You have to put off the renovations or do them yourself."

As an encouraging sign, however, some of the lenders located in the Village itself—perhaps because they are in a better position to see what is happening there—are beginning to make money available to people who intend to buy and rehabilitate. (Practically every Villager mentions Homeseekers' Federal Savings and Loan Association in this connection.) "But we sure could use more help from the major lending institutions," one property owner lamented.

The financing problem is, of course, typical of what Charles Villagers have been facing throughout their three-year private urban renewal project. The solutions they have reached, the strides they have made, have been accomplished largely on their own, with practically no outside help. In that respect Charles Village represents a continuation of the country's fokloric tradition of self-reliance and individual enterprise.

In another respect, however, the Charles Village phenomenon hints of something new. It suggests a moderation of American attitude toward cities. As New York's Mayor John V. Lindsay recently observed, Americans historically have considered the city a suspect institution. "The city has seemed to many of our important and revered thinkers a condition to be avoided, not a problem to be solved," he has stated. "We Americans don't like our cities very much."

But neighborhoods like Charles Village—and Bolton Hill and Seton Hill, and Society Hill in Philadelphia and Church Hill in Richmond and Beacon Hill in Boston and all the other Hills wherever about the country they may be—may prove him wrong. Drawn to metropolitan areas in ever-increasing numbers by job opportunities, Americans may finally be resolving to come to grips with the urban environment in which they must live and work rather than continue their frustrating attempts to escape it. Even now the "vanguard of the Hills" are creating within their respective cities well-defined neighborhoods which, while providing each resident a milieu in which he can pursue his individual goals, also provide him the society—and the strength and security—of community. The city may indeed be the new frontier. If in fact it is, Charles Village will have had the distinction of being one of its pioneer settlements.

TRIBUTE TO POLICE CHIEF HENRY F. MILLER, JR., WEST WARWICK, R.I.

Mr. PELL. Mr. President, I wish to commend Police Chief Henry F. Miller, Jr., of West Warwick, R.I., for two outstanding acts of heroism within the past 10 days.

Henry Miller, whom I know and respect, on two occasions, at great personal risk to himself, unarmed confronted first, a man armed with a rifle; and second, a number of people in a house from which shots were fired, which, it was later determined, were blanks.

In these unhappy times when we hear much criticism of our police authorities, whose obligation and responsibility it is to maintain law and order, it is all too rare that those of us in a position of responsibility take the opportunity to commend our police officers who daily risk their lives and bring to a successful conclusion the maintenance of order in a community without bloodshed.

Chief Miller, a 36-year police veteran, exemplifies the character of the type of policeman we so much admire. In praising him, I wish to point out that he is representative of thousands of policemen who prevent crime and violence from occurring in our society, but not without great personal sacrifice and risk.

I salute him for his courage and good judgment and hope that he will continue to serve the community of West Warwick and its citizens for many years.

COMMITTEE FOR CONTINUED U.S. CONTROL OF THE PANAMA CANAL

Mr. THURMOND. Mr. President, last week I presented to the Senate an article from Human Events carrying reports that discussions were being reopened relative to renegotiating treaties. In my opinion, such an effort is sheer folly, given the present circumstances in world affairs and the international threats which we face.

Today, Mr. President, I am happy to announce that a very distinguished committee of scholars, engineers, and men with a practical interest in canal affairs has been formed to express their combined wisdom and experience on this important matter. This group is called the Committee for Continued U.S. Control of the Panama Canal. The committee comes out clearly against renegotiation of the treaties and in support of the plan for the modernization of the canal according to the Terminal Lake-Third Locks plan, which is embodied in my bill, S. 2228.

In looking over the names of this committee, I cannot think of a group which would have more expertise and more understanding of the manifold problems involved in the canal. There is Dr. Karl Brandt, who was formerly Chairman of the President's Council of Economic Advisers. There is Dr. John C. Briggs, who has done magnificent work in pointing out the ecological problems which would be created by a sea-level canal. There is Dr. Donald M. Dozer, a distinguished historian and authority on Latin America, who has written widely on canal problems. There is Maj. Gen. Thomas A. Lane, former Commissioner of the District of Columbia and an Army engineer. There is Dean Edwin J. B. Lewis of George Washington University, who is

president of the Panama Canal Society of Washington, D.C. There is Vice Adm. T. G. W. Settle, who was formerly Commander of the Amphibious Forces in the Pacific. There is Brig. Gen. Herbert D. Vogel, who was formerly Deputy Governor of the Panama Canal Zone.

In citing these names by random, I do not mean to diminish the importance of the other distinguished members of this panel, all of whom have had intimate experience with the canal from the standpoint of engineering, navigation, history, politics, economics, geology, and business experience. I refer my colleagues to the complete list which includes professors, engineers, general officers, and naval officers of flag rank.

This distinguished committee has prepared a memorial to the Members of the Congress of the United States. This memorial succinctly recapitulates the history of our investment in the Canal Zone.

In connection with attempts to reopen treaty negotiations I call attention to paragraph 7 of this memorial which says:

All of these facts are paramount considerations from both U.S. national and international viewpoints and cannot be ignored, especially the diplomatic and treaty angles. In connection with the latter, it should be noted that the original Third Locks Project, being only a modifiation of the existing Canal, and wholly within the Canal Zone, did not require a new treaty with Panama. Nor, as previously stated, would the Terminal Lake-Third Locks Plan require a new treaty.

I also call attention to paragraph 14 which says:

The Panama Canal is a priceless asset of the United States, essential for interoceanic commerce and Hemispheric security. Clearly, the recent efforts to wrest its control from the United States trace back to the 1917 Communist Revolution and conform to long range Soviet policy of gaining domination over key water routes as in Cuba, which flanks the Atlantic approaches to the Panama Canal, and as was accomplished in the case of the Suez Canal. The real issue as regards the Canal Zone and Canal sovereignty is not United States control *versus* Panamanian, but United States control *versus* Communist control. This is the subject that should be debated in the Congress, especially in the Senate.

This memorial concludes by calling upon Congress to enact the measures for the major modernization of the existing Panama Canal, as embodied in my measure, S. 2228.

Mr. President, I ask unanimous consent that the memorial to Congress issued by the Committee for Continued U.S. Control of the Panama Canal, with the list of signers, be printed in the RECORD.

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

MEMORIAL TO THE CONGRESS

Honorable Members of the Congress of the United States, the undersigned, who have studied various aspects of interoceanic canal history and problems, wish to express our views:

1. The construction by the United States of the Panama Canal (1904–1914) was one of the greatest works of man. Undertaken as a long-range commitment by the United States in fulfillment of solemn treaty obligations (Hay-Pauncefote Treaty of 1901) as a "mandate for civilization" in an area notorious as the pest hole of the world and as a land of endemic revolution, endless intrigue and governmental instability (Flood, "Panama: Land of Endemic Revolution . . ." Congressional Record, vol. 115, pt. 17, pp. 22845–22848), the task was accomplished in spite of physical and health conditions that seemed insuperable. Its subsequent management and operation on terms of "entire equality" with tolls that are "just and equitable" have won the praise of the world, particularly countries that use the Canal.

2. Full sovereign rights, power and authority of the United States over the Canal Zone territory and Canal were acquired by treaty grant from Panama (Hay-Bunau-Varilla Treaty of 1903), all privately owned land and property in the Zone were purchased from individual owners, and Colombia, the sovereign of the Isthmus before Panama's independence, has recognized the title to the Panama Canal and Railroad as vested "entirely and absolutely" in the United States (Thomson-Urrutia Treaty of 1914–22).

3. The gross total investment of our country in the Panama Canal enterprise, including its defense, from 1904 through June 30, 1968, was $6,368,009,000; recoveries during the same period were $1,359,931,421, making a total net investment by the taxpayers of the United States of more than $5,000,000,000. Except for the grant by Panama of full sovereign powers over the Zone territory, our Government would never have assumed the grade responsibilities involved in the construction of the Canal and its later operation, maintenance, sanitation, protection and defense.

4. In 1939, prior to the start of World War II, the Congress authorized, at a cost not to exceed $277,000,000, the construction of a third set of locks known as the Third Locks Project, then hailed as "the largest single current engineering work in the world." This Project was suspended in May 1942 because of more urgent war needs, and the total expenditures thereon were $76,357,405, mostly on lock site excavations at Gatun and Miraflores, which are still usable. Fortunately, no excavation was started at Pedro Miguel. The current program for the enlargement of Gaillard Cut is scheduled to be completed in 1970 at an estimated cost of $81,257,097. These two projects together represent an expenditure of more than $157,000,000 toward the major modernization of the existing Panama Canal.

5. As the result of canal operations during the crucial period of World War II, there was developed in the Panama Canal organization the first comprehensive proposal for the major operational improvement and increase of capacity of the Canal as derived from actual marine experience, known as the Terminal Lake-Third Locks Plan. This conception includes provisions for:

(1) Elimination of the bottleneck Pedro Miguel Locks.

(2) Consolidation of all Pacific Locks South of Miraflores.

(3) Raising the Gatun Lake water level to its optimum height (about 92').

(4) Construction of one set of larger locks.

(5) Creation at the Pacific end of the Canal of a summit-level terminal lake anchorage for use as a traffic reservoir to correspond with the layout at the Atlantic end, to permit uninterrupted operation of the Pacific locks during fog periods.

6. Competent, experienced engineers have officially reported that "all engineering considerations which are associated with the plan are favorable to it." Moreover, such solution:

(1) Enables the maximum utilization of all work so far accomplished.

(2) Avoids the danger of disastrous slides.

(3) Provides the best operational canal practicable of achievement with the certainty of success.

(4) Preserves and increases the existing economy of Panama.

(5) Avoids inevitable demands for damages that would be involved in a Canal Zone sea level project.

(6) Averts the danger of a potential biological catastrophe with international repercussions that would be caused by removing the fresh water barrier between the Oceans.

(7) Can be constructed at "comparatively low cost" without the necessity for negotiating a new canal treaty with Panama.

7. All of these facts are paramount considerations from both U.S. national and international viewpoints and cannot be ignored, especially the diplomatic and treaty angles. In connection with the latter, it should be noted that the original Third Locks Project, being only a modification of the existing Canal, and wholly within the Canal Zone, did not require a new treaty with Panama. Nor, as previously stated, would the Terminal Lake—Third Locks Plan require a new treaty.

8. In contrast, the persistently advocated and strenuously propagandized Sea-Level Project at Panama, initially estimated in 1960 to cost $2,368,500,000, exclusive of indemnity to Panama, has long been a "hardy perennial," and according to former Governor of the Panama Canal, Jay J. Morrow, it seems that no matter how often the impossibility of realizing any such proposal within practicable limits of cost and time is demonstrated, there will always be someone to argue for it; and this, despite its engineering impracticability. Moreover, any sea-level project, whether in the U.S. Canal Zone territory or elsewhere, will require a new treaty or treaties with the countries involved in order to fix the specific conditions for its construction, and this would involve a huge indemnity and a greatly increased annuity that would have to be added to the cost of construction and reflected in tolls, or be wholly borne by the United States taxpayers.

9. Starting with the 1936–39 Treaty with Panama, there has been a sustained erosion of United States rights, powers and authority on the Isthmus, culminating in the completion in 1967 of negotiations for three proposed new canal treaties that would:

(1) Surrender United States sovereignty over the Canal Zone to Panama;

(2) Make that weak, technologically primitive and unstable country a partner in the management and defense of the Canal;

(3) Ultimately give to Panama not only the existing Canal, but also any new one constructed in Panama to replace it, all without any compensation whatever and all in derogation of Article IV, Section 3, Clause 2 of the U.S. Constitution. This provision vests the power to dispose of territory and other property of the United States in the entire Congress (Senate and House) and not in the treaty-making power of our Government (President and Senate).

10. It is clear from the conduct of our Panama Canal policy over many years that policy-making elements within the Department of State have been, and are yet engaged in efforts which will have the effect of diluting or even repudiating entirely the sovereign rights, power and authority of the United States with respect to the Canal and of dissipating the vast investment of the United States in the Canal Zone project. Such actions would eventually and inevitably permit the domination of this strategic

waterway by a potentially hostile power that now indirectly controls the Suez Canal. That canal, under such domination, ceased to operate in 1967 with vast consequences of evil to world shipping.

11. Extensive debates in the Congress over the past decade have clarified and narrowed the key canal issues to the following:

(1) Retention by the United States of its undiluted and indispensable sovereign rights, power and authority over the Canal Zone territory and Canal, and

(2) The major modernization of the existing Panama Canal. Unfortunately, these efforts have been complicated by the agitation of Panamanian extremists, aided and abetted by irresponsible elements in the United States which aim at ceding to Panama complete sovereignty over the Canal Zone and, eventually, the ownership of the existing Canal and any future canal in the Zone or in Panama that might be built by the United States to replace it.

12. In the First Session of the 91st Congress identical bills were introduced in both House and Senate to provide for the major increase of capacity and operational improvement of the existing Panama Canal by modifying the authorized Third Locks Project to embody the principles of the previously mentioned Terminal Lake solution.

13. Starting on October 27, 1969 (Theodore Roosevelt's birthday), more than 100 Members of Congress have sponsored resolutions expressing the sense of the House of Representatives that the United States should maintain and protect its sovereign rights and jurisdiction over the Panama Canal enterprise, including the Canal Zone, and not surrender any of its powers to any other nation or to any international organization.

14. The Panama Canal is a priceless asset of the United States, essential for interoceanic commerce and Hemispheric security. Clearly, the recent efforts to wrest its control from the United States trace back to the 1917 Communist Revolution and conform to long range Soviet policy of gaining domination over key water routes as in Cuba, which flanks the Atlantic approaches to the Panama Canal, and as was accomplished in the case of the Suez Canal. The real issue as regards the Canal Zone and Canal sovereignty is not United States control *versus* Panamanian, but United States control *versus* Communist control. This is the subject that should be debated in the Congress, especially in the Senate.

15. In view of all the foregoing, the undersigned urge prompt action as follows:

(1) Adoption by the House of Representatives of pending Panama Canal sovereignty resolutions; also similar action by the Senate.

(2) Enactment by the Congress of pending measures for the major modernization of the existing Panama Canal.

To these ends, we respectfully urge that hearings be promptly held on the indicated measures and that Congressional policy thereon be determined for early prosecution of the vital work of modernizing the Panama Canal, now approaching capacity saturation.

Dr. Karl Brandt, Palo Alto, Calif. Economist, Hoover Institute, Stanford, Calif., Formerly Chairman, President's Council of Economic Advisers.

Dr. John C. Briggs, Tampa, Fla. Chairman, Department of Zoology, University of South Florida.

William B. Collier, Santa Barbara, Calif. Business Executive with Background of Engineering and Naval Experience.

Dr. Lev E. Dobriansky, Alexandria, Va. Professor of Economics, Georgetown University.

Dr. Donald M. Dozer, Santa Barbara, Calif. Historian, University of California. Authority on Latin America.

Cmdr. Carl H. Holm, Miami Beach, Fla. Business Executive, Naval Architect and Engineer.

Dr. Walter D. Jacobs, College Park, Md. Professor of Government and Politics, University of Maryland.

Maj. Gen. Thomas A. Lane, McLean, Va. Engineer and Author.

Dean Edwin J. B. Lewis, Washington, D.C. Professor of Accounting, George Washington University. President, Panama Canal Society, Washington, D.C.

Dr. Leonard B. Loeb, Berkeley, Calif, Professor of Physics, University of California.

Howard A. Meyerhoff, Tulsa, Oklahoma. Consulting Geologist. Formerly Head of Department of Geology, University of Pennsylvania.

Richard B. O'Keeffe, Washington, D.C. Assistant Professor, George Mason College. Formerly Research Associate, The American Legion.

William E. Russell, New York, N.Y. Lawyer, Publisher and Business Executive.

Capt. C. H. Schildhauer, Owings Mills, Md. Aviation Executive.

V.Ad. T. G. W. Settle, Washington, D.C. Formerly Commander, Amphibious Forces, Pacific.

Harold L. Varney, New York, N.Y. Editor, Authority on Latin American Policy. Chairman, Committee on Pan American Policy.

B. Gen. Herbert D. Vogel, Washington, D.C. Consulting Engineer. Formerly Deputy Governor, Panama Canal Zone.

R.Ad. Charles J. Whiting, La Jolla, Calif. Attorney at Law.

(NOTE.—Institutions are listed for identification purposes only.)

HAROLD BRAGER: A TRIBUTE TO A CIVIL SERVANT

Mr. TYDINGS. Mr. President, today I have the privilege of paying tribute to an outstanding example of what a civil servant should be.

Recipient of the Maryland First Civil Servant of the Year Award in the nonscientific area, Harold Brager has been an employee of the Internal Revenue Service for the past 7 years.

His success can perhaps be attributed to his ideal combination of organizational and investigative abilities and a knack for dealing with people in a field where tact is a necessary attribute.

An active participant in his community, Brager also manages to devote his attention to outside philanthropies, particularly the prevention of children's diseases.

I ask unanimous consent that an article from the News American of May 1, 1970, concerning the achievements of Mr. Brager be printed in the RECORD.

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

FEB HONORS CIVIL SERVANTS

(By Ned Young)

The recipients of the first Civil Servant of the Year Awards for the State of Maryland to be sponsored by the Federal Executive Board in Baltimore are George Friedman of Social Security and Harold Brager of the Internal Revenue Service.

Presentation was made by Senator Charles McC. Mathias (R-Md.) and Colonel Paul R. Cerar, president of the FEB, at a luncheon attended by some 250 civil servants of the Baltimore District in the Statler-Hilton Hotel in Baltimore.

Friedman and Brager were selected from among seven finalists that had been picked by a special committee from a large number of nominees sent in by various federal agencies.

Senator Mathias, who was guest speaker, noted that there are some 63,000 federal employes working in Maryland.

Nominees were divided into two categories. non-scientific and scientific.

Brager, winner in the non-scientific category, joined the Internal Revenue Service July 1, 1963 as an intern and within a three-year period progressively advanced to become a senior revenue officer.

In nominating him for the award, the IRS states in part as follows:

"The Taxpayer Delinquent Accounts assigned to our nominee are consistently difficult or sensitive. He can be relied upon to initiate effective collection measures as well as dispose of troublesome collateral investigations.

"He effectively manages and utilizes his work schedules and consistently applies tact, patience and investigative abilities which result in the successful closing of a large number of cases."

Brager is also cited for extensive involvement in activities for the prevention of children's diseases.

The scientific winner, Friedman, is an assistant bureau director of the Social Security Administration at the agency's national headquarters near Baltimore.

A native of New York City, Friedman began his federal career with the Justice Department in 1935 and transferred to Social Security the following year.

The agency credits him with developing a cost reduction plan that will save the government more than $5 million during the current fiscal year alone.

The plan, declares Social Security, will also result in considerable savings to other federal and state agencies.

Senator Mathias arrived late for the luncheon and explained he had been detained at a meeting of the Senate Judiciary Committee of which he is a member.

"You know what we were doing, and this time I think we've got one," he asserted, referring, of course, to Judge Harry A. Blackmun, the latest candidate for the Supreme Court.

In his talk, the senator paid tribute to the entire federal family.

"The President of the United States is a human being, the same as the rest of us. However, he can depend upon some three million persons for advice and help in achieving the nation's aims. The image of the government worker having it easy is wrong. We owe the Civil Service a debt of recognition," he declared.

United States Marshal Frank Udoff was chairman of the luncheon. Co-chairman and toastmaster was C. Temple Thomason, deputy director of the Veterans' Administration Hospital in Baltimore.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further morning business, If not, morning business is closed.

DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970—CONFERENCE REPORT

Mr. TYDINGS. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two

Houses on the amendments of the Senate to the amendments of the House to the bill (S. 2601) to reorganize the courts of the District of Columbia, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. McGOVERN). Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

PRIVILEGE OF THE FLOOR

Mr. TYDINGS. Mr. President, I ask unanimous consent that for the duration of the debate on the conference report on S. 2601, the District of Columbia Court Reform and Criminal Procedures Act of 1970, the following members of the District of Columbia Committee staff have the privileges of the floor without regard to the usual maximum limitation of two staff members' presence on the floor:

John McEvoy, Wesley S. Williams, Jr., James Davenport, Ted Maeder, Karen Williams, and James Medill.

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

Mr. MANSFIELD. Mr. President, will the Senator yield, without losing his right to the floor?

Mr. TYDINGS. I yield.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum; and this may well be a live quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

[No. 246 Leg.]

Aiken	Hansen	Moss
Allen	Hatfield	Murphy
Baker	Holland	Pastore
Bayh	Hollings	Pell
Boggs	Hruska	Prouty
Burdick	Hughes	Schweiker
Byrd, Va.	Jackson	Sparkman
Byrd, W. Va.	Javits	Stennis
Case	Jordan, N.C.	Stevens
Curtis	Kennedy	Symington
Ellender	Mansfield	Talmadge
Ervin	Mathias	Tydings
Goodell	McGovern	Williams, Del.
Griffin	McIntyre	Young, N. Dak.
Gurney	Metcalf	

Mr. KENNEDY. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Tennessee (Mr. GORE), the Senator from Hawaii (Mr. INOUYE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Ohio (Mr. YOUNG) are necessarily absent.

I further announce that the Senator from Minnesota (Mr. MONDALE) and the the Senator from Wyoming (Mr. McGEE) are absent on official business.

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT) is absent by leave of the Senate on official business.

The Senator from Massachusetts (Mr. BROOKE) is absent on official business.

The Senator from Kentucky (Mr. COOK), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Hawaii (Mr. FONG), and the Senator from Ohio (Mr. SAXBE) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) and the Senator from Maine (Mrs. SMITH) are absent because of illness.

The PRESIDING OFFICER. (Mr. HANSEN). A quorum is not present.

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

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

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

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

Anderson	Hartke	Percy
Bellmon	Jordan, Idaho	Proxmire
Bennett	Long	Randolph
Bible	Magnuson	Ribicoff
Cooper	McCarthy	Russell
Cranston	McClellan	Scott
Dole	Miller	Smith, Ill.
Fulbright	Muskie	Spong
Gravel	Nelson	Thurmond
Harris	Packwood	Tower
Hart	Pearson	Williams, N.J.

The PRESIDING OFFICER (Mr. HANSEN). A quorum is present.

UNANIMOUS-CONSENT AGREEMENT TO DISPENSE WITH THE PRINTING OF CONFERENCE REPORT IN THE RECORD

Mr. BYRD of West Virginia. Mr. President, in view of the great length of the conference report on the bill (S. 2601), which might cover as many as 160 pages of the CONGRESSIONAL RECORD, I ask unanimous consent to dispense with the printing of the conference report in the RECORD.

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

Mr. TYDINGS. Mr. President, today the Senate begins final action on President Nixon's District of Columbia crime legislation. This conference report on S. 2601 combines five of the President's anticrime bills into a single package: Court reform for the District of Columbia, creation of a permanent Public Defender Agency, Bail Agency expansion, juvenile court procedure revision, pretrial detention for dangerous criminal defendants, and a number of reforms of the criminal laws and statutes of the District of Columbia.

This legislation will mark the second of President Nixon's crime bills to pass the Congress. Earlier this year it was my pleasure to manage the passage of S. 952, the first of the President's crime bills to be enacted by Congress. That omnibus judgeship bill significantly increases the Federal judicial manpower available to try both criminal and civil cases.

Mr. President, no one doubts the need for prompt enactment of District of Columbia crime legislation. More than 56,000 felonies were reported in this city last year, but scarcely more than 1,400 felony convictions were obtained in the District's courts during the same period. The number of felonies reported in the District has risen 122 percent in the last 5 years, while the percentage of convictions obtained each year has actually decreased during the same period.

This conference bill is a sound, effective, constitutional, and fully safeguarded response to this crime crisis.

The debate in the Senate will be a thorough one extending over several days. I anticipate that, at the conclusion of the debate, the bill will be approved by an overwhelming majority of the Senate. The bill deserves that overwhelming support.

I expect the debate will center on the pretrial detention provision of this legislation. In nearly overy other area, the bill simply enacts prior Supreme Court decisions or makes applicable to the District of Columbia legislation which Congress has previously enacted for the entire country.

In addition, it adopts reforms in the courts, the Bail Agency, and creates a Public Defender Service, provisions which are uniformly applauded by criminologists and others who are interested in improving our criminal justice system.

For example, the wiretap provisions of this legislation do not even extend as far as Congress authorized the States to go in the omnibus crime bill in 1968. In fact, the wiretap provisions of this bill are considerably tightened and more carefully safeguarded than is the 1968 act itself, which presently applies in the District of Columbia.

The minimum mandatory sentences provision of this legislation applies in no case to the first offender. As it applies to second and subsequent offenders, it is modeled on the provisions of the Federal Firearms Control Act the Senate overwhelmingly approved in 1968.

The no-knock warrant section of the legislation is simply a codification of longstanding Supreme Court decisions. In fact, this bill adds a very significant additional protection for privacy not contained in those prior decisions or in the law of the District of Columbia today: prior judicial supervision of no-knock entry in every possible case. It is a far better proposal insofar as the point of view of civil libertarians is concerned than presently exists under the law of the land as decided by the Supreme Court.

Most of the rest of this legislation was enacted by the Senate, without a dissenting vote, last fall when we passed our version of the President's District of Columbia crime legislation.

Only the pretrial detention section of this legislation has not previously been passed in one form or another by the Senate. Some Senators will oppose this provision.

I would hope that they would make their judgments on the facts and actual law as it is proposed by the conference report; and that they will consider the practice which has existed for hundreds of years in Great Britain and the practice which has existed in most of the Western World. Great Britain not only shares our legal traditions but, in fact, we borrowed verbatim from the British Bill of Rights relating to bail, in adopt-

ing the eighth amendment. I trust Senators will be fair enough to realize and admit that today in the United States we have pretrial detention in the courts of every State operating under the hypocrisy of a high money bail system, which discriminates against the poor and benefits the affluent and which does not provide for the many safeguards, including adversary proceedings or speedy trials, which are contained in this report.

I hope that each Senator will look at the facts in the report and in the Senate Statement of Managers. If they will, I am confident of the overwhelming support of the majority of the Senate for this provision of the bill.

Mr. President, some Senators will argue that even though a majority of the Senate supports this legislation, the Senate should reject it and send a halfway measure back to the House instead as an amendment to other legislation. I expect this strategy to be rejected by the Senate. But I must also warn that it is a dangerous delusion to believe that the House of Representatives, which approved this very bill yesterday by a vote of 5 to 1, is ever going to accept such legislation stripped of the few provisions which the House won in conference.

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

Mr. TYDINGS. I yield.

Mr. HRUSKA. Could that so-called end run technique be engaged in under the present parliamentary situation? Is it not true that the alternatives available to this body are either to accept the report or to reject the report?

Mr. TYDINGS. The Senator is correct. The possibility that some Senators might offer parts of the District of Columbia crime conference report as an amendment to another District of Columbia bill, or as an amendment to another piece of legislation, in the hope that the legislation would then pass the House of Representatives and be enacted into law is a very dangerous delusion.

Mr. HRUSKA. I am confident that that is the situation because of the advice of the Parliamentarian. If there is a rejection of the conference report for the purpose of later engaging in that end-run technique, then we run the high possibility of no crime bill for the District of Columbia during the remainder of this session of Congress. Is that correct?

Mr. TYDINGS. That is my judgment and I will speak to that point.

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. TYDINGS. I yield for a question.

Mr. ERVIN. Mr. President, I wish to ask the Senator if this does not mean the Senate should not have a voice in the passage of this legislation but let the House of Representatives work its will, regardless of how the Senate feels about the matter. The Senator is arguing we must let the House have the only real representative voice in this matter and that Members of the Senate must not have a voice in it.

Mr. TYDINGS. Did the Senator ask me a question?

Mr. ERVIN. Yes; but I added a statement.

Mr. TYDINGS. I yielded for the purpose of a question. However, I accept the Senator's response. I must caution the Senator, however, that those members of the Senate conference who actually participated in our proceedings well remember the warning of the House conferees that if this bill goes back to conference, they will insist on amendments from top to bottom and will retract the numberless concessions the House made in its bill in order to achieve this conference report.

If this bill goes back to conference, the House will once again insist on minimum mandatory sentences for first offenders; the ill-advised transfer of the Lorton Reformatory; deletion of any money to pay for the bill; and restoration of the no-knock warrant features the Senate considers unconstitutional. And this will be just the beginning.

This conference bill represents the work of 3 months of grueling conference process in which good faith and flexibility were exercised by both sides. If it is rejected by the Senate now, in my judgment, no conference bill acceptable to the Senate will ever emerge.

And do not be fooled by some arguments that the House will accept a watered-down version of the District of Columbia crime bill tacked on as an amendment to some other legislation. Those members of the Senate conferees who actually participated in the conference proceedings will recall clearly the warning from the House side that they will block action in the House on any bill that attempts to circumvent the normal legislative processes and substitute a watered-down version of the District of Columbia crime bill.

Mr. President, I do not criticize the House conferees for these positions. They made enormous concessions to the Senate conferees in order to obtain this bill. They have no intention of now being circumvented or defeated on this bill. And neither do I.

There were times when I did not think we could get a good bill, but we prevailed and we did.

I want to take this opportunity to express my gratitude to Senators PROUTY, BIBLE and SPONG, whose support for returning a sound bill to the Senate permitted me the flexibility of negotiation necessary to achieve this conference report.

Our game plan has been to bring back to the Senate a sound bill, an effective bill, a constitutional bill which contains an effective, sound, and constitutional pretrial detention section. We have achieved this objective. In the end, after 24 long meetings of the conference we were able to agree on a bill which met the high standards I had defended throughout the conference.

Mr. President, we have known from the beginning that a bill containing pretrial detention would be opposed by some Senators who are irrevocably opposed to any formal pretrial detention. But we have also known the majority of Senators, just like the overwhelming majority of the House, favor a bill which includes pretrial detention.

This is the bill which is before the Senate. This is the bill which in a few days the President of the Senate will send to the President for his signature, if the conference report is agreed to.

I do not think any mistake should be made about it. If this bill fails, given the unequivocally clear attitude of the House, there will be no District of Columbia crime legislation in this Congress, particularly in view of the backlog of legislation already before both Houses, the elections, and the other procedural and personal difficulties connected with any type of end-run version of a District of Columbia crime bill in the House of Representatives.

Some—friends and critics alike—have actually suggested that we should not pass this bill at all—at least not now—because the division and suspicion surrounding it go so deep among law-abiding citizens.

But I reject this course. For, while I fully recognize the insensitivity of many administration policies, I believe this conference bill, the work product of 3 hard months, is a constitutional, sound, and urgently needed measure which will greatly strengthen the criminal justice system of the National Capital. While I understand the concern, even the fear, of citizens who do not understand this bill, I also recognize another kind of fear—the fear of unchecked crime which is ravaging the National Capital every day and night; ripping its social and economic structure to shreds; and viciously crippling and smashing lives, families and businesses, every hour of every day of the year.

To those who know this bill is sound, but say that we should not pass it, I say look to the morass of despair, terror, and fear into which the people of this city are sinking. Look at the barred windows of private homes, the deserted nighttime streets, the empty stores, the broken lives of crime's victims.

To those who say this bill is antiblack, I say crime in this 70-percent black city is antiblack. President Johnson's District of Columbia Crime Commission tells us that 86 percent of all District of Columbia murder victims are black; 86 percent of all aggravated assault victims are black; 80 percent of all rape victims are black; 66 percent of all auto theft victims are black; and 60 percent of all burglary victims are black. In fact, the only crime of violence which afflicts blacks and whites equally in this city is robbery.

To those who say the bill is repressive, I say study the actual conference report on the bill, and do not read the various statements and speeches made attacking the House version for the past 3 or 4 months. The conference version must stand on its own merits, and it should be judged by what is contained in it—not what was contained in the House version or other proposals. Study the conference report, and not speeches of political leaders in the District of Columbia or elsewhere.

If Senators will look at the bill, they will see that the court reform provisions

should cut down pretrial delays by 75 percent.

They will see that updating half-century-old criminal statutes to conform to Supreme Court decisions in no way unwisely increases police powers.

They will see that the juvenile procedure sections will radically improve the treatment of juveniles caught up in the judicial system.

They will see that the wiretap section does not expand the present wiretap law in the District beyond the additional offenses Congress explicitly authorized local governments to cover in the 1968 Federal wiretap law now in force in the District.

They will see that it provides special protections for communications involving attorney-client, doctor-patient, pastor and member of his congregation, and husband-wife relationships, protections that do not exist in the House bill nor in the Federal wiretap law adopted by the Congress for the whole country in 1968. They will find that there are other protections not in the present law. Under the wiretap provisions in the conference report, it would be illegal to sell or manufacture purely locally electronic eavesdropping devices, to purchase them, or to possess them purely locally. There is no such District of Columbia law today.

Examine the "no-knock" warrant provision. See that it meets the standards of the unanimously passed Senate bill; that it does not expand on the existing law of the land as declared by the Supreme Court; and that it adds a new safeguard for privacy: prior judicial review of police intentions in every case possible.

The conference bill simply conforms the District of Columbia law on search and arrest with Supreme Court decisions which have been rendered since the statutes were last revised half a century ago. It simply states the conditions which the Supreme Court has already held permit a police officer to dispense with the standard notice of his identity and purpose when he serves a search or arrest warrant.

Nothing in the Conference bill in any way enlarges the authority of officers to search a place without a warrant. The Conference bill merely codifies the Supreme Court decision in Ker against California which specified that a police officer may enter premises without knocking, when an announcement of his presence and purpose would endanger his life or result in destruction of the evidence for which the court has authorized him to search.

In addition, the conference report, like the Senate bill, adds a protection for privacy which does not exist under the Supreme Court decisions or even in the law of Maryland. The bill requires prior judicial review of so-called no-knock entries whenever the officer knows in advance he may have difficulty in executing a search or arrest warrant. The bill provides that, when an officer knows beforehand that his life may be in danger or that evidence may be destroyed, he must seek specific authorization from a judge before he can enter the premises to be searched without knocking.

I might say that, in the great majority of such instances, the police officer would have that knowledge beforehand. In the case of getting an arrest warrant for a known dangerous individual, a person who is sure to injure a police officer in the execution of the warrant, when the officer has the information as to where that person is hiding, he will, at the same time, have ample information that he is a dangerous person certain to injure the police officer executing the arrest warrant. At the time that the police officer goes before the judge to get a search warrant on a gambling raid, he will undoubtedly have both the information, from stakeouts and otherwise, in order to get the warrant, and information that they will have the type of evidence which is readily destroyable and which will be destroyed if they follow their usual course of getting rid of the evidence when notice is given.

In effect, what we do in the conference report is insert judicial approval or judicial authority between the person who is going to be arrested or whose evidence is going to be taken, on the one hand, and the police officer on the other. We spell it out.

In the House statement language, Ker against California is made the governing decision. We have in the conference report the same basic proposal which passed the Senate without a dissenting vote, either in our committee or on the floor of the Senate. We, too, in the Senate statement insist on the Ker case.

What we are talking about are the conditions under which a warrant can be served. I do not believe that anyone would suggest a police officer must absorb a bullet in his stomach as the price for announcing his presence at the door of a known dangerous criminal, perhaps fleeing from a murder or robbery. Nor do I think anyone would suggest a policeman should have to stand helplessly by outside the door while he listens to heroin being flushed down the sink, or sees evidence of a numbers operation going up in smoke.

I think the decision in Ker against California was the right one; but the conference report follows, as well more recent case law including the Supreme Court's decision in Sabboth against United States.

The conference provision is an essential protection for the safety of police officers and a necessary measure to prevent the destruction of evidence in criminal cases.

It is more restrictive than the case law and procedure which has been followed in the States—the State of New York, the State of South Dakota, the State of South Carolina, and others—and it codifies and makes available for all concerned to see what the actual law is with respect to so-called "no knock" entries.

I hope that my colleagues will study pretrial detention proposals pending in the pretrial detention section. Examine its restriction to a specific, limited number of grave crimes—which is far more restrictive than the British or Canadian system. I would hope they would examine its guarantee of due process hearing procedures: right to counsel, a preliminary determination of guilt; quick appeal from a pretrial custody order, its expedited trial provisions within 60 days for affected defendants; and its provisions which would abolish the hypocritical approach, based on high money bail, taken by almost all courts without exception on the issue of detention because of dangerousness.

I hope my colleagues will compare the provisions of the conference proposal with the present situation in the District of Columbia, in which, according to the Bureau of Standards, 40 percent of all felony suspects in the District of Columbia during the period of the Bureau of Standards survey were detained by means of high money bail—a system which does not provide them any adversary proceeding, any right of appeal, or any speedy trial. Such defendants at present sit and cool their heels until either they came up with enough money or the trial process finally gets around to them, whether that is in 6 months, 12 months, or 18 months.

The pretrial detention provision of this legislation is not a new, unique, or original idea. It was recommended by President Johnson's D.C. Crime Commission in 1965. It has been endorsed by the relevant Committee of the Judicial Council of the District of Columbia. A similar proposal was introduced by me, before the Department of Justice proposal was introduced, after I had spent some weeks studying the British operation in 1967.

The British success with pretrial detention over hundreds of years demonstrates that a carefully safeguarded system can be consistent with the concepts of the Bill of Rights and still meet the public safety needs of a modern society. I hope Senators will recall that we had hearings in the Senate Committee on the District of Columbia, on the issue of pretrial detention, prior to the passage of the Senate District of Columbia crime bills. At that time, the Department of Justice stated that they did not wish a pretrial detention proposal in the Senate District of Columbia crime bills. We did not include one.

I brought to testify before our committee, at those hearings, Sir George Coldstream, the former Secretary to the Lord Chancellor, one of the leaders of the court reform movement in the free world, who was at that time lecturing in this country on court reform. I brought over Chief Magistrate Frank Milton, the Chief Metropolitan Magistrate of London and noted British Authority on commitment procedures, who came to explain how well it worked over there, to alleviate the fears of those in the community who are and were genuinely concerned.

We played a tape at the hearing of the Right Honorable Lord Denning, Master of the Rolls—third-ranking member of the judicial system in England—of a lecture he gave before the California Bar Association on the specific point of Congress. I should like to read from his remarks. This is found in the record of the District of Columbia hearings.

Be it murder, rape, bank raid, or the like, in England we do not allow that man out on

bail; we keep him imprisoned pending his trial. It isn't necessary to show that he may abscond. If there is reason to think that he may make another offense, we do not let him out so that he may do it pending trial. We keep him in prison until he is tried.

But I believe here, and I have heard the controversy, that it is an unfair procedure; you are imprisoning him without trial; he has not been convicted; what right have you to imprison him like this pending trial?

In England we do. I think it is right, myself, but this is important: We make sure that he is tried speedily. In England, every man, after his arrest, we arrange for him to be tried within 8 weeks, the greatest length between arrest and trial.

I have been most interested to hear of the bill now before Congress in which proposals are made for preventive detention in this country providing always that the man is tried within 60 days. To my mind, our experience in England, we would have thought that very desirable. It is a matter of controversy for you, but I let out that thought because in our experience in England it is better for society that criminals or potential criminals should not be let loose pending trial. We do not let them out on bail, although we have in our bill of rights, like you, the prohibition against excessive bail being demanded.

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. TYDINGS. I would rather wait until I have finished, and then I will yield for questions.

The concept of protecting the public against persons who might reasonably be believed or presumed to be dangerous is common in our country and perfectly consistent with our notions of individual freedom. There is no strong objection today to the detention of narcotics addicts for their own protection and that of the public. I do not think that anyone would suggest that persons believed to be mentally defective or dangerously unbalanced ought to be released rather than committed to an appropriate institution.

In fact, criminal suspects whom judges believe to be dangerous are detained before trial in every State in the union through the subterfuge of high money bond which the defendant cannot pay.

I believe that dangerous defendants should be held in custody before trial, or, at the very least, released under effective conditions that will protect the public.

But I do not think we should use the hypocritical high money bond system to achieve pretrial detention. Use of money bond unfairly penalizes the poor and does not deter the affluent. We should instead have the kind of carefully safeguarded pretrial detention system this conference bill proposes.

The conference bill's pretrial detention provision is fully constitutional. The eighth amendment to our Constitution was taken word for word from the British Bill of Rights. The British in effect wrote that eighth amendment. It was then submitted to the States for ratification as part of the Bill of Rights. At the same time Congress drafted the eighth amendment in the Bill of Rights, the Congress also drafted the first statutes with respect to bail; and they specifically provided that bail may be denied in capital cases. In those days, capital cases included most serious offenses.

Congress made it abundantly clear that it never intended the eighth amendment to keep a judge from jailing a defendant prior to trial. That First Congress, in the first Federal bail law, provided that a judge could refuse bail and jail any suspects accused of the most serious crimes then listed in their statutes.

The eighth amendment language on bail, I repeat, is taken directly from the British Bill of Rights, which has always been interpreted in that country to authorize pretrial detention of dangerous persons.

The law has been changed since our early colonial days. Since enactment of the Bail Reform Act in 1966, in which I took some part, the only ground for detaining criminal suspects in the District of Columbia is the possibility that they might not appear at trial. That is the only ground for setting any type of conditions on release. The basic concept of the bail reform bill—namely, the elimination of money to determine the appearance of a defendant at trial—I support. I was a cosponsor of that legislation, and I held a substantial number of hearings in my own subcommittee.

But I believe that additional bail reform is needed, I believe that our bail laws should make no distinction between the rich and the poor. But the bail law should make a clear distinction between the ordinary defendant and the defendant whose case and record demonstrates a high probability that if released he may very well commit a crime before trial on the original charge; and I think the Bail Reform Act needs an additional reform to take care of this situation.

When a judge has before him a man whose record supports a reasonable belief that he will commit a crime if released, the judge ought to be able to take more into account, when he determines bail, than whether the defendant will show up for trial even after further crimes have been committed. That is not enough. That does not give the judge the tools with which to protect the community.

The law in the National Capital presently provides that defendants must be released even if it is clear that they are likely to commit further crime. The law ought to be changed.

The law also says that no conditions can be set on the release of an individual, even if it is clear that he is likely to commit another crime, so long as the judge feels that he is going to show up in court when his trial is called. That law ought to be changed in reform.

Some have suggested that the amount of serious crime committed by those released under the present law is so statistically insignificant as to make new legislation providing for pretrial detention unnecessary.

I disagree on that issue as well.

Whatever the percentage of crime committed by suspects released awaiting trial, it is no consolation to the dead store owner or his family, or to the victim of rape, or to the robbed, wounded, maimed, and terrorized citizens against whom these crimes have been committed that their experience is part of what some people would call a "statistically insignificant number of crimes."

I do not think that any Member of the Senate would wish to change places with the District of Columbia busdriver who, on the night of March 12, 1968, was threatened with having his throat slashed by a robber who, only 10 days before, had been released without bail after he had robbed another busdriver only a few blocks away. Subsequently, the accused was convicted of both offenses.

I do not think any Member of the Senate would wish to change places with the downtown bank teller who, on the morning of May 4, 1968, faced down the barrel of a pistol held by a thug who had robbed a Safeway store 4 months earlier, but had been released without bond? He was subsequently convicted of both crimes.

I do not believe anyone here would want to change places with the young woman who was choked and raped in her own apartment near Capitol Hill on June 11, 1968, by an assailant who, 3 weeks later, after he was released without bond on the rape case, appeared at his victim's place of work, fired five shots at her, and struck her down with a bullet in the shoulder.

The blistering, demoralizing record of crime in the National Capital area presents too devastating a picture for us to blind ourselves to the reality that a very large portion of all that serious crime is committed by a relatively small, hard group of criminals, many of whom have been accused of one crime, but released pending trial of that charge.

I think, on both issues, the need to reform the present system of setting bail and the hypocrisy of the high bail system today and protection of the public, on both counts, the conference report on pretrial detention is highly desirable.

CONCLUSION

The Capital and much of its surrounding suburban area have become a virtual ghost city by night. Law-abiding residents fear for their lives and property both on the streets and in their homes. Robbery and commercial crime are so out of control that many businesses have either curtailed their operations or left the city altogether.

The perpetration of major felonies is increasing at a rate of 22 percent a year. The number of felonies reported in the National Capital annually has doubled during the last 5 years. Yet, felony convictions in the District of Columbia courts in 1969 represented only 2½ percent of the 56,419 felonies reported here last year.

The need for action is urgent. The time for action is now. Consider this bill on the basis of its merits, not on the basis of the misunderstanding and emotionalism which surround it.

Nearly 2 years of hard legislative work has produced a vital, constitutional, effective bill to help answer the National Capital crime crisis.

Study this bill. Look at this city riddled by the fear and destruction of crime. Then, I believe, you too will support this legislation.

As debate on the conference report progresses, I will also discuss in depth the provisions for pretrial detention of certain dangerous offenders.

Today I want to discuss in particular the conference action on a number of other criminal law provisions in the House bill, however, which have been criticized by several organizations of responsible spokesmen for the practicing bar and which deserve some attention.

Statements have been made by five groups, in particular, which merit a response: the District of Columbia Bar Association, the American Bar Association Section on Criminal Law, an organization of former Federal prosecutors, former members of the President's Commission on Crime in the District of Columbia, and an organization of lawyers concerned with the juvenile court. The provisions in the House bill which troubled these spokesmen were of grave concern to the Senate conferees. In fact, insistence by the House conferees on many of these items was the chief cause of delay in the conference and the main reason why the conference lasted for 3 months. Any fair-minded appraisal of the conference report will disclose that the Senate conferees achieved exceptional results in the negotiations on these provisions. I wish to take this opportunity to rehearse with you, if I may, the criticisms which have been made and the corresponding conference action.

MANDATORY MINIMUM SENTENCES

The former Federal prosecutors, the ABA Section on Criminal Laws, and the former Commissioners on Crime in the District of Columbia were all concerned with the mandatory minimum sentencing provisions included in the House bill. The conference report eliminated mandatory sentences for first offenders convicted of armed violent crime and the mandatory life sentences, with 20 years before eligible for parole, for three-time violent crime offenders.

Mr. ERVIN. The way I read the bill on the provision for the mandatory minimum sentences for first offenders, it permits such sentences for the use of incendiary devices.

Mr. TYDINGS. I am afraid the Senator is in error. The incendiary provisions contain no mandatory minimum sentences.

Mr. President, the only mandatory sentence provision contained in the conference report is for second offenders convicted of armed violent crime, and this provision is limited to the 5-year mandatory sentence which was previously passed into law in the Federal Firearms Act of 1968. All the other sentencing alternatives are completely discretionary with the courts. Since there have been erroneous statements made about the sentencing provisions, it bears repeating that whereas the conference legislation contains effective and appropriate penalties, there are no mandatory sentences for use of molotov cocktails or other incendiary devices and no mandatory sentences for conviction of crime while released on bail.

OTHER SENTENCING MATTERS

In addition, pursuant to the criticism by the Criminal Law Section and the District of Columbia bar, the Senate requirement of pretrial notice of the intention to ask for the imposition of recidivist penalties and notice of those prior convictions to be relied upon was adopted by the conference. The consecutive sentence rule is completely discretionary with the courts, and, if consecutive sentences are mistakenly imposed, the error can be quickly and easily cured by a simple motion for reduction of sentence.

I am trying to point out areas where the conference responded to critcisms which the Senate conferees felt were justifiably directed at some parts of the House proposal.

Mr. ERVIN. In view of the fact that the Senator said I was in error——

Mr. TYDINGS. Mr. President, do I have the floor?

The PRESIDING OFFICER (Mr. HANSEN). The Senator from Maryland has the floor. Does he yield to the Senator from North Carolina?

Mr. ERVIN. Well, the Senator does have——

Mr. TYDINGS. I do not yield at this time.

Mr. ERVIN. The Senator answered me. Of course, he is not obligated to yield, but he did yield to me for a question. He said that I was in error and I just wanted to ask him about the bill he is explaining to see what I am in error about.

Mr. TYDINGS. Mr. President, I do not yield at this time. I shall be glad to yield to the Senator when I have completed my remarks, as I stated before.

VENDING MACHINES

Mr. President, the provision for making tampering with a vending machine equivalent to second-degree burglary with a 15-year penalty was deleted, as was urged by the former prosecutors. Pursuant to the District of Columbia bar suggestion, this crime can be punished by no more than 3 years.

JUVENILE COURT

The juvenile court lawyers, along with the former prosecutors and Crime Commissioner, expressed special concern with several provisions in the new juvenile code.

Although both bills eliminated juvenile jury trials, the conference report follows the Senate bill in requiring proof beyond a reasonable doubt for conviction in delinquency cases.

The conference report, following the pleas of the juvenile court lawyers, contains statutory time limits for most juvenile proceedings, including the time for filing a petition and for requesting a transfer to adult court, the time for initial appearance, for holding a transfer hearing, for holding a detention or shelter care hearing, and for conducting physical or mental examinations, and the timing of interlocutory appeals.

Due to the 6,000-case backlog awaiting trial, the Senate conferees did not insist upon the immediate inclusion of statutory time limits for factfinding and dispositional hearings, but did insist upon explicit guidelines for these proceedings in the two statements of managers with the intention that time limits be enacted into positive law in the future if the suggested time limits are not achieved in the large majority of cases.

TRIAL OF JUVENILES AS ADULTS

Mr. President, the groups which addressed the juvenile code provisions were also concerned with the lowering of the age limit for juvenile court jurisdiction for a large category of offenses. The conference compromise agreed to set the age at 16 instead of 18 for only the most heinous offenses of murder, forcible rape, 1st degree burglary, and armed robbery. The offenses of manslaughter, statutory rape, indecent liberties, mayhem, arson, kidnaping, 2d degree burglary, unarmed robbery and assault with a dangerous weapon were all eliminated from the list of offenses which must be prosecuted in adult court, involving an accused who is 16 or 17 years of age.

OTHER JUVENILE MATTERS

The Senate position prevailed on all of of the other provisions which troubled these spokesmen, specifically eliminating House proposals, first, assigning the burden of proof to the juvenile to establish the appropriateness of juvenile court treatment in a transfer hearing; second, providing a more narrowly defined right to counsel in juvenile proceedings; third, automatically terminating juvenile jurisdiction with respect to subsequent offenses even when the charge on which the juvenile is transferred results in an acquittal; fourth, permitting the indiscriminate mixing of delinquents and persons in need of supervision, in spite of the need for separate treatment; and, fifth, permitting summary transfer of an unruly juvenile to an adult prison without the benefit of affirmative criminal proceedings.

IMPEACHMENT BY PRIOR CONVICTION

Although the Criminal Law Section urged a different formulation of the rule on impeachment of a witness by evidence of prior convictions, the House version was supported by the District of Columbia Bar Association and followed the preliminary draft of the rule to be included by the Judicial Conference of the United States in the proposed Federal Rules of Evidence. The Senate conferees would have preferred to withhold action on this provision until the Federal Rules of Evidence are finally adopted by the Supreme Court, but agreed to the House version with the proviso that the rule for the District of Columbia should be amended by Congress, if the final version contained in the Federal Rules of Evidence does not conform to the preliminary draft.

INSANITY DEFENSE

Likewise, the former prosecutors and the Criminal Law Section were disturbed by the House provisions which would shift the burden of proof to the defendant on his affirmative defense of insanity

and would require the automatic hospital commitment of a person acquitted on grounds of insanity. The House provision is supported by prevailing practice in a large number of States. It closes a loophole in the law which permits a person to raise a reasonable doubt as to insanity in order to defeat criminal conviction and, at the same time, to escape hospitalization because the burden is on the Government to establish insanity by a preponderance of the evidence in a civil commitment proceeding. The Senate conferees insisted, however, on a safeguard which would mandate a hearing with counsel for the person under the insanity charge on the continuing need for hospitalization. The mandatory hearing must be held within 50 days of the conclusion of the criminal trial. This safeguard, which the Senate conferees put in the report, will prevent the person from being kept indefinitely in a mental hospital without an immediate review of the person's present sanity and dangerousness.

NO-KNOCK

The former prosecutors and the criminal law section both urged the adoption of the Senate version of no-knock. The conference report follows the Senate version in all important aspects.

GOVERNMENT APPEALS

The prosecutors were critical of the expanded provisions for Government appeals. The authorization for moot Government appeals was dropped and the provision which would allow the court to call a mistrial pending a Government interlocutory appeal was also deleted.

WIRETAP

The local wiretapping law provides for authority to wiretap for a somewhat longer list of offenses than in the Senate bill, but adopts numerous safeguards to improve upon the existing Federal wiretapping law. Included also are the Senate provisions for criminal penalties and civil damages for illegal wiretapping or electronic surveillance.

WRONGFUL ARREST

Finally, the conference report excludes the House-passed provision for compulsory payment of a policeman's attorney's fees by a plaintiff in a wrongful arrest suit regardless of the outcome of the case, a provision which was condemned by Section on Criminal Law, the District of Columbia Bar, and the former prosecutors.

In addition, during the conference on the crime bill, the chairman of the House conferees agreed to hold immediate hearings on an adequate revenue bill for the District of Columbia.

THE CONFERENCE REPORT

Mr. President, every Member of the Senate knows that a joint conference between the two Houses of Congress must proceed on a spirit of compromise and conciliation. When a conference is held on a major bill with 174 items of difference, no reasonable person would expect the conference report to track one version of the bill in its entirety. Insistence by either House's conferees upon all of the provisions in its version of the bill would have immediately deadlocked the conference and caused the defeat of the many urgently and desperately needed reforms upon which there was already substantial agreement. I could not and will not stand by and watch these reforms fail to be enacted. The conference version of the bill is sound. It is constitutional. In my judgment, it will be effective. It is a major improvement of the criminal justice system of the District. The conference report deletes the undesirable provisions of the House bill and retains many of the Senate-passed reforms. Indeed, in the conference report, on 80 percent of the major, controversial issues so widely criticized, the Senate prevailed.

I urge each Member in considering the objections which he may have to a few provisions in the conference report to be mindful of the many major victories for the Senate bill in the course of the conference. I have singled out the main criticisms that have been voiced by various spokesmen in the community who have attacked the House bill. Well over 80 percent of these issues were resolved in favor of the Senate version, and most of the remaining items were substantially modified by safeguarding amendments or agreements to reconsider the provisions in a short time. Many other Senate victories not mentioned by these critics, such as the elimination of authority for the police to conduct "tests and experiments on persons" and the provision for transfer of Lorton Reformatory which would have gutted effective corrections in the District, must also be added to the list of conference achievements.

Mr. President, the essential reforms this legislation contains and the dramatic Senate conference achievements must be preserved for the citizens of the District of Columbia. I urge the approval of the report.

I hope my colleagues will read the conference report, the statement of the managers of the House, and especially the statement of the managers in the Senate. I hope they will not be misled by key words, but will focus upon what is in the bill and what the bill actually contains, rather than on criticisms not based on the actual content of the final Senate-House conference report. I am confident that if they do, the bill will receive the overwhelming support of my colleagues.

Mr. PROUTY. Mr. President, the pending conference report is one of the most important pieces of legislation, affecting the District of Columbia, to come before the Senate in many years. It is the result of long, mature reflection on serious problems which have long been crying for attention and solution.

Much has been said about this bill. Much has been speculated about what it would do. Little has been said about what it is not. It is not a panacea for all the ills confronting the judiciary and law enforcement agencies. It does little to sweep poverty, misery, ignorance and despair from the community. That is not its purpose. Rather it is a giant step forward in providing for an improved system of Justice, with protection for the accused and public alike.

Eighteen months ago, President Nixon observed that the District of Columbia is a Federal city and that the Federal Government could not evade its responsibility for the condition of life in the Nation's Capital.

When President Nixon took office, the Metropolitan Police Force was badly undermanned. The office of the U.S. attorney, which prosecutes all serious crimes in the District, was woefully understaffed. The various courts were confronted with backlogs and delays, and the correctional facilities were failing to rehabilitate. There were virtually no programs to treat narcotics addicts, and the law-enforcement authorities were saddled with some of the most unrealistic, rigid rules of criminal procedure in the world.

The crisis of disorder demanded the best efforts of the President, the Congress and the courts to effect needed reforms.

Eleven days after taking office, President Nixon outlined a comprehensive crime control program—a large part of which required approval by the Congress.

In the ensuing months, the District Committees of the Senate and the House have been hard at work, studying the problems of the District in depth and fashioning workable solutions.

From the outset, the President's program has provided an agenda for our deliberations. The key provisions in that program are embodied in the bill before us today. They include:

First. A complete reorganization and expansion of the court system in the District of Columbia. This new system will end the jurisdictional squabbles between Federal courts and local courts in Washington. It will provide modern management techniques. And it will make possible a very significant reduction of the 10-month delays between arrest and trial in the District of Columbia.

Second. A full-fledged Public Defender Service to assist indigent defendants in criminal proceedings.

Third. An expanded bail agency to provide adequate supervision for reliable defendants released on bail.

Fourth. A new modern juvenile code that confronts 20th century juvenile problems in a manner consistent with modern trends.

Fifth. A modification of some of the most unrealistic rules of procedure, which have undermined the sound administration of the District's criminal law.

Sixth. Carefully considered authority for court approved electronic surveillance to make inroads into organized criminal activity in the District.

Seventh. Authority for the limited pretrial detention of dangerous defendants.

On other occasions, the proposal to reorganize the courts, shifting the felony jurisdiction which now resides in the Federal district courts to a new, unified local court system, might have engendered sharp controversy. It would be quite inaccurate to assume that there was no opposition to this development, or that it has not been given intense study. Court reorganization has consumed a

tremendous amount of time, thought, and effort, and it will contribute a great deal of the restoration of an orderly system of criminal justice in the District of Columbia, which should be a model of administrative effectiveness.

The fact remains, however, that this central feature in the bill has been overshadowed by several widely debated criminal provisions, which have been the focus of most public attention.

In recent years the condition of life in this city has seriously deteriorated. Crime has demoralized the spirit of this city. Crime breeds fear and at present our society is permeated with this fear and distrust. Neighbors are too frightened to lend to one another a helpful hand in time of distress. A society whose members build walls between each other and who live in a city fast becoming an armed camp cannot survive. In the District of Columbia, as in other cities, the criminal justice system has just broken down. It has proved itself inadequate in the present crisis.

In the last 11 years, the total number of serious crimes in the District of Columbia has increased about 600 percent. The incidence of armed robbery and burglary have been particularly shocking. Last year, armed robberies increased 52 percent, averaging almost 20 each day—which means that each day, roughly 20 people were confronted head on with a weapon of destruction.

There has been an ominous trend in homicides—away from intrafamily murders or quarrels between lovers—toward coldblooded, impersonal murders on the street.

Studies reveal that 50 percent or more of the crime in the District is related to narcotics, mostly heroin.

It is by looking at the drug problem that we can see the very obvious link between organized crime and street crime.

These growing numbers of drug addicts offer one explanation for the enormous increase in street crime over this past decade. As the addict's tolerance for drugs increases, his demand for the drugs grows—and so does the cost. It is clear that there is no way a person addicted to hard narcotics can purchase his drugs without resorting to crime.

A heroin addict may need $100 a day or more to pay for his habit, and this is every day of the week. There are no holidays for those hooked on drugs. They must get their money anyway they can. Traditionally, drug addicts have committed nonviolent crimes like shoplifting, forgery, and breaking to achieve their ends. Now, however, the scene is changing. Drug adicts are committing more and more armed robberies and other violent crimes.

Why? Partly because of the enormous expense involved in maintaining a habit; and, in part, because an addict who supports his habit by burglary must sell the stolen merchandise for one-fourth to one-third of its retail value. That means he must steal a minimum of merchandise worth three or four times the amount of his habit to secure the necessary cash. Robbery is just an easier, faster way to make his payments.

Detailed discussion of those provisions in the bill relating to court reorganization and criminal procedure is work for the great lawyers in this Chamber.

I am not a lawyer, but I think I can bring some practical wisdom and commonsense to some of the problems at hand.

For example, two of the most controversial provisions in this entire legislation have, through what might be termed "overexposure," been responsible for a great deal of emotional reaction to this entire bill. I refer, of course, to those provisions which have been commonly referred to as "no-knock" and "pretrial detention."

Because of the apparent controversy involving these two provisions, I have found it desirable, and indeed necessary to make an especially intensive study of these two provisions. After much care and thought I must support both no-knock and pretrial detention.

I support the provisions for no-knock and pretrial detention because I believe they are essential to any serious effort to reduce crime in the District of Columbia.

The evidence is persuasive that a significant amount of serious crime is being committed by persons released prior to trial.

In July of 1968, the District of Columbia Metropolitan Police Department undertook a study of 130 persons indicted for armed robbery and released during fiscal 1967. The Department determined that 34.6 percent of those defendants were indicted for at least one felony while on bail.

In a later study, the U.S. Attorney's Office collected data on 557 robbery defendants indicted during calendar 1968. Some 70 percent of the 345 defendants released before trial were reportedly rearrested for a new crime.

Subsequently, the Judicial Council Committee to Study the Operation of the Bail Reform Act in the District of Columbia reviewed the U.S. attorney's investigation. Taking a sample of 140 of the 557 robbery defendants, the committee determined that 63.7 percent of the 106 defendants released were rearrested while on bail, which confirmed the substance of the original findings.

Finally, last spring, the National Bureau of Standards released a new report of criminal court data relating to pretrial release in the District of Columbia. The report focused on 426 defendants who were released before trial during 4 random weeks in the first half of 1968. The report revealed that 17 percent of 147 felony defendants were rearrested during pretrial release. Seventeen percent of the defendants charged with "violent crimes," as defined in the bill, and 25 percent of the defendants charged with "dangerous crimes," were rearrested on bail. Altogether, 11 percent of the 426 defendants, including those charged with misdemeanors, were rearrested for new offenses.

The question for lawmakers is whether legislative action can be taken and should be taken to reduce incidents of crime committed by persons out on bail. I believe a limited system of pretrial detension is a vital part of the answer.

In its presentations on this issue, the Department of Justice has convinced me that there are some offenders—people who can be identified—who pose a particularly serious threat to the lives and property of others if released before trial. These defendants include professional holdup men and professional burglars who are usually armed and who steal as a livelihood; desperate narcotics addicts who have resorted to crimes of violence to support their addiction; incorrigible young toughs who have demonstrated vicious propensities in their repeated brushes with the law; compulsive sex offenders and compulsive arsonists; and defendants who have a special motive to engage in crime.

Speedy trials are not a satisfactory answer to the depredations of these men. Something more is needed, and that something is a limited system of pretrial detention.

Let me make plain the fact that most defendants can be released and should be released before trial, and this legislation does not require or inspire pretrial detention that is not needed to secure the public safety or secure the presence of defendants at trial. Release is desirable in most cases because it permits the liberty of a defendant before trial and eliminates the expense of unnecessary custody.

We deal with the exceptions, with the situations in which the public safety demands protection.

The conference went out of its way to minimize the detention of first offenders. Except in the case of addicts, we have required a prior pattern of behavior to reveal the dangerous tendencies that would justify detention. I believe this test is ample protection against erroneous findings.

We have tried to be fair to defendants without neglecting the public interest.

I rely on the wisdom of a New England jurist in my vote on this question. Writing in "Ex Parte Thaw," Federal District Judge Edgar Aldrich of New Hampshire declared:

> The right to bail . . . is subject, like all other personal rights, to being influenced by considerations of public policy and public safety.

Another Federal judge has observed that the bail system is an attempt "to reconcile the conflict between the presumption of innocence and the interests of society." Surely, the interests of society include the right to be free from unreasonable risks of harm by persons who have already been charged with one or more serious crimes. That is my judgment, rendered after full deliberation.

I am heartened by the fact that many newspapers throughout the country have come to a similar conclusion, and I ask unanimous consent to print several editorials in support of pretrial detention at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. PROUTY. Mr. President, the tools and improvements provided for in this legislation are urgently needed to meet the dire situation the courts and law enforcement agencies of the District

face. I urge your adoption of this conference report.

In conclusion, may I pay tribute to the distinguished chairman of the Committee on the District of Columbia for the yeoman service which he rendered in bringing about a meeting of the minds of the conferees on the House side as well as on the Senate side.

EXHIBIT

[From the Washington (D.C.) Evening Star, Oct. 22, 1969]

PREVENTIVE DETENTION

A House Judiciary Subcommittee has tackled the difficult and much debated question of what to do about a 1966 law which requires that criminal suspects must be released on bond—personal or monetary—even though there is a high probability that they will commit additional serious crimes while free.

It is our belief that the 1966 law should be changed. As matters stand, a federal judge can consider only one thing in passing upon a request for bail in a non-capital case—whether an accused person is likely to show up for his trial of whether he can be expected to flee to avoid trial. This limited discretion, we think, should be enlarged to permit a judge to take into consideration the danger to the community that could be created if a particular suspect were to be released prior to his trial. This is what is known as preventive detention.

Under a bill proposed by the Nixon administration, this additional discretion would be subject to tight restrictions. Preventive detention would apply only in the case of very serious felonies. The period of detention could not exceed 60 days. The judge must hold a hearing at which the accused person could present evidence and cross-examine witnesses. Before denying bail, the judge must find that there would be a high risk to the public in releasing the accused. He must spell out his reasons in writing, and the accused has the right of appeal.

Sen. Ervin, who is chairman of the Senate Judiciary Committee, is a principal opponent of the bill. He says it "smacks of a police state" and that it "protects no one." We disagree on both counts. The senator also said the true rate of crime committed while on bail in the District is only about 5 percent.

Again, disagreement is strong. Maryland's Representative Gude disputed this vigorously in his testimony before the subcommittee. Police Chief Jerry V. Wilson in a speech last month told of a survey in Washington of persons released on personal bond before trial, but after indictment, on robbery charges. The survey covered the period from July 1, 1966, to June 30, 1967, and it showed that 35 percent of the released individuals were rearrested and reindicted for subsequent felonies, mostly armed robberies, before being brought to trial. Some were rearrested and reindicted as often as three times in one year.

This condition can be and should be remedied. Chief Wilson and U.S. Attorney Flannery have said that the preventive detention of no more than 300 persons would go a long way toward cleaning up the problem of street crime in Washington. And, generally speaking they know who these people are. One of them, certainly, is the heroin addict indicted for a robbery staged to get money to feed his habit. To release him pending a trial six months or a year in the future virtually guarantees that he will commit new robberies to get the money he needs. What kind of justice is this?

Perhaps the main argument against preventive detention, aside from the constitutional question which the Supreme Court would have resolved, is that a judge cannot read a suspect's mind to determine whether he is likely to commit another crime if released. But this same judge is authorized by the 1966 law to read a suspect's mind to determine whether he is likely to skip the jurisdiction to avoid trial. If a judge can do the latter, why is he not equally competent to make the former determination?

[From the Washington (D.C.) Post, Aug. 26, 1969]

HYPOCRISY AND THE LAW

The case of Damon Alston Jr. provides a superb illustration of what the acrimonious debate over bail and preventive detention is all about. The case involves a sharp dispute between the United States Court of Appeals and Chief Judge Curran of District Court. It demonstrates that the Bail Reform Act, as it now stands, is a constant irritant in the judicial process. And it provides a sound factual basis for Congress to consider the amendments to that Act proposed by the Nixon Administration.

Mr. Alston, it appears, is not one of the District of Columbia's more upright citizens. He has been convicted of various things seven times in the last 12 years and now stands charged with armed robbery. He was on parole at the time of that robbery last December and he has been in jail ever since, unable to obtain a $5000 bail bond. What makes his case particularly unusual is the following set of facts: his employer at the time he was arrested has promised to give him his job back if he is released pending trial; the Bail Agency has recommended he be released in someone's custody; Bonabond is willing to be that someone; the Offender Rehabilitation project has worked out a plan of release for him; and the Shaw Residence has assured him of living quarters.

Despite these arrangements, Judge Curran has refused twice to release Alston without bond or to reduce the bond from $5000. He contends that Alston's prior criminal record and the facts of this robbery indicate that the only thing that might keep Alston from fleeing if released is the posting of bail. This rationale, it seems clear, is phony. What Judge Curran really fears is that if Alston is released he will commit another crime. And that is where the rub of the Bail Reform Act comes in. Under it, and indeed under the whole history of bail procedures in the nation, the standard for pre-trial release is the probability of flight, not the probability that another crime will be committed.

Applying that law as it is written, the Court of Appeals last week ordered Alston's release under a tough set of conditions. It specified that he must be employed, that his employer must report if he fails to appear for work, that he must live at Shaw Residence, that an official there must report if he breaks the curfew time or any other rules, that he must reenroll in the Alcoholic Rehabilitation Clinic, and that he must deposit 10 per cent of his net earnings with the Court as security for his appearance for trial until the fund reaches $500.

It is hard to believe that Alston is more likely to flee if he is released under those conditions than if he were released because he could raise the $280 to buy a $5000 bond. But that merely underlines the problem. Since the law is cast in terms of fleeing, the trial judges talk of flight when they mean danger and the real question—will Alston be a threat to the community before his trial?—is never faced.

Even without answering that question, it is clear why the Bail act should be re-considered. Congress ought to decide whether the judges should have power to detain a man pending trial because they believe he is too dangerous to release. This newspaper has argued in the past that judges should have that power in certain clearly defined situations and with substantial restrictions on its use. Whether Congress agrees or not, it ought to clarify the situation. One of the worst evils of the law is hypocrisy, and the bail procedures are full of it.

One other fact in this case is relevant. Alston was arrested on December 16, 1968. He has been in jail eight months and he has not yet been tried. Even if the Nixon Administration's proposals were now law, Alston would be released automatically; those proposals limit pre-trial detention to 60 days and Alston has been in jail 250 days. A system of criminal justice that permits this kind of delay is uncivilized and the whole problem of court reform ought to get the highest kind of priority when Congress returns.

[From the Richmond (Va.) News Leader, June 30, 1970]

LET THE JUDGES DECIDE

A few days ago in Washington, a traffic patrolman shot and killed a robbery suspect fleeing from a liquor store holdup, after the suspect had shot the patrolman through the chest and neck. Details of the shooting repeat a pattern that has prevailed in the nation's capital since passage of the Bail Reform Act of 1966, under which all suspects charged with other than capital crimes in Federal courts must be released on bond if the judge considers them likely to show up for trial.

Had Federal District judges in Washington been permitted to consider a suspect's record or the likelihood that he would commit other crimes while free on bond, the recent shoot-out might not have occurred. The suspect in the case, Franklin E. Moyler, had the record of a hardened criminal. He had served two years in jail on charges of assaulting an officer. He subsequently chalked up a number of assault charges: In January, he was charged on four counts, including assault with a deadly weapon, but was released when he posted one-tenth of a $1,500 bond. On June 1, he was charged again with robbery and released on a $2,000 bond. So he was free on June 19 to shoot and to wound a policeman critically.

The latest incident adds yet more imperative reasons for approval of a preventive detention provision included in the D.C. Crime Bill, under which Federal District judges would be permitted more discretion in setting bail. The Tydings Advisory Panel Against Armed Violence recently endorsed preventive detention as "an immediate response to armed violence." The panel found, in its investigation, that one out of every 11 suspects released on bond is charged with subsequent offenses before reaching trial on the first charges. The panel also reported that offenders charged with certain crimes, such as burglary, robbery, and narcotics offenses, are much more likely to be charged with subsequent offenses while free on bond.

The preventive detention proposal has sincere opposition from those who believe that it infringes on the constitutional rights of criminal suspects. After all, they say, the suspect has not yet faced trial on his charges, and therefore, he must be presumed innocent and set free until proved guilty. Opponents further contend that only a small percentage of those released actually commit new crimes before their trials, and preventive detention would punish both the innocent and the guilty.

These arguments fail to persuade. In recent testimony before a Senate subcommittee, U.S. District Judge George Hart recounted 14 cases in Washington in which preventive detention would have prevented commission of new crimes by the suspects, all of whom had been charged with crimes of violence. The subsequent crimes included rape, attempted murder, and armed robbery. In Judge Hart's view, the right of society to be protected from crimes of violence justifies approval of preventive detention.

Those who oppose preventive detention

somehow view judges as ogres who would welcome an opportunity to put every criminal suspect behind bars. The record suggests otherwise. Judges who deal daily with violent criminals soon learn to recognize a hardened criminal when he appears in their courtrooms. These judges also recognize their responsibility to uphold the law, acting as instruments of that law. Arguments against preventive detention suggest that most judges are corrupt and that they have no ability to distinguish a hardened criminal from a first offender, an unjustified insult to the Federal judiciary.

The arguments continue, pro and con, and a great deal of misinformation results. Meanwhile, the crime rate in Washington rose 21 per cent during the first three months of this year over the same period in 1969; the national crime rate rose by 13 per cent. Even the liberal *Washington Post* has recognized that the lack of preventive detention has contributed to Washington's crime problems. With support from both conservative and liberal elements, preventive detention, in conjunction with a speedier trial system, may yet prove a highly effective weapon against those who repeatedly threaten the lives and safety of citizens in the nation's capital.

[From the Rockwood (Ill.) Register-Republic, Feb. 23, 1970]

PREVENTIVE DETENTION REASONABLE

(The issue: Proposed legislation to permit detention of defendants considered dangerous to the community.)

One of the most reasonable suggestions advanced by the Nixon administration proposes judicial authority for pretrial detention of dangerous defendants.

The proposal comes as a series of amendments to the federal Bail Bond Reform Act of 1966 which requires that criminal suspects must be released on bond—personal or monetary—even though there is a high probability that they would commit additional serious crimes while free.

As it now stands, a judge may consider only two areas in ruling on bonds in noncapital cases—whether the accused is likely to show up for his trial or whether he can be expected to flee to avoid trial.

If a judge is competent to rule in these areas, why is he not also competent to determine if the release of a suspect might create a danger to the community?

This latter judgment is the heart of preventive detention, which would permit a judge to take into consideration the public danger that could be created if a particular suspect were to be released prior to his trial.

The proposal is loaded with safeguards and tight restrictions. It would apply only in the case of very serious felonies.

The period of detention could not exceed 60 days, which would place on the court special obligations to try the case within that period, a prompt trial guarantee not provided for most defendants today.

Further, the judge must hold a hearing at which the accused person could present evidence and cross-examine witnesses. If the judge decides to deny bail, he would have to spell out his reasons in writing and the accused has the right of appeal.

These restrictions more than serve to override the critics of the proposal who protest that because the accused is innocent until proven guilty, he should remain free until he comes to trial. Already, bond can be denied in capital cases and judges are free to set bonds at prohibitively high figures.

Balancing the interests of the individual and the public at large is one of the basic dilemmas of a free society.

In an address to the American Trial Lawyers Assn. a few days ago, Deputy Atty. Gen. Richard G. Kleindienst pointed out:

"Today, as we reconcile the tensions between order and liberty, crime and fear weigh heavily in the balance. For they threaten important liberties as well as our lives.

"The time has come to face our responsibilities, to afford protection to all of our people. We can no longer neglect the security of our citizens. We must reassert their liberty to live without fear. Pretrial detention is not the whole answer; but it is part of the answer in this time of crisis."

Kleindienst stated the case most succinctly. The public has rights, too, and the courts should have reasonable power to protect those rights.

The preventive detention proposal has the safeguards to prevent its misuse, yet affords protection against the menace of known offenders running loose and extending their string of crimes.

[From the Cincinnati (Ohio) Enquirer, Oct. 21, 1969]

THE PRESIDENT'S PROPOSALS FOR PRETRIAL DETENTION

One of the distressing aspects of the nation's already appalling crime rate, especially in the so-called street crimes such as robbery, burglary, rape and traffic in narcotics, is the high incidence of crimes committed by persons out on bond and awaiting trial for a crime previously committed.

A major point of President Nixon's anti-crime program is an effort at reducing this activity, which understandably infuriates a large segment of the public. The administration has introduced identical bills in both the House and Senate to provide for pretrial detention in noncapital cases of Federal prisoners, for periods up to 60 days and under certain conditions and procedures.

Last week, a subcommittee of the House Judiciary Committee began hearings on Mr. Nixon's bail-reform proposals. So far, Congress has moved hardly at all on others of the 20 bills submitted or supported by the administration to help launch a nationwide attack, on a number of fronts, against crime.

The President has asked Congress for omnibus antinarcotics legislation; for increased appropriations to the existing National Law Enforcement Assistance Administration, which provides monetary and administrative help to the states for a concerted anticrime effort; for better legislation to protect minors from receiving obscene materials through the mails; for funds for a national crime program—as yet with little success.

In this light, it is gratifying to a nation which has seen its major-crime rate more than double in the last eight years that Congress has begun moving on the President's pretrial-detention bill, a recommendation that patently is designed to enhance public safety.

Although the thrust of the bill is toward fighting the incidence of street crimes in Washington, D.C., the only place where such crimes come under Federal jurisdiction, the proposal has nationwide implications. For if the measure—which already has stirred considerable controversy—becomes law and then survives challenges as to its constitutionality, it could provide a framework for similar action on the part of states and municipalities plagued by criminal recidivism from persons already under indictment and awaiting trial.

The legislation the President has requested would allow courts to consider danger to the community in setting nonfinancial conditions of pretrial release; provide pretrial detention for up to 60 days of defendants of certain categories who are found, after a hearing, to be "dangerous to the community." The categories of persons who may be detained until trial are listed by the bill as repeated offenders in crimes of violence, persons charged with offenses that have a high risk of repeated public danger (robbery and drug-pushing, for example); narcotics addicts charged with a crime of violence; any defendant who threatens witnesses or jurors.

The bill additionally authorizes sanctions against those defendants who, having secured a pretrial release, violate the conditions of their bond or commit a crime.

Some of the present dilemma arises from failures of the Bail Reform Act of 1966, intended to protect the rights of Federal prisoners who found themselves unable to obtain bail money, while other defendants similarly charged were able to obtain pretrial release.

As a consequence of this act, there has been steadily decreasing reliance on money bail in the nation's capital, with releases on personal recognizance becoming almost the order of the day.

Last month, the District of Columbia police chief said his department has found that 35% of the defendants indicted on armed-robbery charges who were released on personal recognizance were rearrested and re-indicted on subsequent felonies—mostly armed robberies—before coming to trial.

Under these conditions, a community needlessly suffers and already overcrowded court dockets become more jammed.

Hopefully, the President's corrective recommendations will win congressional approval, and thus provide a guideline for action throughout the nation.

[From the Oakland Sunday Tribune, Mar. 1, 1970]

PRETRIAL DETENTION: PRACTICAL WAY TO COMBAT CRIME

The do-gooders, bleeding hearts and nicely-nicely apologists for much of the nation's criminal element are beclouding the question of pre-trial detention to the point where public attention is diverted from the true issues.

As a result, a serious and practical proposal to reduce crime is denied enactment, much to the consternation of those responsible for protecting society.

Last July, Attorney General John Mitchell proposed to Congress that the Bail Reform Act of 1966 be amended to prevent certain dangerous defendants from being easily and automatically freed on bail while awaiting trial.

Appropriate and effective safeguards against abuse or misuse of such powers were detailed in the proposed legislation, and in a practical and logical sense, every anticipated criticism was realistically answered.

The answers, however, have been coldly ignored by an assortment of self-anointed civil libertarians, who allege that denying bail to an accused rapist, with a record of prior convictions for similar offenses for example, would somehow violate his rights.

These nay-sayers suggest that somehow bail is an unqualified "right," but such a position finds little support in the Constitution.

The Eighth Amendment forbids imposing "excessive bail," but nowhere does it require that all those accused of any and all crimes be freed on bail. From the earliest days of this nation, accused murderers have been kept locked up without any protests about their constitutional rights.

If indeed the Eighth Amendment actually established a "right" to bail, by what authority have states regularly and consistently taken away that alleged right when defendants were accused of capital offenses—those punishable by death?

Murderers, however, are not the only ones who pose a direct threat to society if permitted freedom. In Washington, D.C. in 1968, nearly 70 per cent of the persons indicted for robbery and released prior to trial eventually were rearrested and charged with a subsequent offense.

That is precisely the crime problem the Justice Department proposal is designed to diminish. Under the plan, an accused person

would be kept in jail only after a hearing before a judge and only after his attorney had had ample opportunity to rebut the government's case for retention.

A judge could keep such person locked up when he was convinced by the accused's past performance that release would literally endanger the community and public safety.

The suggestion that pre-trial detention presumes guilt and thus violates the protection that a defendant is "innocent until proved guilty" simply reflects ignorance of this time-honored canon of American law.

Presumption of innocence is merely a rule of court procedure during trial and is unrelated to a separate hearing as proposed to determine pre-trial detention. If such were truly the case, judges would be forced to grant accused murderers pre-trial release, for we certainly do not deny them the presumption of innocence.

Suggestions that due process protections of the Constitution would be denied defendants by pre-trial detention are refuted by the very wording of the proposed statute.

Every word of the proposal reflects the fairness and reasonableness of the procedures by which detention would be achieved, and therein lies the basic test of due process.

The Mitchell plan would apply only in federal cases, particularly in the District of Columbia where crimes of violence are a priority problem. There is little question, however, that it could serve as a model for legislators concerned about the incidence of crime by repeaters in their own states.

Indeed, the validity of the attorney general's arguments should inspire Sacramento solons to apply Mitchell's logical, reasoned position to California law.

Action in both capitols to permit pre-trial detention of known felons in non-capitol cases would provide positive steps in controlling vicious and irresponsible actions by all manner of dangerous, hard-core criminals.

[From the St. Louis (Mo.) Globe-Democrat, Feb. 10, 1970]

HOLD DANGEROUS DEFENDANTS

Before anyone, even a speed reader, can complete this editorial, someone in the United States will have been the victim of a horrible crime.

Such is the frequency of crime and violence in the land that traveling to the moon is safer than walking the streets at night.

When Richard Nixon campaigned for President he promised to do something about the dreadful crime crisis, obviously one of the major concerns of voters.

One of the most reasonable and protective proposals put forth by the Nixon Administration, in its fight against crime, asks authority for pretrial detention of dangerous defendants.

As President Nixon observed, in asking Congress to amend the Bail Reform Act of 1966, "Increasing numbers of crimes are being committed by persons already indicted for earlier crimes, but free on pretrial release. Many are being arrested two, three, even seven times for new offenses while awaiting trials."

No one needs to draw St. Louisans a picture of a dangerous defendant.

Milton Brookins, who has been found guilty of an armed robbery attack on a young woman while out on bond on two rape charges, answers the description.

Under a system authorizing pretrial detention, Brookins could have been denied bail because of the substantial probability that his release posed a danger to the community.

At present a court must ignore a defendant's danger to the community and release him on bond if he is not considered likely to flee.

Precise statistics on the number of crimes committed by those out on bond while awaiting trial for other offenses are not available, because until recently no attempt was made to tabulate them.

Available figures, however, are shocking. In Washington, D.C., nearly 60 per cent of defendants indicted for robbery, and released prior to trial, were re-arrested and charged with subsequent offenses.

As requested by the Justice Department, pretrial detention would be authorized in all federal courts, but would have its greatest impact in the District of Columbia, where these courts have full jurisdiction.

Adoption by states would have a most beneficial effect in crime-infested cities everywhere.

Detention is no presumption that the accused is guilty of the offense charged, any more than a person charged with murder is presumed guilty because he need not be granted bail on a capital offense.

Rather than cripple anyone's constitutional rights, pretrial detention of dangerous defendants could make it practical to do away with the hypocrisy of setting high bonds in situations where the defendants are not considered a threat to the whole community.

The aim of pretrial detention is simple and clear. The welfare of the majority requires that the community be protected against the menace of known offenders running loose, piling crime upon crime to the ruination of us all.

[From the Wisconsin State Journal, Feb. 5, 1970]

FREE SOCIETY DILEMMA: MERIT IN PRETRIAL DETENTION

Back in 1967 Madison was shocked when three armed bandits, who were virtually caught in the act of robbing employes of the Kohl's Food Store at gunpoint, were permitted to be released on bail.

And the shock and indignation was compounded a few months later when these same bandits who jumped bail killed a Louisville, Ky., policeman during a supermarket robbery.

You could reasonably conclude that if these bandits, with long criminal records, had been held in jail here pending trial, the Louisville policeman might be alive today.

Judges should have the power to protect the public against known criminals. The records show that increasing numbers of crimes are being committed by persons already charged with earlier crimes, but free on pretrial release.

ATTACK BY CRITICS

The Nixon Administration is trying to remedy this situation. It has proposed to Congress certain amendments to the federal bail reform act to give judges some discretion in dangerous crimes to deny release on bail if this is deemed necessary to protect the public.

The President and the Department of Justice were immediately attacked by a host of critics with some arguing that it is wrong and immoral to hold an accused without bail until trial, or to set the bond at a prohibitively high figure. Because he is innocent until proved guilty, they argue, he should remain free until he comes to trial.

The pretrial detention proposed by the Nixon Administration is designed to accomplish two objectives. First, it is an effort to reduce violent crime, a significant percentage of which may be attributed to persons released prior to trial.

The second objective is to eliminate from the bail system the hypocrisy of locking up defendants, without fixed standards, through the device of requiring unattainably high bail money.

Preventive detention would place special obligations on the court to give the accused a trial within 60 days, a prompt trial guarantee not provided for other defendants.

BALANCING INTERESTS

Balancing the interests of the individual and the public is a dilemma inherent in a free society. As Deputy Atty. Gen. Richard G. Kleindienst said in a speech to the American Trial Lawyers Assn. last week:

"Today, as we reconcile the tensions between order and liberty, crime and fear weigh heavily in the balance. For they threaten important liberties as well as our lives. The time has come to afford protection to all of our people. We can no longer neglect the security of our citizens. We must reassert their liberty to live without fear. Pretrial detention is not the whole answer; but it is part of the answer in this time of crisis."

Pretrial detention of the armed bandits who raided the Kohl's store here was the whole answer for Louisville Policeman William F. Meyer, slain Sept. 1, 1967.

The long list of officers like Policeman Meyer and the public generally have rights, too, and the courts should have reasonable power to protect them.

[From the San Francisco Chronicle, Sept. 15, 1969]

HOW THE BRITISH DEAL WITH CRIME

When a suspect is arrested in Britain for murder, rape or other violent crimes, Lord Alfred Denning told the State Bar convention here last week, "we keep him in prison pending his trial; we do not allow that man out on bail . . . if there is reason to believe he may commit another offense while awaiting trial."

This amounts to saying that the British already employ the system of "preventive detention" which the Nixon Administration is proposing to employ in certain criminal situations over which the Federal courts have jurisdiction.

Last July the Justice Department asked Congress for authority to detain dangerous suspects in specified classes of crimes for up to 60 days without bail if a judge, having found a "substantial probability" of guilt, determines that the defendant's release on bail would be a danger to the community.

Civil libertarians and strict constitutionalists are bitterly opposed. Senator Sam Ervin Jr. of North Carolina said the request is "unconstitutional and smacks of a police state." In his address to the bar, Lord Denning, a leading jurist of his country, took note of this opposition. "I have heard here that this is regarded as an unfair procedure because it amounts to imprisonment without trial," he said. "In England, we make sure he (the accused) is tried speedily—within eight weeks."

That is the big difference. The English provide a speedy trial; under the Sixth Amendment to the Constitution we guarantee a speedy trial but seldom make good on the guarantee. The reasons for this are many. Defense lawyers customarily play for delays, rather than for speedy disposition of their client's case, and this practice itself becomes a self-serving argument for release on bail as opposed to detention pending trial. Courts are slow-moving and usually clogged with backlogs of cases. Most jails are crowded and would feel the strain of any substantial number of suspects being preventively detained.

In the face of these hindrances to speedy trials, all of which are frequently cited as discreditable to American justice, the opponents of the preventive-detention proposal of the Administration are making considerable headway.

Still, in any deliberation about how to control crime in this country, it is a good idea to begin by inquiring how the British do it. Our system, with its rights and safeguards, developed from theirs, and it is generally acknowledged that they have on the whole a much better record than we have of protecting society from the criminal and the

criminal from injustice. And it is highly relevant to learn that preventive detention not only is customary in the homeland of Anglo-Saxon law but is no great subject of complaint because justice is swift there.

[From the Appleton (Wis.) Post-Crescent, Apr. 2, 1970]

PRETRIAL DETENTION TO COMBAT CRIME

One of the key provisions of President Nixon's anti-crime program has now been adopted by both houses of Congress, although a conference committee will have to work out minor differences between House and Senate versions of the bill. It is a proposed law to authorize the limited pretrial detention of dangerous defendants in the District of Columbia. It is viewed as a possible model for later legislation for federal and state courts throughout the nation.

When the President asked Congress to amend the Bail Reform Act of 1966 in this regard, he observed that "increasing numbers of crimes are being committed by persons already indicted for earlier crimes, but free on pretrial release. Many defendants are being arrested two, three, even seven times for new offenses while awaiting trials."

Meaningful statistical data on recidivism is limited since few records have been kept. But one study in the District of Columbia showed that of 557 persons indicted for robbery in 1968, 70 per cent of the persons released prior to trial were rearrested while on bail.

Under the proposed law, pretrial detention would be limited to two categories of offenses, "dangerous federal crimes" and "crimes of violence." As regards the former, proponents of the law point out that they usually result from a continuing motivation of pecuniary profit or sexual gratification which involve planning, deliberation and the purposeful selection of a victim. Moreover these dangerous crimes frequently involve cooperation with other criminals on a continuing basis.

The bill has been challenged on constitutional grounds on the basis that it violates the Eighth Amendment, presumption of innocence, and the due process clause of the Fifth Amendment.

The Justice Department has argued forcibly, however, that restrictions on the right to bail have been recognized since before the Eighth Amendment was adopted in 1791, notably in capital punishment cases. And the Department argues that due process is protected in the proposed law inasmuch as the defendant is granted a judicial hearing at which he is represented by counsel, has an opportunity to present witnesses in his behalf and to cross-examine adverse witnesses. The burden of proof of dangerousness is on the government.

The Justice Department believes that pretrial detention of dangerous defendants will be an effective tool in reducing violent crime. Under the legislation now pending in Congress the District of Columbia will become a testing ground for this theory. Obviously the Justice Department should take steps to keep detailed records of experience when the law goes into effect. For a successful experience in the District could lead to nationwide application of the procedure.

[From the New York Daily News, May 25, 1970]

A MATTER OF JUSTICE

Sen. Sam J. Ervin Jr. (D–N.C.) has worked himself into a fine froth of opposition to the Nixon administration's proposal to keep potentially dangerous criminals off the streets of Washington, D.C., during the period between arrest and trial.

This is called "preventive detention," and from the outraged protests raised by Sen. Ervin and others of like mind, one would think the administration was advocating a mammoth, arbitrary assault on constitutional rights.

Sen. Ervin, in fact, professes to see in it the beginnings of a "police state." That's hardly the case, since the pending legislation requires thorough and thoughtful judicial consideration before an accused person could be jugged prior to trial.

Preventive detention would be used only in those cases where the accused had a record of violent conduct so vicious as to label him a menace to society if allowed to roam at large. The danger of setting such men free on bail is more than theoretical. Testimony supporting the present bill is piled high with examples of assaults, robberies, rapes and even murders committed by men set loose on bond.

The public also has constitutional rights, including the right to be secure in their persons and property. Doesn't it deserve protection?

We think it does. And while the weapon of preventive detention is one that should be used sparingly and with the most careful safeguards, it should nonetheless be available in dealing with certain types of criminals.

[From the Oakland Tribune, Sept. 12, 1969]

BAIL: INVITATION TO RECIDIVISM

In the lexicon of sociologists, lawyers and law enforcement officials, "recidivist" is a much-used word of growing importance to a general public which is just beginning to fully understand its meaning.

The word identifies those who return to a life of crime, usually after arrest, jailing, etc.

Latest FBI statistics show that 82 per cent of all persons arrested in 1968 had a previous arrest, 70 per cent were previously convicted and 56 per cent had been imprisoned under a prior sentence.

Further, police officials are increasingly convinced that many of these repetitive crimes are committed while the criminals are out on bail awaiting trial for earlier felonies.

It's almost a treadmill condition as a man is arrested for armed robbery, posts bail and then goes out to commit another robbery to pay the bail bondsman. He gets caught again, pays a new bail fee, and so on, more or less forever.

Federal court rules governing such activity have set a far more progressive pattern than have most individual states or local courts. There are, however, many examples of states following federal examples to judicial reform.

Frequently cited in this respect is the 1966 Bail Reform Act, which established new federal bail bond rules for the first time in 175 years. It permits suspects accused of noncapital crimes to be released pending trial unless authorities believe they might attempt to flee, in which case bail must be set.

The Justice Department now wants to amend the procedure to permit pretrial detention of dangerous criminals—those accused of major (but not capital) crimes such as rape, armed robbery, arson, etc. The Justice proposal offers balancing safeguards calling for trial within 60 days, for instance, to protect those accused from arbitrary, lengthy imprisonment without trial.

Society, in natural self-protection, has long denied release, with or without bail, to accused sexual psychopaths and murderers. Thus what can be provided via the Administration proposals are safeguards to society against attacks from other dangerous criminals who continue in a life of crime while free on bail.

These so-called lesser crimes, which are still quite "major" as viewed by the victims, have now become so prevalent, and are being committed with such frequency by the repeaters—the "recidivists"—that added public protection is needed.

As we continue to satisfy all the requirements for fairness and due process for accused defendants, it is also necessary to meet the needs for maximum public safety.

The Justice Department proposal deserves adoption for federal offenses, and the entire reform plan, with the proposed amendments, deserves consideration for more localized judicial reform.

[From the New York Daily News, Sept. 4, 1969]

WHY NO PREVENTIVE DETENTION?

The State Penal Law Revision Commission, working on a proposed new code of criminal procedure, has decided not to include a provision permitting judges to refuse bail to defendants they feel are menaces to society.

Preventive detention, as it is called, looks good to us—and to President Richard M. Nixon on a nationwide basis for some classes of criminal defendants.

We think the commission made a mistake in ruling against preventive detention, and we hope the Legislature will restore it before voting on the proposed new code at the 1970 session.

This device could keep out of circulation a lot of dangerous characters who otherwise would be free, between time of arrest and time of trial, to let their criminal instincts be their guides, to society's grave detriment.

Why not at least give preventive detention a fair tryout?

[From the Richmond (Va.) News Leader, July 10, 1969]

WHILE FREE ON BAIL

The liberal coterie, holding firm to a sentimental view of the nature of man, insists on promoting the view that it is wrong and immoral to hold an accused suspect without bail until trial, or to set his bond at a prohibitively high figure. But in a case where a suspect has been charged with one or more crimes of physical violence, critics of this view argue, wouldn't it be more in the interest of society to protect itself from possible subsequent acts of violence by isolating the suspect? Not at all, the liberals reply; he is innocent until proved guilty, and he should remain free until he comes to trial.

Well, that may be nice in theory, but in practice last week it proved close to disastrous in St. Louis. The case involved a series of more than 20 assaults against women committed by the "Phantom Rapist," although the rapist boasted of committing close to 60 assaults in notes he left behind for the police. In these notes, he also poked some jibes at the police, calling them "stupid coppers," and "slowwitted cops." He also referred to some of them by name in his notes, and members of the St. Louis police force began to wonder if the rapist might not be one of their fellow policemen.

The rapist finally made a mistake when he used a credit card stolen from one of his victims, and the police arrested a four-year veteran of the St. Louis police force. One judge thought the suspect's bail ought to be set at $51,000, but he later was freed on $12,000 bail. Then last week, a 22-year-old St. Louis newspaper reporter and her teen-aged girl friend were attacked in the reporter's apartment by a man who tore their clothes and swore to rape them. He brandished a gun; when the reporter continued to resist, he shot her in the face and fled. The bullet wound was not fatal, and both girls later identified the policeman charged with the previous assaults as their assailant.

So the suspect is in jail, where he is being held without bond. Had he been held without bond when first arrested, two young girls might have been spared a traumatic and terrifying experience. But the liberals have a theory for that too: The rights of the suspect take priority over the rights of his possible

future victims, and society has few rights at all, especially when it comes to rational acts of self-protection.

[From the Tulsa (Okla.) World, Nov. 30, 1969]

NEED FOR BAIL REFORM

The Justice Department's efforts to tighten up permissive legal practices which are held contributory to worsening crime conditions have run afoul of opposition in and out of Congress.

One of the prime targets of the Department's clampdown is the widespread use of bail-bond practices which permit criminal elements to continue their depredations while awaiting trial.

A celebrated example of the problem occurred just a week ago in the nation's capital. A suspect under charge in two murders was released on bail of $500—reduced at the request of his attorney from an original $50,000 figure. While out on bail, the defendant was re-arrested in connection with another killing. He now stands charged in three murders.

The exposure of the ludicrous aspects of the bail policy followed in some of Washington's courts prompted local General Sessions Judge Tim Murphy to reignite public interest in bail reform legislation. The Nixon Administration, through Attorney General John Mitchell, has proposed a system of "preventive detention" to protect society from constant criminal repeaters. Mitchell's plan has met frigid stares from legal lights not only in Congress but outside.

Sessions Judge Murphy says, however, that a sterner method of admitting to bail must be devised. He reports that in personal interviews with enforcement officials and jailed criminals, there is no compunction by those admitted to bail against continuing their crimes.

Violators tend to feel "duty bound," said the Judge, to continue their pursuits if for no other reason than to "bankroll" their families. They are inclined to go out on a "last fling," on the theory they will be tried for only one violation and the others mean nothing.

Attorney General Mitchell seeks legislation granting to courts more rigid authority to withhold bail from those whose records indicate freedom awaiting trial serves no other purpose than to permit them to commit more crimes.

He has a valid point, but one which has created adverse reaction in the legal profession. Since the right to bail for most crimes is guaranteed under the Constitution, strict legalists question the propriety of laws recommended by the Attorney General.

Still, there is a point beyond which a law-abiding society cannot stand helpless while criminals use the protection offered by the Constitution against it. Mr. Mitchell is not asking that arbitrary powers of incarceration be given courts; his purpose is to obtain stiffer guidelines under which the courts may act. We think he is on the right track and that Congress, while properly wary of overdoing the legal tightening-up process, should take a most careful and sympathetic look at the basic if drastic goal he is seeking.

Certainly there is reason to suspect the American judicial system has become flabby and overly permissive, and its slowness scandalous.

[From the Richmond (Va.) News Leader, Nov. 24, 1969]

WHILE FREE ON PROBATION

Some of the talk these days around Capitol Hill centers on the thorny question of preventive detention. Is it constitutional to deprive a suspected criminal of his liberty until he can be tried, when probable doubt exists that he will commit no more crimes before his trial? Or is the right of society to be protected from further criminal acts the overriding consideration? It is an issue on which reasonable minded men can disagree.

Perhaps those who doubt the need for preventive detention, pending trial, of suspected criminals might want to study a textbook case of what can happen without preventive detention. This case was headlined on the front page of *The Washington Post* last week. It involves a 30-year-old unemployed truck driver, Walter C. Powell, who was charged last week with a third count of murder within a six-month period. (On the same day, incidentally, *The Post* carried six ads for truck drivers in its help-wanted columns).

In May, Powell was arrested and charged with robbery, but the case was not prosecuted. On June 18, a 28-year-old woman was shot to death in her Washington apartment. On June 30, Powell appeared before a U.S. District Court judge to be sentenced on a conviction of attempted auto theft last year. The judge placed Powell on probation for three years.

Then on August 25, an elderly man was shot to death as he ran from a robbery attempt. The next day, Powell was charged with murder, not for the killing the day before, but in the June 18 case. Bail was set at $10,000 at first; Powell could not raise this amount. His lawyer petitioned for a reduction in bail, and the judge complied, setting it at $5,000 with the stipulation that, if $500 could be put up in cash, Powell could be released. A friend of Powell's posted the $500, and Powell went free, after being in jail one week.

In September, a judge conducting a preliminary hearing into the June 18 slaying concluded that the charge against Powell in the June 18 slaying was justified. He recommended that Powell's bond be increased, but he had no authority to increase it himself. Powell stayed free.

On November 3, a grand jury instructed Powell to appear for arraignment on the charge of murder in the August 25 killing. He didn't show up, and a warrant for his arrest was issued. On November 15, a 42-year-old man was killed by a robber who entered his apartment. On November 19, police arrested Powell, and charged him with murder in this most recent slaying. He now is being held without bond.

So during a six-month period, Powell managed to rack up three charges of murder two of them committed while on probation for another crime. Even the most determined opponent of preventive detention should be able to learn something from this case, and the many others like it that have occurred in the nation's capital. If they refuse to believe that preventive detention has any positive factors at all, it says a great deal more about their sympathy for criminal suspects than about their concern for society's right to protect itself from being further victimized.

[From Arizona Republic, May 28, 1970]

PREVENTIVE DETENTION

There well may be some constitutional questions involved in the preventive detention legislation passed by the House of Representatives at the urging of the administration. And Sen. Sam J. Ervin, chairman of the Senate constitutional rights subcommittee, has articulated them very well.

But there is also a great amount of foolish talk being raised against the bill, particularly by former Atty. Gen. Ramsey Clark who has denounced it as "immoral."

What is immoral about pre-trial detention of persons accused of specified dangerous crimes? What is immoral about pre-trial detention of those charged with crimes of violence while on bail, probation, parole or within 10 years of a prior conviction?

Unconstitutional, perhaps. Mistaken, maybe. But immoral?

Robert Conquest, well-known British political writer, recently wrote in the New York Times Magazine:

"On this law-and-liberty issue, a piece of news that was completely astonishing to Englishmen of all political opinions was that a significant proportion of the armed robberies taking place in Washington, D.C. are carried out by men out on bail on earlier charges of armed robbery.

"We do not think ourselves less liberal or less legally oriented than the U.S.; but it is virtually inconceivable that bail would be considered for a moment in such cases in England."

Ramsey Clark might reply that Englishmen, of all political opinions, are therefore immoral. But the rest of us should be able to view the proposed law with less emotion.

The House-passed bill would apply only to the District of Columbia; where crimes by previously convicted criminals are common. It would become nationwide for federal crimes under bills pending in Congress. And the administration has urged states to use the bill as a model for themselves.

Senator Ervin and other critics have said the crime problem could be substantially reduced if trial were conducted in 60 or even within 120 days. That may well be. But the fact is that trials are not so conducted. Meanwhile, those out on bail continue to rob and beat and vandalize.

Deputy Atty. Gen. Richard Kleindienst, speaking for the administration, acknowledged that conscientious men have difficulty balancing the interests of the individual and the public. But he also said that society has the inherent right to protect its members for limited periods, through due process procedures (a judge would first have to determine, after a hearing, whether the release of a criminal suspect would constitute a danger to the community), from persons who pose a serious threat to life and safety.

These are the choices, and there are good men lined up on both sides of the issue. But Ramsey Clark's moral posturing tends to make it appear that the bill (to quote UPI) "will tear families apart, jail thousands of innocent persons, lead to more—not less—crime, violate the Constitution," etc.

It is his prerogative to live in a dream world, if he so desires. But he has no business accusing others of sanctioning immorality simply because they wish to do something concrete about a terrible problem that has continued to worsen through the years.

[From the Cincinnati (Ohio) Enquirer, Dec. 12, 1969]

CONGRESS TROUBLED DOORSTEP

Rudimentary law enforcement in the United States is essentially the responsibility of the states and cities—with one notable exception: Washington, D.C., as the nation's capital and a city that belongs to the entire nation, is a federally governed city; its major officials are appointed by the President, and Congress functions as something of a city council.

The fact, accordingly, that crime continues to mount in Washington ought to be a matter of significant concern to both Congress and the administration.

Police for the District of Columbia reported a few days ago that serious crime in Washington during October had shown an increase of 35.4% over October of last year and that, for the 12 months ended September 30, the number of robberies in the district had climbed 59% over the preceding 12 months. Burglaries were up 20%.

As U.S. News & World Report observed in its December 8 issue: "Downtown Washington at night is almost deserted . . . Store

clerks, filling-station attendants and deliverymen work in constant fear."

Yet Congress has evidenced none of the urgency the problem seems to warrant. Perhaps Mr. Nixon waited longer than he should have—July 11—to send a "model anticrime program" to Congress. But Congress has shown no disposition to act on it. Indeed, the prospects for action at this session seem virtually nil.

The proposals the President put before Congress included a series of recommendations reflecting, as Attorney General John N. Mitchell put it, the administration's "firm, even-handed" approach to crime control.

The most controversial aspect of the administration's program is an amendment to the Bail Reform Act of 1966 to permit a judge to set strict conditions on the release of suspects awaiting trial in noncapital cases and to detain without bail certain categories of suspects who are found, after a hearing, to pose a threat to the safety of society.

This proposal—the so-called preventive-detention bill—has been bitterly assailed by, among others, Sen. Sam J. Ervin Jr. (D., N.C.), who called it a "repudiation of centuries of Anglo-American traditions of fairness, due process and common standards of justice."

Another phase of the program would reorganize the court system of the District of Columbia. Yet another would convert Washington's Legal Aid Society into a public-defender service.

Two months ago, Mr. Nixon reminded Congress of its responsibilities in connnection with Washington's crime problem and declared that crime in the city had reached the crisis point.

Washington ought to represent a laboratory in which the Federal government introduces new techniques to combat crime for imitation by cities across the nation. Instead, it has been allowed to acquire the highest rate of robberies and burglaries of any city of comparable size in the United States—despite the significant fact that it has the highest per capita income and the lowest unemployment rate of any major city.

Congress should not allow the problem to grow even more acute.

[From the Washington (D.C.) Evening Star, Dec. 29, 1969]

RESTRICTING THE BAIL RIGHT

It is often said and widely believed that a criminal defendant has an "absolute" right to bail unless he is likely to flee to avoid trial. But this is not true in all cases.

A few days ago the U.S. Court of Appeals acted in the case of Kermit N. Gilbert Jr., charged with assault with intent to kill. Gilbert had been denied bail in the lower courts because of a claim that his friends and possibly the defendant himself had threatened witnesses with a view to so intimidating them that they would be afraid to testify at the trial.

The appellate court stated the controlling principle in these words: "We are satisfied that courts have the inherent power to confine the defendant in order to protect future witnesses at the pretrial stage as well as during trial." And this despite the language of the Bail Reform Act of 1966 which supposedly establishes an absolute right to bail in noncapital cases if the accused can be expected to show up for his trial. Of this, the court said: "The necessities of judicial administration prevail, and the right to bail is not literally absolute."

Surely no one will quarrel with this view of the law. It would be absurd to contend that a suspect must be released on bail if, while at liberty, he uses the opportunity to coerce witnesses so that when his trial is held there will be no one present to testify against him. It is difficult enough at best to get witnesses to appear and testify. If they could be threatened and intimidated, the administration of criminal justice would soon break down.

But if judges have the inherent power to protect witnesses, why should they not also have the power to protect the public? In our opinion they should have, and this is what the debate over preventive detention is all about.

Police Chief Jerry V. Wilson recently told the International Association of Police Chiefs of a study made by his department of individuals released in this city on personal bond, which means no bond, after being indicted on charges of armed robbery. The study covered the period July 1, 1966, to June 30, 1967.

The key finding was that "35 percent of these individuals released in one year were rearrested and reindicted on subsequent felonies, mostly armed robberies, before coming to trial. Some were rearrested and reindicted as many as three times in one year." This is a state of affairs which certainly has not improved since 1967, and which bears impressive witness to the extent to which the right of the public to be protected against criminals is trampled upon under the bail reform act.

The Nixon administration is trying to remedy this situation. It has proposed to Congress certain amendments to the bail reform act to give judges some discretion to deny release on bail if this is deemed necessary to protect the public.

This proposed discretion is not unlimited. Before denying bail the judge must hold a hearing at which the accused would be represented by counsel. Bail could be refused for these types of suspects: (1) Those charged with committing a "dangerous crime" in which there would be a high risk of additional public danger should the suspect be released. Included would be such offenses as bank robbery and the sale of narcotics. (2) Repeat offenders who have been charged with at least two crimes of violence. (3) Narcotic addicts charged with any crime of violence. (4) Defendants who try to obstruct justice by threatening witnesses or jurors.

There also are safeguards for the accused, chief among these being that a suspect must be released unless he is brought to trial within 60 days, or unless additional delay is at his own request.

Competent officials have stated that crime in Washington could be very substantially reduced if only 300 hardened criminals and narcotics users could be taken off the streets pending trial. But Congress has been dragging its feet on preventive detention despite the strong case that has been made for this law enforcement tool.

Perhaps the ruling by the Court of Appeals will help bring action at the next session of the legislators. For if judges have the power to protect their courts, no persuasive argument can be made against authorizing some similar protection for the long-suffering public.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. HRUSKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PROTECTION OF CONSUMERS IN RELATION TO ARTICLES COMPOSED IN WHOLE OR IN PART OF GOLD OR SILVER

Mr. PASTORE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1046.

The PRESIDING OFFICER (Mr. HANSEN) laid before the Senate the amendment of the House of Representatives to the bill (S. 1046) to protect consumers by providing a civil remedy for misrepresentation of the quality of articles composed in whole or in part of gold or silver, and for other purposes, which was to strike out all after the enacting clause, and insert:

That the Act entitled "an Act forbidding the importation, exportation, or carriage in interstate commerce of falsely stamped articles of merchandise made of gold or silver or their alloys, and for other purposes", approved June 13, 1906 (34 Stat. 260), as amended October 4, 1961 (75 Stat. 776; 15 U.S.C. 294 et seq.), is amended by—

(a) Inserting immediately after the section number "SEC. 5." the subsection designation "(a)".

(b) Adding at the end of the newly designated subsection "SEC. 5. (a)" the following new subsections:

"(b) Any competitor, customer, or competitor of a customer of any person in violation of section 1, 2, 3, or 4 of this Act, or any subsequent purchaser of an article of merchandise which has been the subject of a violation of section 1, 2, 3, or 4 of this Act, shall be entitled to injunctive relief restraining further violation of this Act and may sue therefor in any district court of the United States in the district in which the defendant resides or has an agent, without respect to the amount in controversy, and shall recover damages and the cost of suit, including a reasonable attorney's fee.

"(c) Any duly organized and existing jewelry trade association shall be entitled to injunctive relief restraining any person in violation of section 1, 2, 3, or 4 of this Act from further violation of this Act and may sue therefor as the real party in interest in any district court of the United States in the district in which the defendant resides or has an agent, without respect to the amount in controversy, and if successful shall recover the cost of suit, including a reasonable attorney's fee. If the court determines that the action has been brought frivolously for purposes of harassment, or in implementation of any scheme in restraint of trade, it may award punitive damages to the defendant.

"(d) Any defendant against whom a civil action is brought under the provisions of this Act shall be entitled to recover the cost of defending the suit, including a reasonable attorney's fee, in the event such action is terminated without a finding by the court that such defendant is or has been in violation of this Act.

"(e) The district courts shall have exclusive original jurisdiction of any civil action arising under the provisions of this Act."

(c) Inserting immediately after the section number "SEC. 6." the subsection designation "(a)".

(d) Adding at the end of the newly designated subsection "SEC. 6. (a)" the following new subsections:

"(b) The term 'person' means an individual, partnership, corporation, or any other form of business enterprise, capable of being in violation of this Act.

"(c) The term 'jewelry trade association' means an organization consisting primarily of persons actively engaged in the jewelry or a related business, the purposes and activities of which are primarily directed to the improvement of business conditions in the jewelry or related businesses."

(e) Changing paragraph (A), subsection (b), of section 4 to read as follows:

"(A) Apply or cause to be applied to that article a trademark of such person, which

has been duly registered or applied for registration under the laws of the United States within thirty days after an article bearing the trademark is placed in commerce or imported into the United States, or the name of such person; and"

SEC. 2. If any provision of this Act or any amendment made thereby, or the application thereof to any person, as that term is defined is held invalid, the remainder of the Act or amendment and the application of the remaining provisions of the Act or amendment to any person shall not be affected thereby.

SEC. 3. The provisions of this Act and amendments made thereby shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States.

SEC. 4. This Act shall take effect three months after enactment.

Mr. PASTORE. Mr. President, we are considering S. 1046, as passed by the Senate. I have cleared this matter with the minority, with the Senator from Pennsylvania (Mr. SCOTT), and it is agreeable with him; and also with the Senator from Montana (Mr. MANSFIELD), and it is agreeable with him as well.

Mr. President, I move that the Senate concur in the House amendment.

The motion was agreed to.

THE C–5A AIRCRAFT PROGRAM

Mr. RUSSELL. Mr. President, I wish to address myself today to the issue of authorizing $200 million to insure a continuation of the C–5A aircraft program.

I am proud to say that this airplane was conceived and designed and is assembled by men and women of Georgia, and I cannot deny that I am vitally concerned about their well-being. Also, I am concerned about the adverse economic impact any precipitous work stoppage at the Lockheed-Georgia Co. would have on Georgia and the whole Southeast.

But the issue is even larger than the livelihood of 20,000 or more families in Georgia. The entire Nation has a vital stake in its outcome. The ability of the United States to meet its international commitments at a cost commensurate with our ability to pay hangs in the balance.

My distinguished colleague from Georgia, Senator TALMADGE, addressed himself to the issue when he spoke on the Senate floor last Thursday, July 9. He spoke very convincingly about the importance and the value of the "remote presence" concept. The distinguished Senator from Missouri (Mr. SYMINGTON), is the midwife of this concept and has been very articulate on this subject.

It envisages bringing hundreds of thousands of our troops back home from foreign bases, but still making our foreign treaties and commitments credible and viable through the ability to redeploy these troops and their equipment quickly and efficiently through the use of massive airlift. It is remote presence rather than physical presence, and estimates indicate it could save up to $2 billion per year.

The implementation of a remote presence policy is totally dependent on an adequate massive airlift capability. It is highly questionable whether even the 81 C–5's on order are sufficient to meet this capability much less the C–5's to which we would be limited if the $200 million contingency amount is deleted from the military procurement authorization bill.

The remote presence concept has been ably espoused by Senators SYMINGTON and TALMADGE and I wish to endorse strongly their remarks. I hope the administration generally and the Pentagon particularly will give greater attention to it. It would be useful, it seems to me, for the Pentagon to make further studies of this concept in the hope that we could pinpoint more accurately and more certainly the numbers of airplanes needed to implement such a policy and the numbers of dollars we could save by its adoption.

As a matter of fact, there is a growing amount of evidence that we will need even more than 81 C–5A airplanes. The Joint Chiefs of Staff unanimously recommended twice this year going on to six squadrons, or 120 C–5A's. The Secretary of the Air Force says they still need six squadrons but budgetary constraints will make it necessary to limit our purchase to 81. The Military Airlift Subcommittee of the House Armed Services Committee recently filed a report after many months of hearings and investigations indicating there will be a deficiency of 46 airplanes with only 81 aircraft.

President Nixon, in his foreign speech to Congress in February, describing the one and a half war strategy and the new low profile policy abroad, said:

> Questions have been raised concerning whether . . . our airlift and sealift capabilities are sufficient to meet the needs of the existing strategy.

The dollar savings from implementation of the remote presence concept are certain to be in the billions, and there is certain to be a huge favorable effect on our balance of payments situation. I believe it would be very useful to the Congress for a detailed study to be made to provide us with more precise information for use in considering this matter in future years.

Mr. President, the taxpayers of this Nation would not benefit by stopping the C–5A program at 30 or 31 airplanes. It is incredible to me that we could seriously consider denying the funding necessary to continue C–5 production. Such a decision would not only void the delivery of the additional 50 to 51 aircraft we so badly need, but also create fiscal chaos.

Let me bring to your attention some of the statistics given in hearing before the Senate Armed Services Committee by the Deputy Secretary of Defense, David Packard, and by the Assistant Secretary and Comptroller Robert Moot. They indicated that if the $200 million contingency amount were not available or used, the Government would have spent $3.7 billion by January of 1971, and for that amount about 30 aircraft would have been completed and delivered. This includes the amounts to be paid Lockheed and its subcontractors and suppliers for the production of the airplane, and the amounts to be paid to General Electric for the engines. It also includes such Air Force items as ground handling equipment, spare parts, training costs, and the cost of facilities that are associated with the C–5A.

On this basis, the first 30 aircraft will cost about $120 million apiece. Mr. Packard and Mr. Moot estimate that to complete the current order of 81 C–5A's, the cost would be a total amount of $4.5 billion at an average of about $55 million apiece. Simple arithmetic indicates the cost of those additional 51 aircraft would be at the rate of less than $16 million apiece.

As Secretary Packard said in his testimony, and I quote him exactly:

> We have put so much money into the program now that we are going to get a very poor bargain if we stop it at 30.

These facts are readily explainable because there are certain costs that have already been incurred and are not recoverable. There are design and development costs—as well as employee training expenses—that go with beginning production of any new airplane. Obviously, to average these expenses over the production of only 30 airplanes makes the cost far greater per unit than if the averages are extended over 81 airplanes, or over 120 airplanes or more.

The first effect of limiting the C–5 program to 30 airplanes would be the loss of more than 20,000 jobs in the Lockheed-Georgia Co., and about 20,000 more jobs in the plants of subcontractors and suppliers in 42 States. Such precipitate layoffs would not only have a disastrous impact on all those workers and their families, but also would have a very serious and adverse economic ripple effect thoughout the Nation.

But the most incredible and startling waste comes from the fact that this work stoppage would leave about 50 unfinished C–5A's in the "pipeline," in various stages of completion. Their only value would be whatever they would bring by selling them for scrap.

I have asked for an analysis of the cost of these useless unfinished airplanes. I asked for conservative estimates so they could not be attacked or distorted, for we certainly have had enough of that in connection with this airplane.

This analysis reveals that a stoppage of production would bring about a waste of Government funds of at least $1.15 billion and possibly a great deal more.

And the irony of it is that it comes in the guise of avoiding waste in military programs.

Let me take you briefly through the arithmetic—the arithmetic of waste—if we vote to deny the funds to continue production of the C–5A.

First, the analysis indicates that 31 complete airplanes would have been delivered to the Air Force by December 31, 1970, the approximate time when the $200 million would be needed to continue production. This reflects a slight change from the figures given us in March of this year indicating that only 30 airplanes would be complete at this date.

In stopping work at this point 50 airplanes would be left unfinished. The funds to complete these aircraft have already been committed; and most of the costs would have been already in-

curred. This is, of course, quite normal in an industry which requires long lead-times.

All the raw material for the full complement of 81 aircraft would have been purchased and all the structures and avionics would have been delivered from subcontractors for 58 airplanes.

For 23 C–5A's, 55 to 65 percent of the structures and avionics would have been delivered by the last day of 1970.

Of the 50 unfinished airplanes the last one would be about 50 percent complete and the 32d C–5A would be about 96 percent complete.

The cost of these 50 unfinished airplanes at the December 31 date is estimated by Lockheed to be at least $1.350 billion. The salvage value from scrapping them is estimated at approximately $200 to $300 million resulting in a net waste of $1.150 billion.

These figures do not include those extra costs to be spent directly by the Air Force on ground handling equipment, training costs and so on. These estimates do include the possible savings that could be realized from immediately stopping production of parts, rather than waiting for the end of the year when the money would run out.

Also, it should be noted that these estimates do not include the effect of contract termination charges against the Government. I do not know what the termination costs might me, and I am sure no one knows at this time. It probably would require years of lawsuits to find out.

In any event, it is certain that the termination charges would add very substantially to the fiscal chaos that would occur in the event production is stopped at 31 C–5A's. But more than a billion dollars in wasted, unfinished airplanes is reason enough for us to come to our senses as we debate the question of whether to continue the C–5A.

Why must we create this chaotic fiscal mess, and incur this incredible waste? Why must we stop production at 31 C–5A's?

First, we are told that we should stop at the so-called "legal limit"—that is, the amount of funding due Lockheed and its associated contractors for the completion of 81 aircraft if you accept the legal position of the Air Force on the interpretation of the contract.

The trouble with this argument is that it prejudges the legal case. It assumes the legal position of the Air Force is unassailable and that Lockheed's legal case is worthless. It puts the U.S. Senate in the position of being a judge and a jury and denies the opportunity for a normal, judicial review of the case.

I do not know what the ultimate legal judgment might be, but in any event, I believe it is highly inappropriate for Senators to become injected into the legal question, and to use it as a reason for denying the funds for completion of the airplanes.

We are told that is a Government "bail out" of a private company, or some form of Government charity.

This "charity" argument is hardly valid once you understand that it is a legal question. Lockheed has only asked for the funds that they say are due them under the contract. They simply do not have the resources to continue this program while awaiting a legal determination of their case.

We have heard the argument that Lockheed has incompetent management. If this contention is used as a basis for refusing to authorize the $200 million, it presupposes that a receiver could do a better job.

In this connection, I have gathered a few statistics about Lockheed's record which will indicate just the opposite is true.

Since its founding in 1932, Lockheed has delivered more than 31,000 military and commercial aircraft. Since World War II, excluding current programs, they produced 9,265 military aircraft of various types, and their production performance has been truly outstanding. The performance by Lockheed on these more than 9,000 aircraft indicates a composite compliance with delivery schedules of 99.6 percent, and a composite compliance with target prices of one-tenth of 1 percent under the targets.

Since 1961, Lockheed has delivered more than 270 Agena satellite vehicles to the U.S. Government with a 94-percent schedule achievement and at costs of 7.5 percent over target prices.

Lockheed delivered more than 1,000 Polaris missiles to the Navy with a 98.6 schedule achievement and with costs at nine-tenths of 1 percent over target prices. And they delivered the first Polaris missile 2½ years ahead of the original Polaris schedule.

With a record like that it is no wonder that Lockheed became the No. 1 defense contractor and has maintained that position most of the past 10 years, including the current one. Although there are a number of fine companies in the aerospace industry, I do not believe that any other company in the industry can furnish such a record of performance.

In addition, Lockheed has become noted for the high quality of its products. I only need to mention such standouts as the P–38, the F–104, the Constellation, the U–2, the Agena satellite vehicle, and the Polaris missile. From the Georgia division, the workhorse C–130 which is still in production and the very reliable C–141 are doing yeoman's service in our Vietnam war effort and have been invaluable to the welfare of the American boys serving there.

Even today, on Lockheed's current programs, their cost overruns are about average for the industry. Their cost excess over original estimates on the C–5A, for example, is estimated to be about 60 percent, and this is about average for major defense systems these days. These overruns occurred at Lockheed for the same reasons they occurred throughout the industry—inflation; unusual problems in the industry itself where the subcontractor market turned quickly from a buyers' market to a sellers' market; well-intentioned contract procedures which turned out to be harmful rather than helpful in holding down costs; and, admittedly, some mistakes in judgment by Lockheed's management about the difficulty of the development and production task on the C–5A.

Of course, Lockheed's management has made mistakes, but in spite of their mistakes they are producing a fine useful airplane which is badly needed for our security and to meet our defense commitments.

To have made mistakes under the circumstances that faced them, is hardly a proper reason to drive them to bankruptcy. And, if you drive them to bankruptcy, who would you nominate to install as the receiver—the new man in charge?

In view of Lockheed's record, both past and present, in comparison with the records of other companies in the defense industry, would you trust some other company to do a better job? Hardly. Or would you go outside the industry to get someone who never had experience in building an airplane?

But even if you could get someone else who would be satisfactory to all of us, is it really practical to do it in midstream? Secretary Packard—a man with a wealth of experience in this field—testified that it would not be wise or feasible to make such a switch.

It might be necessary, he said, to take over full ownership and control of the Georgia plant and equipment—and it might be necessary to establish a "super" Air Force projects office to monitor continuing production—but no one in his right mind would propose completely changing management.

Lockheed's problems are financial, not managerial. And there are legal questions involved. But, more importantly, there is the question of building and delivering badly needed airplanes.

When all arguments fail, the critics of this program claim that the airplane is deficient, and we would be pouring good money after bad by continuing this program.

Because these questions have been raised, the Air Force found it necessary to review and monitor the technical progress of the C–5A far beyond normal. Incidents occurring during the development cycle have been blown all out of proportion to their importance.

The airplane has been judged by the experts to be basically sound and, at this stage, in its test program, it still promises to meet all of its basic performance requirements. This conclusion comes from Dr. Ray Bisplinghoff, the distinguished scientist and professor at MIT, and his panel of experts on the special scientific advisory board appointed by the Air Force to review the technical progress of the C–5A. Dr. Robert Seamans, the Secretary of the Air Force, who is also a distinguished scientist, confirms these conclusions. For example, they assert flatly that no new wing design is needed, despite shrill claims to the contrary.

The question finally boils down to this. Are we willing to create fiscal chaos and waste more than a billion dollars on the C–5 program on the basis of arguments that are either distortions or which are not germane to the central issue? Are we willing to stop this program at 30 airplanes instead of going ahead with the

production of 81, which may not even be enough?

Is it really appropriate for the Senate to sit in judgment on the degree of punishment that should be meted out to a defense contractor, its shareholders, its employees, and its subcontractor's employees, when the legal case is not yet settled?

It is just commonsense, in my judgment, and in the interests of the United States, to proceed with the completion of this program.

DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970

The Senate resumed the consideration of the report of the committee of 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.

Mr. HRUSKA. Mr. President, I rise to speak in support of the conference report on S. 2601, the District of Columbia Court Reorganization and Criminal Procedures Act of 1970. This bill has been subjected to close scrutiny by the able members of the District of Columbia Committees in both the House and the Senate. The conference members met a total of 24 times to discuss and reconcile their differences, and the resulting bill is a triumph of wisdom and judicious compromise.

The District of Columbia crime bill represents an ambitious, very advanced project, for it is the first time that Congress has ever revised an entire criminal justice system from top to bottom. This is the type of effort that must eventually be made in other jurisdictions to assure that our institutions of criminal justice meet and conquer the pestilence of crime.

The President and the Attorney General are to be commended for undertaking this massive effort. Members of the District Committees are to be commended for seeing it through. Casual observers of the legislative process cannot know, cannot even imagine, the work that has gone into this bill and the commitment of energy and resources which have come from both the executive and legislative branches of the Government.

Much has been said about certain controversial provisions in this bill. Some critics have attacked the so-called no-knock search warrant provision and pretrial detention provision as "repressive" legislation. A modified form of these provisions is included in this bill, as reported by the conference committee. In my judgment, these sections are constitutional, reasonable, and highly necessary.

Mr. President, there is a great deal in this bill that has not been mentioned by the critics of the administration.

THE PRESIDENT'S MESSAGE

President Nixon outlined his legislative program to combat crime in the District of Columbia on January 31, 1969. I ask unanimous consent that the text of that message be printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HRUSKA. Chief among the President's several goals was a court system "similar to that of the States and other large municipalities." This required a broad and comprehensive plan to reorganize the present court system. I had the privilege of introducing S. 2601, the legislation designed to accomplish this objective.

The thrust of that bill, and the bill before us today, is to create an expanded, unified local court system in which all "local" jurisdiction is transferred, gradually, from the U.S. district court and the U.S. court of appeals to a new superior court for the District of Columbia and the District of Columbia court of appeals. The bill includes a transfer of the juvenile court jurisdiction and a timetable by which the transfer is to be effected.

This reform has been necessary for several reasons. Divided jurisdiction in criminal cases, with all felony jurisdiction residing in the Federal district courts, has been wholly unsatisfactory, resulting in squabbling, disagreements, "buck-passing," and general confusion. Through the years, this type of court system has led to the inefficient use of judicial resources and fumbling inequities in the administration of justice. The local courts and the Federal courts have been separate entities. There has been no central administration. And there have been few existing devices for solving mutual problems for the benefit of the public.

Although the District of Columbia Crime Commission, various committees, and prominent local judges called for reform, no one authority stepped forward to assume the task of planning and drafting a complete reorganization of the courts until the President directed such an effort in his crime message of January 31, 1969.

The newly created superior court replaces the present court of general sessions, the juvenile court, and the District of Columbia tax court. Over a three-stage period of 36 months, the superior court will be vested with all local trial jurisdiction and will have 44 judges serving in five divisions—civil, criminal, family, probate, and tax.

The District of Columbia Court of Appeals will have expanded powers including a greater scope of review in criminal cases, rulemaking power, and control over admissions to the bar. Its decisions will no longer be appealable to the U.S. Court of Appeals for the District of Columbia Circuit. Review on certiorari, will be the U.S. Supreme Court. The size of the court of appeals will be increased from six to nine.

In the new system, Federal courts will not be changed in structure. At the end of 36 months, their jurisdiction will be comparable to that of other Federal courts. In the new era ahead, local judicial business will be eliminated from the Federal courts.

A large urban court with 44 judges needs capable administration to perform effectivedly. The bill provides for modern management and court administration. It creates the post of court executive, who is made responsible for all nonjudicial functions such as facilities, procurement, personnel, and management of court operations.

The moulding and shaping of a new court system has necessitated the modification of certain judicial procedures. This procedural revision is also undertaken in the bill. For example, special procedures are created for handling intrafamily offenses, would avoid resort to the criminal process.

There are other changes, improvements, and reforms associated with court reorganization that are incorporated into this bill. They are designed for the sole purpose of updating and modernizing the District of Columbia court system so that it will be better able to cope with the crime crisis. This is the sort of fundamental reform that is absolutely necessary if the court system is to attain its mission of justice.

At the same time the courts are streamlined and given the capacity to speed up the trial of cases, efforts should be made to update the District's criminal law and procedure. This too has been accomplished in the conference report. As the President has often said, law enforcement authorities must be given the proper tools if we are to make real progress in fighting crime.

The criminal law reforms incorporated into this bill have excited some controversy. Proponents of the disputed measures have been attacked as "repressive," and it has even been suggested that the proposals will lead to a "police state."

These allegations are not true. The public officials who support the tough crime measures in this bill—men like the President, the Attorney General, the distinguished Senator from Maryland and in fact all the proponents of the measures—have taken an oath, as I have, to support and uphold the Federal Constitution. None would ignore our duty and responsibility under the law by promoting legislation he believed to be unconstitutional.

Our goal is to see that the law responds with fairness but reasonable efficiency to the sometimes harsh realities of modern society. Our objective is to advance the cause of justice by reducing the rampant crime and personal insecurity which detract so much from the quality of life, but at all times within the Constitution.

NO-KNOCK AUTHORITY

On December 5, 1969, criminal law reforms for the District of Columbia were considered in S. 2869 and approved by this body. That bill, reported by the District Committee, contained a provision establishing no-knock authority for police officers in the District of Columbia. During the course of the debate, I offered a substitute version of this provision which in my view provided a more comprehensive reform, consistent with existing law and the practical needs of law enforcement.

At the request of the Senator from Maryland (Mr. TYDINGS), I withdrew my amendment with his assurance that the amendment would be considered in the conference. Subsequently, the House passed a bill that included a no-knock provision which was very similar to my amendment.

The bill reported by the conference

embodies a little of both the Senate version and the House version, and I am well satisfied.

When I presented my amendment last December, I stated that in contrast with S. 2869, my provision would apply to both arrest and search situations, and that it would codify each of the exceptions now recognized in this area, and provide flexibility for future judicial developments in the law.

As I said then:

The exigent circumstances existing at common law include entry without notice when, as stated as early as 1843 in Aga Kurboolie Mohomed v. Queen case, 4 Moore P.C. 239, 13 Eng. Rep. 293: First, the officer's identity or purpose is already known to the person on the premises. Other cases have recognized exigent circumstances when, second, such notice would result in the destruction or concealment of the evidence, third, such notice would increase the likelihood of bodily peril to the officer or anyone aiding him; and fourth, the notice would permit the party to be arrested to escape.

Since my remarks on the floor, the United States Court of Appeals for the District of Columbia Circuit has taken note of the "useless gesture" exception. I ask unanimous consent that pertinent parts of this decision, Bosley against United States, be printed following my remarks.

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

(See exhibit 2.)

Mr. HRUSKA. A majority of our States, in statute or in court decision, recognize situations which justify no-knock entries. My own State of Nebraska has enacted a statute that provides in part, that a judge may issue a warrant authorizing an officer's entry without giving notice of his authority and purpose, when, upon proof under oaths, he is satisfied "that the property sought may be easily or quickly destroyed or disposed of, or that danger to the life or limb of the officer or others may result, if such notice be given." Nebraska Revised Statutes, section 29–411.

U.S. Attorney Thomas Flannery has stated that—

[T]he passage of [a no-knock provision] is necessary for effective enforcement of local and federal narcotics law. Experience has shown that the time consumed by the executing officers in announcing their authority and purpose and waiting to be refused admittance is used by the dope peddler in disposing of his narcotics down the toilet. All too often law enforcement officers, after finally entering the premises to be searched, find the drug trafficker in his bathroom gleefully watching his drugs vanish from sight. The provision . . . would also be of exceptional value in our efforts against organized gambling.

This prophetic statement was borne out last week when gambling evidence was destroyed during the course of a police raid. I ask unanimous consent to have printed at this point in my remarks an article from the Washington Post.

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

FBI ARRESTS NINE IN GAMBLING RAIDS

(By Alfred E. Lewis)

FBI agents, acting on information obtained through federal court-authorized wiretaps, raided 13 locations in Washington and Maryland yesterday and arrested nine persons on interstate gambling conspiracy charges.

A spokesman for the FBI said the raided operations were doing a business in excess of $25,000 a week.

Thomas A. Flannery, U.S. attorney for Washington, said the raids, conducted by more than 50 FBI agents, were the result of a two-month investigation. It was the third major raid since last August based on wiretap information. The first two raids involved narcotics allegations.

The wiretaps at three locations, authorized by federal District Court judges in Washington and Maryland, were the first obtained in a gambling investigation by the FBI in this area, Flannery said. The horse betting and numbers investigation was coordinated by the year-old major crimes unit of Flannery's office.

Arrests were made at only eight of the 13 locations. Flannery said, because evidence was destroyed in some instances before the agents could enter. He said it was a "classic case for 'no-knock' authority."

"At each of the 13 locations searched by the FBI," he said, "agents were required to and did knock, announce their identity and purpose and give the occupant a reasonable time to answer, as required under present law. On several occasions today, they gained entry only to find pans of indistinguishable water soluble paper and charred remnants of flash paper," which he said were destroyed betting slips.

"Clearly, if the pending 'no-knock' legislation had been in effect, we would have saved this evidence," Flannery said. The proposed law would give police authority to enter premises without knocking if they believed evidence was being destroyed.

He said the wiretaps were based on applications made by the FBI to Judge John J. Sirica, of the District Court for Washington, and Judge R. Dorsey Watkins, of the U.S. District Court for Maryland in Baltimore. He said the taps showed that the phones were being used to transmit bets and betting information "in aid of a racketeering enterprise."

The following persons were arrested. All were charged with using an interstate facility (a telephone) to conduct a gambling operation and using a telephone in aid of a racketeering enterprise (gambling).

Arrested at the scene of the first wiretap, 201 I St. SW, was Thurman M. Jones Jr., who was held on $5,000 bond.

Arrested on the scene of the second wire tap, at 3623 Eastern Ave., Mt. Rainier, was William F. Cush, held on $5,000 bond.

Arrested at 4105 Southern Ave., Hillcrest Heights, the third location the FBI tapped, was Robert L. Cheruahas, held on $1,000 bond.

Others arrested at their homes and held on $1,000 bond were Francis R. Jones, 4105 Southern Ave., Hillcrest Heights; John W. Crowley, 4901 4th Ave., Oxon Hill; Paul Grasso, 6103 42d Ave., Hyattsville; Joseph L. Garilli, 3601 Eastern Ave., Mt. Rainier; William A. Shields, 3712 42d Ave., Cottage City.

Joseph Juliano, 7310 Rolling Ridge Rd., Seat Pleasant, was arrested at the Cottage City address.

Mr. HRUSKA. I strongly endorse this provision of the bill.

PRETRIAL DETENTION

My position with regard to pretrial detention was set out at length in my article, "Preventive Detention: The Constitution and the Congress," which appeared in 3 Creighton Law Review 36 (fall 1969). In that article, I argued in support of formalized pretrial detention while observing that "the judicial instinct to protect society from defendants who pose an obvious danger to the community cannot continue to operate without restraint. It can and must be channeled into constructive procedures which limit the range of the judge's discretion and protect the rights of the defendant."

In reducing these sentiments to statutory language, the conference report has made several important changes in the law.

First, it authorizes courts in the District of Columbia to consider a defendant's potential danger to the community in setting conditions of pretrial release. We have learned through hard experience that this consideration was unwisely forbidden in the Bail Reform Act.

Second, the bill authorizes the limited pretrial detention of very dangerous defendants for a period of up to 60 days. The possibility of detention is limited to defendants charged with specified serious felonies; and it is additionally limited to defendants who have been found in an adversary hearing to constitute an acute danger to the safety of the public.

Third, the bill provides sanctions for defendants who violate the conditions of their release and adds penalties for defendants found guilty of bail jumping or committing an offense while free on bail.

A fourth provision, found elsewhere in the bill, enlarges the size and function of the District of Columbia Bail Agency. This provision will permit the improved supervision of defendants released on bail.

Pretrial detention is clearly the most controversial of these four provisions, and it deserves further comment.

From the available evidence, there appear to be four major reasons why the Bail Reform Act should be amended to authorize pretrial detention in the District of Columbia.

First, pretrial detention will reduce crime. A sizeable percentage of the serious crime in the District of Columbia may properly be attributed to persons released before trial and subsequently apprehended in the commission of new crimes. Of 130 persons indicted for robbery and released before trial in fiscal 1967, 34 percent were reindicted for at least one felony committed during pretrial release. In calendar 1968, 70 percent of the 345 robbery defendants indicted and released were subsequently rearrested for a new crime.

Although we do not have a complete statistical breakdown of recidivism on bail for every category of offender, we have sufficient information to know that crime on bail is not insignificant. A recent study by the National Bureau of Standards indicated that while 17 percent of the felony defendants released during a four week period in 1968 were rearrested for a new crime, the true recidivism rate was probably close to 40 percent.

Let me direct your attention to two quotations on this problem. Testifying before this Subcommittee on Constitutional Rights last year, Judge Tim Murphy of the District of Columbia Court of General Sessions said:

[A]s a practical matter, many cases come before the court in which from the outset

there is not a shadow of a doubt about the defendant's guilt. Many of these cases involve dangerous persons whom the judge knows to a moral certainty will repeat their criminal activity if released. Yet under the Bail Reform Act he must release these people to prey on the community. My immediate examples are the holdup man who is in on one, two, three, or four gunpoint holdup charges, and, of course, your narcotic addicts, who because of their illness must commit a crime to support a habit.

Compare with Judge Murphy's testimony this comment in the New York Times magazine, by British political writer Rober Conquest. Conquest wrote that:

A piece of news that was completely astonising to Englishmen of all political opinions was that a significant proportion of the armed robberies taking place in Washington, D.C., are carried out by men out on bail on earlier charges of armed robbery.

We do not think ourselves less liberal or less legally oriented than the U.S.; *but it is virtually inconceivable that bail would be considered for a moment in such cases in England.* (Emphasis added.)

These questions supply a little food for thought to those who wonder why the crime rate in Britain is considerably lower than the rate here. They should also inspire support for the pretrial detention provision in this bill.

Now, second, even if the crime on bail were not a significant factor, individual instances undoubtedly arise when predetention is really the only way to avoid an unspeakable tragedy.

At present, the Bail Reform Act mandates the release of virtually all noncapital defendants before trial. These defendants include men charged with such serious crimes as forcible rape, kidnapping, arson, armed robbery, burglary, bank robbery, mayhem, manslaughter, assault with intent to kill, and second degree murder.

As interpreted by the court of appeals, the Bail Reform Act does not permit a consideration of dangerousness in any of these cases, regardless of how extreme the facts may be.

A story in yesterday's Washington Daily News provides a hypothetical example of the problems at issue.

Shortly before 2 p.m. on Tuesday, Officer Harvey E. Baker spotted a man in an alley in the 1200 block of Seventh Street NW. As Baker's patrol car pulled near, the man dropped a small package to the ground that might have been narcotics.

When the officer went up to the man and apprehended him, the man shouted for help. Suddenly, two men jumped the officer from behind.

When the attackers had wrestled the officer's service revolver away, the suspect screamed, "Kill him, kill him." Within the next few seconds, five shots were fired, three directly at the officer, though none wounded him. Later, the man in the alley was apprehended, with narcotics paraphernalia in his possession.

Suppose all three men had been arrested and been positively identified. All three would be entitled to pretrial release, even though they have been addicts, even though they definitely assaulted an officer, and even though they came within inches of killing a policeman in cold blood. I ask unanimous consent to have printed in the RECORD, an article entitled "Kill Him, Kill Him, the Suspect Screamed," written by Mark Lewis and published in the Washington Daily News of July 15, 1970.

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

"KILL HIM, KILL HIM!" THE SUSPECT SCREAMED

(By Mark Lewis)

"Kill him, kill him!" the suspect screamed as a friend aimed the police revolver at a D.C. police officer writhing on the ground.

"Then he started cranking them off," Officer Harvey E. Baker said as he described yesterday's experience as a human target.

The first shot whipped thru his pants leg.

The second hit the ground beside him and ricocheted away.

The third shot glanced off a metal eyelet high on his combat boot.

"You just think about trying to stay alive, that's all," the 23-year-old Vietnam veteran said. "I got up and started ducking and trying to get out of the way."

The final two shots went wild as the gunman backed away.

"I was shaking. It was pretty hectic," the officer said as he recounted the incident yesterday.

It began shortly before 2 p.m. when Officer Baker spotted a man in an alley in the 1200 block of Seventh-st nw. As the one-man patrol car pulled near, Officer Baker said the suspect dropped a small package that might have been narcotics on the ground.

Leaving the patrol car, the First District officer ordered the man to halt and placed him under arrest. "He began to shout for help," Officer Baker said. As the officer attached one end of the handcuffs on the suspect's wrist, two men jumped him from behind.

The officer was wrestled to the ground and his gun was pulled away. He said that the original suspect urged the man with the gun to kill him. After the five shots, the three fled.

Officer Baker was treated at Washington Hospital Center for bruises and abrasions, and then returned to duty.

Forty minutes after the struggle, Officers James L. Jones and Ronald A. Firmani spotted a man with a white towel wrapped around his left wrist. They ordered him to halt and when he whirled toward them, Officer Jones fired one shot but missed.

The man surrendered. The towel covered handcuffs, police said.

Booked at the District jail charges of assault on a police officer and possession of a hypodermic needle was William Henry Slaughter, 20, of 655 Acker-st nw.

Last night, Officer Baker who was wounded twice and received both Navy and Presidential citations during his 27 months with the Marines in Vietnam, said the gunfire reminded him too much of combat.

Mr. HRUSKA. More extreme cases can easily be imagined and have in fact occurred in the District of Columbia. Vicious rapists have been released on personal bond. Bank robbers, burglars, and armed felons have been released casually on personal recognizance. New crimes have been committed.

In my view, the compulsive rapist and sex pervert who may strike without warning at any time—the incorrigible recidivist who has been engaged in a life of crime since early childhood, the narcotics addict who is desperately in need of money for his next fix, and the hardcore tough who is inclined toward viciousness and physical violence, should be detained before trial because no system of accelerated trials and no alternative to pretrial detention will protect the public from such men. When these men have been charged with a serious crime, society should have an appropriate means to effect their detention.

The third reason why this pretrial detention provision is desirable is that it will restore integrity to the legal system.

Even under the Bail Reform Act, which was designed to minimize the use of money bond, not every defendant has been released before trial. On the contrary, the Senator from North Carolina (Mr. ERVIN) reports that on May 15 of this year, 1,408 defendants were being held for trial in District facilities. This is a shocking figure, which will undoubtedly be reduced if the present bill is passed.

There is really no doubt that some of these defendants were not released because they could not meet the money bond required by judges who considered them dangerous.

Detention derived through bail manipulation is dishonest and hypocritical, even when it is wholly rational. The law should be above this subterfuge.

Open pretrial detention would not only restore integrity to the legal system, it would also afford greater protection to individual defendants, whose alleged dangerousness and whose open detention would be subject to appellate review.

The fourth reason why the Bail Reform Act should be amended in the District of Columbia is that, as drafted, it grants no authority to revoke bail for those who have been apprehended for a new crime during or following pretrial release; nor does it authorize the detention of those who would threaten or injure witnesses or jurors or otherwise disrupt the administration of justice. These grounds for pretrial detention are almost universally accepted as necessary and reasonable, but they are not recognized in the language or the legislative history of the 1966 act.

These four reasons, plus others which might be adduced, provide ample justification for changing the law. I am convinced that the Bail Reform Act should be amended to authorize pretrial detention, and I think we are deluding ourselves if we seriously insist that this is not so.

As I review the constitutional questions that have been raised concerning this provision, I have concluded that the statutory and constitutional history of Federal bail establishes that the eighth amendment to the Constitution does not guarantee an absolute right to bail. Too many exceptions exist which have stood the test of time and Supreme Court review. Just as bail has been traditionally denied in capital cases, so it can properly be denied in noncapital cases if the standards and guidelines of the Congress are carefully drawn. They have been carefully drawn in this bill. The fifth amendment's guarantee of due process can be adequately protected in detention hearings by providing procedural safeguards and the right to judicial review.

I ask unanimous consent to have printed at this point in the RECORD sev-

eral editorials relating to the District of Columbia crime bill and pretrial detention.

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

[From the Evening Star, July 15, 1970]

A SOUND COMPROMISE

Given the scope, controversy and emotional confusion of the omnibus D.C. Crime Bill, the merits of the House-Senate conference report now before Congress constitute an impressive legislative victory for this city. We urge its immediate enactment.

The nearly 500 pages of this massive bill certainly are not free of flaws—from our view as from that of everyone else. But it is a compromise measure in which no fault is sufficiently severe to outweigh the substantial advances. Through some 24 conference sessions, surprisingly satisfactory solutions were hammered out in most of the 174 separate points of difference between the initial House and Senate versions. Where doubts remain as to legislative wisdom, we believe they can be overcome in each instance by prudent, intelligent administration of the law.

In the Senate, a great deal will be heard during the next few days about a move to try to enact several essential provisions—including the reorganization of the local court system—through new, separate legislation. That effort deserves rejection if for no other reason that it has no chance whatever of acceptance in the House. One might continue to argue, as we believe was the case, that the Senate initially chose the wiser course in approaching this multitude of anti-crime proposals through a series of bills rather than the single measure insisted upon by the House. But the public should be aware that those senators who still urge that course, in view of present realities, have embarked upon a futile political trail—at the risk of losing an invaluable package of tools for combatting crime and improving this city's system of justice.

We intend, as the debate proceeds, to comment at greater length in these columns on specific aspects of the bill. In brief, we think it regrettable that the police "no-knock" provision, which has become such a symbolic point of emotional dissent, survived the conference. There are aspects of juvenile treatment which could have been improved upon. The inadequate federal financing, and the curtailed authorization for new judges for Washington's courts, are sharply disappointing.

As to the most hotly debated provision, however, we applaud the Senate conferees for accepting the concept of a preventive detention authorization—having insisted upon safeguards which vastly improve the original House proposal. The elimination of the senseless proposal to transfer the Lorton Reformatory from District to federal control was a major victory. The Senate conferees prevailed, as well, in removing objectionable features of mandatory minimum sentence proposals, and in bolstering provisions for an effective public defender program and an expanded city bail agency.

These, moreover, are merely the highlights of this incredibly complex and far-reaching legislation. The relatively few points of philosophical controversy can be counted upon to monopolize the debate in both the House and Senate. But it is the total package, clearly in the public interest, which should be the pre-eminent concern.

[From the Washington Daily News, July 15, 1970]

PASS IT THE WAY IT IS

It was pleasant to report on Monday that, after three months of deliberations, Senate and House conferees had reported out the omnibus crime bill for the District of Columbia. It was high time.

The conferees' bill contains most of the controversial sections of the original Senate and House measures—as, to be sure, was manifest weeks ago.

Months ago, more than 15,000 concerned D.C. citizens took occasion to write to the Washington Daily News urging swift action on the crime bill. These letters were transmitted formally to the men on Capitol Hill. The fact that three long months were required for such action to be forthcoming seems to say something sad about the effectiveness of the voice of the people—the people of the disenfranchised Federal City, at least.

But now there is agreement among the conferees, and we only hope that the full Senate and House will make up for all that lost time.

Most controversial sections of the bill are:

Provision for preventive detention of persons accused of certain crimes of violence when, in the opinion of the court, the accused might be expected to commit another crime while free awaiting trial.

The right of policemen, having obtained a warrant, to enter private premises without knocking—when there is reason to believe that if they announce themselves evidence may be destroyed or the person suspected of having committed the crime in question will be given opportunity to escape.

The preventive detention provision has operated extremely well for many years in Britain—which is, however, admittedly a somewhat different society than ours. Certainly preventive detention can function fairly only if there is sweeping reform of our courts and many more judges are provided to give swift justice. Provision is made for this in the current bill.

The "no-knock" provision appalls many concerned and thoughtful citizens. We do not find it so appalling, provided judges and policemen follow the rules meticulously. One of the problems is that police already break in without knocking under certain circumstances and this law would require that they get judicial sanction for such practices.

If a householder, hearing someone breaking in his door, undertakes to defend his dwelling by shooting the policeman—well, we shall have to see what comes after that. Meanwhile, we believe the "no-knock" provision will give those same policemen a necessary weapon in their war on the very crimes that have so justly frightened all citizens here, whether they are for or against "no-knock."

Cliche tho it be, we believe that the vast majority of our people who are law-abiding require strong measures for their protection.

We hope, then, that the full Senate and House will enact the bill into law—right now.

NIXON CRIME LEGISLATION—I

(This editorial was broadcast October 22 and 23, 1969 over WTOP Radio and Television, No. 166)

This is a WTOP editorial.

The need for a war on crime rightly has aroused the nation to action. One manifestation of the growing concern is a broad range of anti-crime legislation prepared by the Nixon administration for the District of Columbia. In this and subsequent editorials, we will address ourselves to a number of the most significant proposals.

The most controversial among these is the jailing of suspects charged with serious crimes to prevent their committing additional crimes while awaiting trial. Three months ago, we editorially opposed the concept. Today, we reluctantly support it.

Two things have altered our view: the danger to our communities from hardened criminals who are exploiting the existing bail law has become, we believe, more acute. Secondly, we are reasonably assured that the kinds of safeguards drafted by the Justice Department for its amendment to the Bail Reform Act probably will pass a constitutional test.

Under the administration's proposal, carefully-designated suspects may be detained up to 60 days, but only on an order of the court and only after a full hearing. This is a drastic policy, for its net effect is to impose imprisonment in advance of conviction. But in this particular respect, the right of society to a reasonable degree of safety needs to be reinforced.

The language of the legislation is critical. A 60-day maximum detention, for example, may be unnecessarily long. The categories of offenders to whom detention would apply may be somewhat broad in the administration's draft. The procedural safeguards it contains must be regarded as minimal.

The jailing of suspects is an easy way—albeit a risky one—to fight crime. It will get people into prison, but it won't alleviate the conditions which disposed them toward crime, and it won't cure the wretched mess we call a correctional system. The administration's commitment to attacking these parts of the problem is far from sufficient.

With some misgivings, therefore, and with a deep concern for the careful drafting of the law, we support the use of preventive detention.

This was a WTOP editorial . . . Norman Davis speaking for WTOP.

[From the Washington Post, June 21, 1970]

CRIME CONTROL: A CASE HISTORY OF WHAT IS WRONG

"A Washington policeman shot and killed a fleeing robbery suspect at New Jersey Avenue and K Street NW," the story on Friday's front page began, adding that the officer had been shot twice by the suspect, according to the police. That was all that could be said in one paragraph, in a straightforward news account, and it is not until you examine the background of the dead man that the event becomes something more than a shoot-out between a policeman and a suspect—becomes, in fact, almost a model of what is wrong about our system of crime control. For the fact is that Franklin E. Moyler was more than a "suspect"; he was, from all the evidence, a hardened criminal, at liberty on a very small bond and awaiting trial for two previous offenses involving use of a dangerous weapon. In 1965 he was found guilty of robbery and assault on an officer and was imprisoned for nearly two years. After this release, he was charged with assault on several occasions. Last January he was accused of four offenses including assault with a dangerous weapon, but succeeded in regaining freedom when he put up one-tenth of a $1,500 bond in cash. On June 1 he was arrested again on charges of robbery and carrying a dangerous weapon, and this time a bonding company put up the $2,000 required for his release.

This is a record which calls into question almost every aspect of our approach to crime and criminals and criminal suspects—the efficacy of correctional institutions and of rehabilitation programs for convicted criminals; the speed, or shocking lack of it, with which accused persons are brought to justice; and, finally, the hard question of how to protect the public from people with demonstrably dangerous criminal tendencies who are set free for prolonged periods while awaiting trial. It is impossible to say precisely what might have been done to rehabilitate Moyler over the past five years even if the most advanced techniques had been available—except that it would have been worth a try. It is also impossible to know what would have been the judgment if he had been brought speedily to trial; he might well have been found innocent of the several crimes of which he stood accused, and released each time.

What seems inescapable, however, is that he would not have been at New Jersey Avenue and K Street NW last Thursday with gun at hand, as the police say he was, if he had been detained or even subjected to close and continuing supervision after his arrest on June 1 and until he could be tried—under a greatly accelerated and reformed judicial process. And some such precaution for the sake of public security would have been justified by the known facts in this case, in our view. The record suggested a pattern of criminal activity involving acute dangers to the community. The bail agency was apparently concerned about that risk. It recommended that he be required to get a job in January, and that he be placed in someone else's custody in June, but the judge ignored both conditions of release.

The chief difficulty with the present law is that it makes no allowance for restraints designed to protect the community, except in capital cases. The conditions of release specified in the act are supposed to be used only for the purpose of assuring the appearance of the defendant at the time of his trial. We think judges should also have discretion to use conditional release and monetary bail where necessary to protect the community and that in some cases, involving extraordinary risks, preventive detention for a limited period would be the lesser of two evils. If preventive detention had been used in this case, it might have saved the life of the accused and prevented suffering and danger of death for a conscientious policeman.

Unfortunately, the Department of Justice has sought to cast too broad a net. In some wide categories of cases it would allow preventive detention to become the rule rather than the exception carefully tailored to defendants with records of violence, bail-jumping or other conduct that may menace the public. The District crime bill now in conference between the Senate and House ought to be revised so that it would give the courts new resources in dealing with known criminals of Moyler's type, without making detention before trial almost a general rule in serious cases.

[From the Omaha Sunday World-Herald, June 21, 1970]

JAIL BEFORE TRAIL

Preventive detention—the jailing between arrest and trial of defendants considered too dangerous to be released on bond—is a comparatively new concept as a matter of law. But it is fairly routine as a matter of practice.

For years judges have kept defendants in jail before trial, simply by setting bail so high the accused cannot afford it. Prof. Abraham Goldstein of the Yale Law School, quoted in the New York Times magazine, said this technique "has been so widespread that fewer persons are released on bail in most of our states, where there is nominally an absolute right to bail, than in England, where there is no such right."

It has been estimated that 40 per cent of all felons indicted in the United States District Court for the District of Columbia in 1965 were detained before trial. The figure was 26 per cent in 1967 and 34 per cent in 1968. A Justice Department survey has shown that only 10 per cent of persons indicted in a recent period, in the same jurisdiction, would have qualified for pretrial detention under the administration's proposed law.

This is one aspect of the preventive detention issue that has not received the public attention it seems to merit.

Another largely overlooked factor is the support of federal pretrial detention legislation by widely varied individuals and groups. It is not, as has been pictured, solely the brainchild of Atty. Gen. John Mitchell and the "repressive" Nixon administration.

Some liberal congressmen, including Sen. Charles Goodell, R–N.Y., and Sen. Joseph Tydings, D–Md., chairman of the Senate District of Columbia Committee, support preventive detention legislation.

Last year a panel reported to the Tydings committee that "pretrial detention offers an immediate response to armed violence and adds long-range rationality to our criminal justice system."

The panel included a judge of the D.C. court of general sessions; a past president of the Washington Bar Association; the chairman of the 1966 President's Commission on Crime for the District of Columbia; the dean of the Howard University Law School; a past president of the D.C. chapter of the NAACP, and the director of the D.C. Human Relations Commission. It was hardly a vigilante gang.

There are varieties of pending legislation. Basically, all would provide a procedure something like this:

In prescribed cases, the federal prosecutor could ask the court to detain a dangerous defendant before trial. A hearing would be required immediately or within a few days, and a clear and convincing picture of the defendant's dangerous nature would be required.

The accused would have the right to appeal and the right to counsel. The prosecution would be required to go to trial within a specified time period—which in all the proposals is considerably shorter than normal pretrial delays.

Thus there seem to be several safeguards. But this is not to say the proposals would pass constitutional muster. Preventive detention laws probably would have to be very carefully written and even more thoroughly hedged with protections to satisfy strict requirements of the Constitution as to due process and right to bail.

However, it can be seen that pretrial detention as presently envisioned is not necessarily the frightening police-state measure it often is said to be. It would be helpful if the discussion could continue in that realization.

[From the Albuquerque Journal, January 12, 1970]

CRIME IN NATIONAL CAPITAL

Because of its appallingly high crime rate, Washington is frequently referred to by Journal columnist Andrew Tully as "Hell City."

This appellation and the statistics that produced it obviously must distress most Americans. The nation's capital is one of the world's most beautiful cities and certainly its most important power center. It should be the show place of the nation.

But the dismal fact is its residents live in constant fear. At night they stay behind locked doors and visitors are advised to do likewise; those who go out after dark do so at their own peril.

Washington's high rate of crime is indisputable but there is some question about its root causes.

A recent report by Police Chief Jerry V. Wilson showed that murder, rape and robbery reached an all-time high in Washington in 1969. The city's total crime index, which includes statistics for seven major classifications of crime, has risen from 10,000 cases to 60,000 in the last decade.

Chief Wilson says a major cause of this increase is the change in the attitude of the courts that followed the U.S. Supreme Court's decisions in the Escobedo and Miranda cases. These have made prompt justice impossible and eventual justice uncertain.

Availability of bail contributes to delay. There have been numerous instances in which a suspect, out on bond pending trial on one crime, is arrested for another offense and again gains freedom by posting additional bail. In this Washington is no different from Albuquerque and other cities.

But in the nation's capital this mischief has been compounded by a recently enacted Bail Reform Act. A suspect arrested for a crime and who cannot make bail, but has ties to the community, must be released on his own pledge to appear in court when his case comes up. So he is again free to rob, rape and kill until his first case eventually surfaces on the court's overloaded docket.

Still another factor in Washington's crime rate is congressional penuriousness. In their book "The Case-Against Congress," Journal columnist Jack Anderson and the late Drew Pearson label Rep. John L. McMillan, D-South Carolina, as "the man who has ruled the city of Washington . . . for the last 22 years."

The book blames McMillan, chairman of the House District of Columbia Committee, for blocking home rule because Washington was the first big city in the nation to have a Negro majority."

And it states McMillan's "sturdy opposition to progress over the years has stunted the development of Washington as a real metropolis."

Fighting crime anywhere else in the nation is difficult; in Washington it has been made almost impossible.

[From the Richmond News Leader, June 30, 1970]

LET THE JUDGES DECIDE

A few days ago in Washington, a traffic patrolman shot and killed a robbery suspect fleeing from a liquor store holdup, after the suspect had shot the patrolman through the chest and neck. Details of the shooting repeat a pattern that has prevailed in the nation's capital since passage of the Bail Reform Act of 1966, under which all suspects charged with other than capital crimes in Federal courts must be released on bond if the judge considers them likely to show up for trial.

Had Federal District judges in Washington been permitted to consider a suspect's record or the likelihood that he would commit other crimes while free on bond, the recent shootout might not have occurred. The suspect in the case, Franklin E. Moyler, had the record of a hardened criminal. He had served two years in jail on charges of assaulting an officer. He subsequently chalked up a number of assault charges: In January, he was charged on four counts, including assault with a deadly weapon, but was released when he posted one-tenth of a $1,500 bond. On June 1, he was charged again with robbery and released on a $2,000 bond. So he was free on June 19 to shoot and to wound a policeman critically.

The latest incident adds yet more imperative reasons for approval of a preventive detention provision included in the D.C. Crime Bill, under which Federal District judges would be permitted more discretion in setting bail. The Tydings Advisory Panel Against Armed Violence recently endorsed preventive detention as "an immediate response to armed violence." The panel found, in its investigation, that one out of every 11 suspects released on bond is charged with subsequent offenses before reaching trial on the first charges. The panel also reported that offenders charged with certain crimes, such as burglary, robbery, and narcotics offenses, are much more likely to be charged with subsequent offenses while free on bond.

The preventive detention proposal has sincere opposition from those who believe that it infringes on the constitutional rights of criminal suspects. After all, they say, the suspect has not yet faced trial on his charges, and therefore he must be presumed innocent and set free until proved guilty. Opponents further contend that only a small percentage of those released actually commit new crimes before their trials, and preventive detention would punish both the innocent and the guilty.

These arguments fail to persuade. In recent testimony before a Senate subcommittee, U.S.

District Judge George Hart recounted 14 cases in Washington in which preventive detention would have prevented commission of new crimes by the suspects, all of whom had been charged with crimes of violence. The subsequent crimes included rape, attempted murder, and armed robbery. In Judge Hart's view, the right of society to be protected from crimes of violence justifies approval of preventive detention.

Those who oppose preventive detention somehow view judges as ogres who would welcome an opportunity to put every criminal suspect behind bars. The record suggests otherwise. Judges who deal daily with violent criminals soon learn to recognize a hardened criminal when he appears in their courtrooms. These judges also recognize their responsibility to uphold the law, acting as instruments of that law. Arguments against preventive detention suggest that most judges are corrupt and that they have no ability to distinguish a hardened criminal from a first offender, an unjustified insult to the Federal judiciary.

The arguments continue, pro and con, and a great deal of misinformation results. Meanwhile, the crime rate in Washington rose 21 per cent during the first three months of this year over the same period in 1969; the national crime rate rose by 13 per cent. Even the liberal *Washington Post* has recognized that the lack of preventive detention has contributed to Washington's crime problems. With support from both conservative and liberal elements, preventive detention, in conjunction with a speedier trial system, may yet prove a highly effective weapon against those who repeatedly threaten the lives and safety of citizens in the nation's capital.

CONCLUSION

Mr. HRUSKA. Mr. President, the final paragraph from the editorial in the Washington Star says in part that the bill is incredibly complex and far reaching and that the total package, clearly in the public interest, should be the preeminent concern in Senate consideration of the legislation, not just a few controversial paragraphs out of almost 500 pages.

I applaud this sentiment. As has been pointed out earlier in this speech, I support the controversial revisions in the criminal code of the District. I think these changes and additions to the laws are necessary for the protection of the people of this city, consistent with the constitutional rights of all.

But even those who do not support certain of these sections must not lose sight of the totality of this bill. The great bulk is devoted to reform of the criminal justice system in this city—court reorganization, creation of a public defender service, revision of the bail agency. These are vital changes, urgently needed now. To vote against the entire package and condemn these changes to the wastebasket is a classic case of throwing out the baby with the bath water.

I urge my colleagues to look at the entire bill in making up their minds on how to vote. When that is done, I am hopeful that the Senate will approve the conference bill, as the other body has already done by an overwhelming vote.

Mr. President, I yield the floor.

EXHIBIT 1

ACTIONS AND RECOMMENDATIONS OF THE PRESIDENT FOR THE DISTRICT OF COLUMBIA

Responsibility begins at home.

The District of Columbia is the Federal City, and the Federal Government cannot evade its share of responsibility for the conditions of life in the District.

For many who live here, those conditions have become intolerable. Violent crimes in the District have increased by almost three times in the last eight years; only two days ago, the local newspapers carried a report that armed robberies had more than doubled in the past year alone.

This violence—raw, vicious violence, hurting most of all those who are poor and work hard—is the surface manifestation of far deeper troubles.

These troubles have been long building. In part, Washington today is reaping a whirlwind sown long since by rural poverty in the South, by failures in education, by racial prejudice, and by the sometimes explosive strains of rapid social readjustments.

Because its roots are deep and closely woven, crime in the District cannot be brought under control overnight. Neither can poverty be ended or hatred eliminated or despair overcome in a year. But we can begin.

In the 11 days since the new Administration took office, I have asked the departments and agencies concerned to make an intensive study—as a matter of first priority—of actions that could be taken now toward curbing crime and improving the conditions of life in the city of Washington.

I wish I could report that we had produced a magic formula that would end crime and sweep away despair overnight. We have not. I have determined on a number of actions and recommendations which will provide a start.

These include:

A swift start on restoring those areas devastated nearly ten months ago.

A package of proposals that can at least help toward restoring the safety of life and property.

A commitment to give the people of the District of Columbia the voice they legitimately should have in the public policies that affect their lives.

Before detailing these measures I would like to make two points, both of which may help set the measures themselves in perspective.

I am pleased to report, first, that Mayor Washington and I, together with key members of our respective Administrations, have established the basis for what I confidently expect will be the most effective cooperation yet achieved in the relations between the Federal and City governments.

The basic framework within which we both intend to operate is one of local initiative and responsibility, and the fullest possible Federal support—not only in terms of the necessary money, but also by involving the vast array of technical assistance available from within the Federal departments and agencies headquartered here.

Second, the great majority of these actions and recommendations are in the fields of crime control and the administration of justice. I recognize full well that crime and violence are only part of the complex interweave of problems the District faces, and that in the long run crime itself also requires much more far-reaching and subtle approaches. But the rapidly mounting urgency of the crime crisis in the District marks immediate, direct anti-crime measures as the first-priority task.

There is another reason for this early and urgent emphasis. Crime in America today is both a primary local responsibility and a primary national concern. Here in the District, the Federal Government bears a special responsibility and has a unique opportunity. By searching for new ways of applying the resources of the Federal Government in the war against crime here, we may discover new ways of advancing the war against crime elsewhere.

These measures are by no means a comprehensive list. They represent things that are clearly needed and can be done now. Other crime-control measures will follow, and also additional measures to meet the vast array of the District's other needs.

RESTORING THE DEVASTATED AREAS

Scarcely any of the shops and homes destroyed during the riots of last April have been rebuilt, and very few of those damaged have been made habitable or usable again. These rotting, boarded-up structures are a rebuke to us all, and an oppressive, demoralizing environment for those who live in their shadow. They remind us again of the basic fact that the principal victims of violence are those in whose neighborhoods it occurs.

It is not enough merely to patch up what now exists: we must truly rebuild.

The people of the District—especially, of course, the people who live in these areas, and those who own the land—must decide the purposes for which these blocks will be used. The Federal Government can, however, pledge its full support for those Federal programs which can enable such redevelopment to proceed, and can further pledge the utmost Executive energy in responding to formal applications from the District.

We have already begun.

Specifically, Secretary Romney informed me today that the Department of Housing and Urban Development has approved a 29.7 million dollar neighborhood development plan for the Shaw area, including the major portion of the 7th Street neighborhood damaged during last April's riots. This plan, the result of several years of preparation, is an accomplishment of which this city can be proud.

It took Secretary Romney's Department less than 24 hours to approve this plan for the Shaw area, once it was approved by the City Council last Tuesday and submitted for Federal approval Wednesday evening. This unprecedented process illustrates the commitment of this Administration to the meeting of the urgent needs of the Capital city.

Mayor Washington has indicated that he intends to seek similar assistance under the Housing and Urban Development Act of 1968 for rehabilitation of the two major areas of riot damage not covered in the Shaw plan—the areas along 14th Street and H Street. I can assure him that this Administration will respond with the same sense of urgency to his requests for help in these areas.

He has promised me a tight but serious timetable under which the first construction in these areas would begin next fall.

While the city prepares for this construction—and decides what to do with the 14th and H Street areas—the Department of Housing and Urban Development will make available $1 million in special interim assistance for improvements in some of the blighted areas. This morning, I watched the first cranes at work clearing rubble to make way for a temporary playground. The District has plans for swings, slides and swimming pools where now there is charred rubble. Street lighting will be improved, roads and sidewalks repaired.

Under Section 514 of the 1968 Housing and Urban Development Act, Mayor Washington has undertaken to provide ⅓ matching funds for this $1 million, and the District Government will take the initiative in deciding how this money will be spent. The limited assistance to be provided by the federal government under this interim program cannot by itself remake these areas. But it is a first step toward making them more livable, an earnest demonstration of our concern, and a first sign of hope.

In this connection, I can announce that the 1969 Inaugural Committee, through its chairman, Mr. J. Willard Marriott, has agreed to devote the net proceeds of the Inaugural to the cost of providing playground equipment and other improvements for these parks and playground areas.

CRIME AND ADMINISTRATION OF JUSTICE

A meaningful assault on crime requires action on a broad array of fronts. But in the midst of a crime crisis, immediate steps are needed to increase the effectiveness of the police and to make justice swifter and more certain.

Toward these ends and as a beginning, I have taken or will propose action in twelve major areas.

1. THE COURTS OF THE DISTRICT OF COLUMBIA

I am asking Congress to provide 10 more judges for the courts of the District of Columbia. I will ask later for more additional judges as they become necessary upon the reorganization of the District of Columbia court system.

As an interim measure, I would hope that the existing visiting judges program would be expanded in the District. The Chief Judge of the District of Columbia circuit here has diligently sought the services of visiting judges. I will encourage and aid him in his effort to obtain the services of more judges.

To improve the administration of justice in the District, I have directed the Attorney General to consult with the bench, the bar and the various interested groups, to assist in the drafting of appropriate legislation providing for a reorganization and restructuring of our present court system toward the eventual goal of creating one local court of general, civil, criminal and juvenile jurisdiction for the District of Columbia. It is consistent with my support for home rule to urge the creation of a local court system similar to that of the States and other large municipalities.

To perform with full effectiveness, a modern court needs modern computer and management techniques. I have asked the Attorney General to offer his department's assistance to the study groups in the District that are presently seeking to apply such techniques in the court system.

I have asked the Attorney General to submit specific recommendations for such additional court house personnel, including United States Marshals, court clerks, probation officers, law clerks and bailiffs, as are necessary to support not only the present judges but the additional judges that will be requested.

2. UNITED STATES ATTORNEY'S OFFICE

The chronic under staffing of the prosecutor's office has long hampered the efficient administration of justice in the District. It is widely recognized that a ratio of at least two prosecutors for each judge is needed. To achieve that goal, 20 new Assistant U.S. Attorneys are required immediately. With the creation of 10 additional judgeships and the contemplated court reorganization, another 20 prosecutors will be required. Consequently I am recommending the authorization of 40 more Assistant U.S. Attorneys.

A comprehensive reorganization of the Office of the U.S. Attorney is imperative. This should include a restructuring of the office to provide for two-man prosecutor teams in important cases; the development of specialized functions for technical cases such as frauds and other economic crimes; and the creation of a special "violent crimes unit" to handle such crimes as armed bank robberies on a priority basis, as is presently being tried experimentally. In addition, greater emphasis is needed on developing policy guidelines and training program. On January 14, $120,000 was awarded by the National Institute of Law Enforcement and Criminal Justice for a special study committee. Included in its study is an examination of the prosecutor's office, with a view toward recommending improvements in its operation. I strongly support this study and have instructed the Attorney General to make available the resources of the Department of Justice to assist the committee and to facilitate reorganization found desirable.

In addition, I will seek authorization for the hiring of law clerks and sufficient other personnel for the proper staffing of the U.S. Attorney's office—and for the hiring and use of trained investigators, who are necessary to the effective functioning of the prosecutor's office.

3. COURTHOUSE FACILITIES

The local courts already are overflowing the existing Court of General Sessions buildings. Judges are sitting in three different buildings, and some in temporary courtrooms. With the creation of additional judges and the eventual transfer of greatly expanded jurisdiction to the local courts, a new courthouse complex becomes a pressing necessity. $100,000 has already been utilized for planning for a new courthouse and $3.5 million has been appropriated for site selection. But we must have these facilities now. Consequently, I am vigorously endorsing the requests presently pending before the Congress for $1,240,000 to be used to complete acquisition and for additional planning. The Administration will fully support the Mayor in such additional requests as are needed to speed the building program. Meanwhile, I have instructed the General Services Administration to assist in providing temporary facilities.

4. BAIL REFORM AND THE BAIL AGENCY

Problems arising out of the operation of the Bail Reform Act of 1966 are now being considered by the Congress. But substantial changes in this area are needed quickly. Increasing numbers of crimes are being committed by persons already indicted for earlier crimes, but free on pre-trial release. Many are now being arrested two, three, even seven times for new offenses while awaiting trials. This requires that a new provision be made in the law, whereby dangerous hard core recidivists could be held in temporary pre-trial detention when they have been charged with crimes and when their continued pre-trial release presents a clear danger to the community.

Additionally, crimes committed by persons on pre-trial release should be made subject to increased penalties.

Insufficient staffing of the Bail Agency is one of the contributors to crime by those on pre-trial release. I support immediate lifting of the ceiling that now constricts the Agency's funding. I will seek appropriations for an initial expansion of the agency from 13 to 35 permanent positions. If the pre-trial release system is to protect the rights of the community, the agency must have the capacity for adequate investigation and supervision.

5. THE DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS

As the local government is painfully aware, the existing facilities and programs of the Department of Corrections are woefully inadequate. On January 16, 1969, the Director of the Bureau of Prisons submitted a comprehensive report to Mayor Washington identifying the deficiencies and making a number of recommendations. I join with the Mayor in urging immediate implementation of those recommendations, and I will offer whatever Federal assistance is possible in doing so.

All who have studied the problem agree that far-reaching changes are needed in the penal facilities and programs serving the District. I will press vigorously for accomplishment of the needed reforms.

6. OFFICE OF PUBLIC DEFENDER

The recent bail reform hearings before the Senate Judiciary Subcommittee on Constitutional Rights have emphasized the important contributions skilled defense counsel can make toward expediting criminal trials.

Too often, inexperienced lawyers who are appointed to represent indigent defendants complicate and delay the trial process by their unfamiliarity with the law and criminal practice. Experience has shown that professional public defenders, on the other hand, not only better safeguard the rights of defendants, but also speed the process of justice. The Legal Aid Agency in the District is a pilot project which has given every indication of great success if properly supported. I believe the time has come to convert this project into a full-fledged Public Defender program. To make this project possible, I will support the Legal Aid Agency's 1970 budget request for $700,000 to allow an increase in its staff from 22 to 34 attorneys and to assume responsibility for a successful project in offender rehabilitation. This would allow it to become a full-fledged Public Defenders Office with the capacity to represent almost half of the indigent adult and juvenile defendants in the District.

7. THE METROPOLITAN POLICE DEPARTMENT

There is no deterrent to crime quite so effective as the public presence of policemen. Several immediate steps are needed to bolster and improve the local police force in the District of Columbia.

The first step is more effective recruitment. Despite diligent recruitment efforts, the police force has hundreds of unfilled vacancies. I have pledged to the Mayor the assistance and full support of this Administration to improve the recruitment process. I will sponsor the establishment of a procedure by which the District can draw upon the experience of other cities. Imaginative and innovative approaches may be necessary.

But even bringing the department up to its presently authorized strength will not secure adequate public protection in these troubled times. Consequently, I am recommending to the Mayor that he request authorization of an additional 1000 police officers for the District, and I will support such a request.

I endorse the Mayor's efforts and those of the police department to reorganize the structure of the department, so as to consolidate functions, reduce duplication and free additional police officers for patrol and enforcement duties. I offer the assistance of the Federal Government in this effort.

I urge our local police officials to give a high priority to planning and development, making use of the increased Federal funds now available for the introduction of new law enforcement techniques.

The police department also needs the increased assistance of competent legal advisers in this era of evermore complicated criminal law and procedures. I laud the Mayor for his recent appointment to the police department of a legal adviser. However, with the increased burdens on the department it seems advisable to increase the staff and capability of such an office. Not only do the police need to be properly advised as to the performance of their duties, but it is also necessary for the police department to be assured of the Government's support of an interest in the officer's performance of his individual duties.

8. DIRECTOR OF PUBLIC SAFETY

The potential of this office is great. It is presently vacant. The Mayor informs me that he is diligently searching for the right man to fill the job. I have offered the Mayor this Administration's resources to assist him in selecting the best possible Director.

9. CITIZEN PARTICIPATION

Increased citizen involvement is essential to any program of crime control and prevention; it is also in keeping with the American tradition. I strongly support the Mayor in his plan to appoint a Criminal Justice Coordinating Committee patterned after

similar successful programs in other large cities. It is important that the Council be properly staffed. This could be done with help from the recently created Criminal Justice Planning Office and funded under the Law Enforcement Assistance Act, which provides financial support of up to 90% for such planning activity involving citizen participation. Policy making and planning must have citizen participation and coordination if they are to produce programs that are widely acceptable to the community. I pledge the Mayor the support and assistance of the Federal Government in this area.

10. NARCOTICS

Although the narcotics traffic in the District of Columbia is apparently not dominated by organized crime it has become an acute and growing problem. It is a direct cause of much of the District's crime, by driving the narcotic user to commit crime to support his "habit". Many armed robberies, assaults and bank holdups are directly related to narcotics use.

Consequently, I have instructed the U.S. Bureau of Narcotics and Dangerous Drugs to increase significantly its role in the District of Columbia in enforcing the narcotic and dangerous drug laws. The Bureau has assured me that they will also increase their cooperation with the Metropolitan Police Department in enforcement, training and in making available additional laboratory facilities and expert and technical assistance.

I have also directed the Bureau and the Department of Justice to seek more effective application of the civil commitment provisions of the Narcotics Rehabilitation Act of 1966 which has not yet been widely used.

11. JUVENILE CRIME

In recent years the median age of those charged with crime has been ominously dropping. The National Commission on Violence warned this month: "The key to much of the violence in our society seems to lie with the young. Our youth account for an ever-increasing percentage of crime, greater than their increasing percentage of the population. . . . It may be here, with tomorrow's generation, that much of the emphasis of our studies and the national response should lie."

I strongly support the city government's efforts to draft a new Juvenile Code, and I am making available technical assistance by Federal authorities. The Department of Justice is already cooperating with the Corporation Counsel and other local officials on the project.

Under the proposed court reorganization, the now isolated and undernourished Juvenile Court would be brought into the new District of Columbia court of general jurisdiction. Thus juveniles would have the advantage of the comprehensive facilities of the new court, including family services and probation assistance.

The pilot Group Home Rehabilitation Project, in which juveniles enjoy retention of community ties, close adult supervision and peer-group controls, gives every appearance of success. Expansion of the project as a substitute for institutionalization and as a possible supplement to probation is desirable. I support the Mayor in his request for increased funding and authorization for such facilities.

The lack of sufficient psychiatric services for the youthful disturbed is a serious obstacle to crime prevention. Young minds gone astray must be helped while still malleable. I will assist the Mayor in his forthcoming request for a well-staffed psychiatric care residential facility for adolescent delinquents.

I also urge that the local government, together with local school officials, prepare a plan to provide for the education of those school children whose disciplinary and truant absence from schools for long periods now causes them to reach adulthood educationally stunted. A substitute educational program must be devised for them, lest they become a burden to themselves and the community.

12. NEW ATTENTION TO THE DISTRICT

The Attorney General has created a new post within the Justice Department, that of Associate Deputy Attorney General for the Administration of Criminal Justice, with one of the new official's special and continuing responsibilities that of helping improve the administration of justice in the District of Columbia. He has named to the post Mr. Donald Santarelli, a widely experienced expert on the special problems of crime control in the District. One of Mr. Santarelli's functions will be to evaluate and help implement new ideas for more effective anti-crime measures in the District.

HOME RULE AND DISTRICT REPRESENTATION

For more than 20 years I have supported home rule for the District of Columbia. I continue to support home rule, but I consider the timing of that effort the key, as is proven by its past history of failure. For the present, I will seek within the present system to strengthen the role of the local government in the solution of local problems.

Beyond this, I will press for Congressional representation for the District. In accordance both with my own conviction and with the platform pledge of my party, I will support a constitutional amendment to give the 850,000 people of the District at last a voting representative in Congress.

Adding an amendment to our Constitution, however, is a long and difficult process. As an interim measure, I will press this year for legislation that would give the District a non-voting delegate. The District is a Federal city, but it should not be a Federal colony. Nearly 200 years ago, the people of America confronted the question of taxation without representation. It was not acceptable then; it hardly is justifiable today.

I cannot overemphasize the fact that these reforms are not a panacea. They are a beginning. Some will show modest results quickly; others may show greater results over a longer period of time. More must be done. But as the city moves to modernize its own government, as improved Federal cooperation provides the support so desperately needed, as the citizens of Washington develop a greater awareness of ways in which citizen action can make their city safer and more livable, as progress is made in tackling the stubborn social problems that have sapped the spirit of so many of the District's people, I am confident that together we can make measurable progress toward reviving the spirit and restoring the safety of the nation's capital, and making it once again what it ought to be: a proud, glorious city, cherished by every American as part of his heritage and cherished by those who live here as a place of beauty, neighborliness and decency.

EXHIBIT 2

[No. 21,513]

DAVID E. BOSLEY, APPELLANT *v.* UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia.

[Decided April 9, 1970]

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.

* * * * *

The appellant next argues that the statement allegedly made by him, along with certain physical evidence, 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 an 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 effect 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, 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 consitutional 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 section 3109. 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 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 F2d 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 leveled against him. To have done so before entry would have been a 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. GOODELL. Mr. President, I oppose this conference report.

I served on the conference. It was a difficult conference, and I express my great respect for the manner in which the chairman of the conference, the Senator from Maryland, handled the complex issues that were presented to us. The Senator from Maryland was diligent and persistent. He fought very hard for the Senate version of the bill. We faced a very strong-minded group of House conferees.

In spite of the gallant effort made by the Senator from Maryland, the Senate lost most of the crucial battles on the most controversial and most significant sections of the bill.

Yesterday, when the House considered this measure, Representative ABERNETHY, one of the conferees, made this comment to his colleagues in the House:

> 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.

The ranking Republican conferee, Representative NELSEN, made this comment:

> In its court reform and criminal procedure aspects, this is much the same bill that left this body for conference some months ago.

Despite the diligent and gallant efforts of our leader in the conference, the Senator from Maryland (Mr. TYDINGS), we had to back off on a great many of the provisions, with which I believe sincerely that the Senator from Maryland disagreed as much with the House provisions as the rest of us did.

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

Mr. GOODELL. I yield.

Mr. TYDINGS. Would the Senator mind enumerating some of those areas? I think the facts on the issues of difference will show that we prevailed on more than the House. On 68 major points of difference on which we could not decide on the first go-round, the Senate conferees prevailed on 50 percent, the House on something like 32 percent, and the balance were modified back and forth.

With all due respect to Mr. ABERNETHY's dialog on the House floor, which was disputed by other members of the committee, I should like to have some facts rather than just generalities.

Mr. GOODELL. Mr. President, numerous facts will be given in the course of this debate.

As I believe the Senator from Maryland is aware, I have introduced a substitute measure and the Senator from North Carolina has introduced a substitute measure as an amendment to another bill. We enumerate in those bills the many areas in which we are in agreement with this conference report, but we also make very clear the significant and numerous areas where we differ.

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

Mr. GOODELL. I yield.

Mr. ERVIN. The distinguished Senator from Maryland talked about the number of instances in which the House conferees receded and those in which the Senate conferees receded, if I understood his remarks correctly. Sometimes, when people go back and forth in trade, they merely swap a couple of rabbits for an elephant, do they not?

Mr. GOODELL. Or a donkey.

Mr. TYDINGS. I might point out that we used the 68 issues as the ones Senator ERVIN thought were most important on which to base our figures. They were Senator ERVIN's 68 issues. The Senate prevailed on 50 percent, the House on 32 percent, and the balance we agreed on or modified back and forth.

Mr. ERVIN. Preventive detention and no-knock were kept in the bill. The House receded on some inconsequential matters, and all the big inequities were kept in the bill—every one of them. They did take out the provision that a prosecuting attorney could appeal after an acquittal. That was taken out.

Mr. TYDINGS. What about the transfer to Lorton and mandatory minimum sentences on first offenders and on third offenders? What about the no-knock provision, on which the Senate prevailed?

Mr. ERVIN. The bill was like a mangy hound dog. It was so full of fleas that it was clear that a few of the fleas would get off the dog, when the conference lasted 3 months.

Mr. GOODELL. If the Senator from Maryland wishes to respond at this time, I will yield to him; otherwise, I shall continue.

I think the question of who prevailed most is not as significant as the vital issues we have presented in this conference report. I have praised the Senator from Maryland for his gallant fight. I think he did as well as could be expected under the circumstances.

Now the Senate must make unmistakably clear our determination that we are not going to pass a bill that includes some of the very serious deficiencies that this conference report includes.

The difficulty here, of course, is that this is a very important measure. It contains many things that all of us would applaud: Substantially the language of the conference bill on court reorganization; establishment of a public defender for the District; adoption of the Interstate Compact on Juveniles; strengthening of the District of Columbia Bail Agency. My substitute bill S. 4080, introduced with the cosponsorship of the Senator from North Carolina and 19 other Senators, also contains these desirable provisions. Should we choose not to pass the conference report, S. 4080 provides a ready alternative.

We do add $48.8 million in our bill to carry out court reorganization and other provisions. That was the figure in the original Senate bill, in contradistinction to this conference report, which provides only $5 million to implement the provisions of the conference report.

As to criminal law and procedure, in our substitute bill we knock out entirely preventive detention, the no-knock section, wiretapping, and mandatory sentencing, and we drastically overhaul the juvenile procedure section.

We also modify sections about nighttime searches, criminal penalties, moot and interlocutory appeals, and the insanity defense. I shall talk a little more about those in a moment.

The truth of the matter is that the House of Representatives, particularly the conferees on the bill, are holding these noncontroversial and important matters hostage, with the threat that we will get no legislation at all, that we will not enact these important reform provisions that are noncontroversial unless we deal with the other sections which, in my opinion, are in some cases unconstitutional and in other cases certainly undesirable.

I have not closed my mind to the possibility of a pretrial detention measure that would be constitutional and proper, a measure oriented toward therapeutic treatment of a person who would be likely to injure himself or others if released, and not toward mere custodial detention. As a matter of fact, in trying to enlighten the discussion with reference to this important matter, I introduced a pretrial detention through emergency guardianship and therapeutic treatment measure that had a great deal more protection for the civil liberties of defendants than the bill proposed by the administration.

I did not offer my detention bill as an amendment to the District of Columbia crime bill in the District of Columbia Committee or on the floor because I felt that it should have full hearings before the subcommittee of the Judiciary Committee that is chaired by the distinguished Senator from North Carolina. He has been holding the hearings. He accorded me the privilege of testifying on my bill and on others. During the period of consideration, I found that I had other suggestions that could modify my proposal and provide greater guarantees to the rights of individuals who might need therapeutic treatment in a period of temporary detention.

The reason I have kept an open mind with reference to this issue is a practical one: In reality, we now have massive preventive detention throughout the country today through the bail system. As was pointed out by the Senator from Maryland, preventive detention through the setting of bail does not protect the rights of individuals in any way because it is an arbitrary decision made by a judge setting high bail. It does affect grievously the rights of the poor. This is true all over the country. In the Tombs in New York City, the facility available to those awaiting trial, about one-half of the 2,000 inmates are subject to a $500 bail or less but cannot raise it, so that some of them have been there up to 2 years awaiting trial. That is preventive detention—preventive detention in its worst form.

Thus, I think we have to consider alternative measures to what the present existing situation is; but I certainly do not accept the preventive detention

provisions of this bill. In the first place, they are very broad. They apply to an overbroad category of offenses, particularly first offenses. They do not adequately procedurally protect the rights of the individual. They do not provide to the individuals who are subjected to preventive detention any protection of their rights. I shall talk more about that in the course of this debate in the next few days. But I think it should be understood that the objections we have to this legislation are on questions of policy and constitutionality overriding.

It is not just a question of one or two provisions that have been compromised a little bit in a fair compromise. In the compromise bill, the substitute bill which the Senator from North Carolina and I and others have offered, we have accepted 92 out of 136 provisions of the conference report. In some 44 instances the conference agreement was rejected, notably on the five items which were most controversial: The no-knock, the wiretapping, preventive detention, the mandatory sentencing, and the juvenile procedure sections.

Now if we accept the view of those of us who wish to reject the conference, what will happen?

The claim is made that it will kill the legislation. That is a sad commentary on the honest and objective views expressed by the Senator from Maryland. Of course we have been encouraged to that view by the very strong statement made by the Members of the House. But is it really true? My bills, S. 4080 and S. 4081, are available and we could bring them out of the Judiciary and the District of Columbia Committees in short order. S. 4080 incorporates all of the items which were agreed to in conference and which are relatively noncontroversial and would delete those items to which we are objecting today. It could be passed and sent to the House and then the House would be in a position to decide whether it will continue to hold hostage court reorganization and needed procedural reforms in the criminal law of the District of Columbia, or whether it will act responsibly and bring out a bill.

If the House determines that it will not, the Senator from North Carolina has offered another alternative, the possibility of adding the very worthwhile and desirable sections to a bill pending in the Judiciary Committee's jurisdiction and to send it through to the House to see if the House Judiciary Committee will act.

In any event, those of us who feel deeply on this matter, as a matter of conviction, cannot sacrifice our conviction to an expedient compromise here. Much as we desire to have court reorganization in the District of Columbia, and much as we enthusiastically endorse many of the provisions in the conference report, we must reject those very significant provisions which infringe upon the constitutional rights of individuals. They are very large issues.

Mr. President, I shall speak more on this in the course of the debate. I shall deal with the detailed items on which we differ, particularly on the no-knock provisions and preventive detention, because I think they are two of the most significant provisions in the bill.

I might say that there is more involved here even than just the decision as to the District of Columbia crime bill. We may well be setting in deciding upon the conference report, a precedent for legislation nationwide in scope.

Many of the controversial items in the District of Columbia bill are also included in the overall Federal crime proposals of the administration. I think we should set the pattern now as to how we will deal with those vital issues. We should set it by rejecting preventive detention in the conference report, and by rejecting the no-knock provision. I recognize that the Senator from Maryland indicated he believes this merely codifies the present law as laid down by the Supreme Court in the Ker case. I must say that I disagree with him, while acknowledging his good intentions.

Mr. TYDINGS. Mr. President, will the Senator from New York yield?

Mr. GOODELL. But there are very significant differences that may result from this law, particularly because the criterion for invocation is probable cause that evidence is likely to be lost—not "will" be lost but is "likely to be."

I have grave questions about the application of the language we have put in the conference report in relation to the present case law on no-knock.

Mr. TYDINGS. Mr. President, did the Senator read the statement of the managers on behalf of the House and of the Senate?

Mr. GOODELL. Yes, I have.

Mr. TYDINGS. Mr. President, would the Senator agree that the statement of the managers, both on the part of the House and the Senate, specifically refers to the Ker case in California being determinative of that type of situation involving the likely language the Senator brings up?

Mr. GOODELL. It is irrelevant.

Mr. TYDINGS. It is irrelevant?

Mr. GOODELL. It certainly is.

Mr. TYDINGS. We wrote it into the law and we are creating legislative history.

Mr. GOODELL. Mr. President, the Supreme Court determined in the Ker case the constitutional limits of the no-knock provision. Obviously no committees and no Representative or Senator will openly say that we are trying to overrule the Supreme Court in its constitutional interpretation of the rights of the individuals to be protected in the privacy of their homes.

So, while we try to alter the rules, we say that, of course, if the Supreme Court has dealt with this in the Ker decision it prevails. The point is that the Ker decision dealt with a specific fact situation. It was a 4-4-1 decision, a very close decision. There was a strongly worded and persuasive dissenting opinion.

I think the Ker decision leaves a great deal of question and uncertainty as to what constitutional rights we have. The Congress of the United States should responsibly try to define them consistent with the Ker decision.

In the case of the conference report, I believe that it very likely will be used as an authority to restrict further the rights of privacy of our citizens in their homes.

Mr. President, I intend to speak on this matter at great length at a later time. So I will not take the time of the Senate today to go into the full details. I particularly want to join with my esteemed colleague from North Carolina in his colloquy with reference to the analysis of the specific provisions of the conference report.

There is no need to overlap and waste the time of the Senate by doing it individually and separately. I feel very deeply that this is an important decision for the Senate. We should reject the conference report.

We may have difficulty in getting the needed court reorganization. But I am sure that the Senator from Maryland will be a leader in moving forward with legislation out of the District of Columbia Committee or the Judiciary Committee that can pass the Senate and will have a chance to pass the House of Representatives, and thus put the pressure on the House of Representatives to enact these needed reforms that are acceptable to both Houses and not just to the House of Representatives.

In this connection I note that I introduced S. 4080, the court reorganization bill largely embodying the conference provisions on that subject, with 21 cosponsors. The Senator from Maryland could, should the conference bill fail, support us in pressing for passage of that measure.

Mr. President, I yield the floor.

Mr. ERVIN. Mr. President, I do not care to prolong the inquiry as to whether the House got a couple of elephants in trade for a couple of jackrabbits. I will have to admit that the bill has been improved by the omission of certain provisions regarding mandatory sentences and the appeals of prosecuting attorneys after trial. Those provisions, as I have pointed out, were clearly in conflict with the Constitution.

I note that Mr. ABERNETHY, who seems to have been chairman of the subcommittee handling the House provisions, said this in the course of the debate:

> 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. (CONG. REC., July 15, 1970, p. 24463.)

Then Mr. MCMILLAN said:

> 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. (Ibid.)

Mr. NELSEN said:

> In its court reform and criminal procedure aspects, this is much the same bill that left this body for conference some months ago. (P. 24464.)

Mr. ABERNETHY had this to say in response to a question from Mr. ADAMS:

> This is basically the House bill. There are some slight changes in some of the provisions. The Lorton provision, I might say, did not 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. (P. 24466.)

Mr. ABERNETHY also said further:

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. (Ibid.)

Mr. HOGAN said in a prepared statement for purposes of legislative history intended to represent the solid position of the House conferees:

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. . . .

Mr. HOGAN said further:

The conference report adopts a provision authorizing entry without notice of identity and purpose [in] limited circumstances modeled after the House bill. . . . (P. 24471.)

Mr. CABELL said:

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. . . .

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—

That is the way he talks about the Senate.

I continue to read what Mr. CABELL had to say:

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. (P. 24472.)

In other words, in the opinion of the House conferees, we are shedding crocodile tears if we grieve over the destruction of the principle of our law that every man's home is his castle and if we weep over the acceptance of the theory that men will be put in jail and kept there for crimes they have not committed and may never commit, instead of being tried and sent to jail only for the crimes they do commit.

Mr. STEIGER of Arizona said to Mr. ABERNETHY:

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. (P. 24475.)

Mr. ABERNETHY, in response to Mr. STEIGER of Arizona, said:

I think we have retained the substance of the House-passed bill. (Ibid.)

I want to say that the Senator from Maryland has made a gallant fight, but that it was a gallant fight worthy of a more noble cause than that in which it was waged.

Mr. President, we are told in effect that the Senate must not exercise its own intelligence in this matter; that the Senate must knuckle under to the House demands; that Americans residing in the District of Columbia be robbed of the privileges of dwelling under their own vine and fig trees with none to molest them and make them afraid; and that they be imprisoned for crimes they have not committed. Although many of us feel that the bill—and I will discuss that in more detail tomorrow—is filled with unconstitutional provisions. The Constitution of my country, as I interpret it, states that every man's home is his castle, and that no man is to be imprisoned for crimes he has not committed and may never commit.

I am not willing to knuckle under to the House. I am not going to agree to unconstitutional provisions in a bill which robs Americans of liberties they have enjoyed since this Nation became a republic, merely to get a law passed.

Edmund Burke said bad laws are the worst sort of tyranny. I resist the conference report because, if adopted, it would constitute a bad law and it would be the worst sort of tyranny.

Mr. President, I recognize the importance of law and order. I recognize the seriousness of crime. I am just as anxious as any other Senator to have a law speedily enacted which will deal in an adequate manner with the crime situation in the District of Columbia.

However, I would compare the position of the Department of Justice in demanding passage of this bill with the apple grower who wanted to sell his rotten apples along with his good apples. So he put them all in the same basket and he put his rotten apples in the bottom of the basket and he put his good apples on the top of the basket. We are told here if we are going to buy good apples we have to buy rotten apples along with them. That is what we are told when it is said we must take the House bill.

The only solution to the crime problem is that which is pointed out in the sixth amendment which provides that people who are accused have a constitutional right to a speedy trial. The only way you are ever going to enforce the criminal law effectively, Mr. President, is by having enough judges and enough prosecuting attorneys to handle the cases. We could have had enough judges and we could have had enough prosecuting attorneys in this District a year ago if the Department of Justice had not insisted on selling us rotten apples, like preventive detention and no-knock, along with some very salutary provisions of this bill, which those of us who oppose the conference report want to see enacted into law.

Mr. President, the distinguished Senator from Indiana (Mr. BAYH), the distinguished Senator from Massachusetts (Mr. BROOKE), the distinguished Senator from Kentucky (Mr. COOK), the distinguished Senator from Missouri (Mr. EAGLETON), the distinguished Senator from New York (Mr. GOODELL), the distinguished Senator from Michigan (Mr. HART), the distinguished Senator from Massachusetts (Mr. KENNEDY), the distinguished Senator from Maryland (Mr. MATHIAS), the distinguished Senator from Maine (Mr. MUSKIE), and I have jointly introduced two bills. One of those bills is S. 4080 which contains every provision in the conference report relating to the reorganization of the courts of the District of Columbia, relating to the establishment of a public defender system for the District of Columbia, relating to the strengthening of the Bail Agency in the District of Columbia, and all like matters that are in the conference report. These are good provisions and they should be enacted into law.

I wish to notify the Senate here and now that in the event the majority of the Senate votes to reject the conference report I and the other Senators who are associated with me propose to ask unanimous consent immediately that this bill be recalled from the Committee on the Judiciary, to which it has been referred, and placed before the Senate for immediate passage in the Senate, and sent to the House, to see if the House will vote for a good bill and not a bad bill.

The same Senators have introduced S. 4081, which contains every other provision in the conference report which is worthy of a place in a civilized system of criminal administration; and in the event the conference report is rejected we also propose to ask unanimous consent that the District Committee to which this bill has been referred be discharged from further consideration and that this bill be placed for immediate consideration in the Senate.

In the event there is any objection to these unanimous-consent requests we propose to make an immediate motion to discharge these two committees on these two bills and bring the bills before the Senate for immediate consideration. Under the Senate rules that motion could be voted on and would be subject to the will of the majority of the Senate on the following day.

We will undertake, in the event the conference report is rejected, to see that every provision of the conference report which, as I said, is worthy of any place in a civilized system of criminal justice, is immediately voted by the Senate and sent to the House for its consideration. I think the House will pass a bill of that kind and I am satisfied the bills will become law as quickly as if we adopted this monstrous conference report.

In saying that I do not ignore the fact that members of the conference have done some fine work on this bill and it contains these worthy provisions which we have incorporated in these two bills and expect to have enacted.

I gave the names of the 10 Senators who joined in introducing both S. 4080 and S. 4081. Mr. President, I now ask unanimous consent that the following additional Senators be made cosponsors of these two bills: the distinguished Senator from California (Mr. CRANSTON), the distinguished Senator from Oklahoma (Mr. HARRIS), the distinguished Senator from Iowa (Mr. HUGHES), the distinguished Senator from New York

(Mr. JAVITS), the distinguished Senator from South Dakota (Mr. MCGOVERN), the distinguished Senator from Wisconsin (Mr. NELSON), the distinguished Senator from Connecticut (Mr. RIBICOFF), the distinguished Senator from New Jersey (Mr. WILLIAMS), the distinguished Senator from Texas (Mr. YARBOROUGH), and the distinguished Senator from Ohio (Mr. YOUNG).

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

Mr. ERVIN. Mr. President, I do not intend to proceed any further today. I have quite a detailed statement I expect to make in respect to this conference report, and which I hope to be able to make tomorrow.

For that reason I ask unanimous consent that these remarks which I have made on this occasion not be counted as a separate speech on the bill, but that they and such additional remarks as I shall make tomorrow be counted as the first speech on the bill.

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

Mr. ERVIN. Mr. President, before yielding the floor I ask unanimous consent that the following documents be printed in the RECORD at this point: Statement of Jerome J. Shestack, chairman, American Bar Association Section of Individual Rights and Responsibilities, made before the Subcommittee on Constitutional Rights of the Committee on the Judiciary of the Senate in opposition to preventive detention.

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

STATEMENT OF JEROME J. SHESTACK

Mr. Chairman and Committee Members, the Board of Governors of the American Bar Association has authorized the Association's Section of Individual Rights and Responsibilities, of which I am Chairman, to appear and present testimony to Committees of Congress regarding proposed legislation popularly known as "preventive detention" and contained in such bills as S. 2601, S. 2600, H.R. 12806, and H.R. 16196. In particular, I wish to express the Association's opposition to such bills to the extent that they are inconsistent with the "Minimum Standards of Pretrial Release," approved by the House of Delegates in August, 1968.

Preliminarily, I should like to say a few words concerning the American Bar Association's Project on Minimum Standards for Criminal Justice. The scope of this Project has been the entire spectrum of the administration of criminal justice, including such aspects as pretrial proceedings, prosecution and defense functions, criminal trial, sentencing and review and fair trial and free press. The Project was under the overall supervision of a 15 member Special Committee on Minimum Standards for the Administration of Justice chaired by Chief Judge J. Edward Lumbard of the United States Court of Appeals for the Second Circuit. Following Judge Lumbard's chairmanship, Judge (now Chief Justice) Warren E. Burger became Chairman of the Committee and served in that capacity until the end of the annual meeting of the American Bar Association in August 1969. The present Chairman of the Committee is Senior Judge William J. Jameson of the United States District Court for Montana. Judge Jameson is a former President of the American Bar Association.

In order to cover the broad areas dealt with by the Project on Minimum Standards for Criminal Justice, sub-areas were delineated and a separate Advisory Committee was appointed for each area to make the necessary studies and to draft the standards for the major topics within that area. One such area was Pretrial Release, which included the subject matter of the proposed legislation currently before this Committee.

The Advisory Committee on Pretrial Release (herein Advisory Committee) was chaired by Chief Judge Alfred P. Murah of the United States Court of Appeals for the Tenth Circuit. Attached to this statement is a list of the members of the Advisory Committee and a brief description of their qualifications. You will see that they include judges, practicing lawyers, professors, prosecuting attorneys and defense attorneys; a more knowledgeable committee would have been difficult to assemble.

The Advisory Committee was fortunate in having as its Reporter Dean Charles E. Ares of the University of Arizona Law School. Dean Ares had practiced as a deputy county attorney and as a lawyer in Tuscon, Arizona. While a professor at New York University Law School, he was one of the architects of the well known Manhattan Bail Project, a major spark for the recent movement towards pretrial release reform.

The Standards relating to Pretrial Release proposed by this Advisory Committee were recommended by the American Bar Association's Special Committee on Minimum Standards for the Administration of Criminal Justice and were approved by the House of Delegates of the American Bar Association at its annual meeting on August 6, 1968.

The question of preventive detention was specifically considered by the Advisory Committee on Pretrial Release. The Committee was most sensitive to the felt need to protect the community from harm at the hands of the dangerous defendants and the Committee was well aware of the proposals that had been made for preventive detention. The Advisory Committee thoughtfully explored all facets of this question. Indeed, in order to focus on the issue in a realistic context, the Committee drafted what would be a model provision for preventive detention. After thorough consideration, the Advisory Committee rejected the draft proposal for preventive detention and concluded that at this time, and on the basis of present knowledge, it should not recommend the adoption of preventive detention.

There is a basic difference in philosophy and approach between the Minimum Standards of Pretrial Release proposed by the Advisory Committee and adopted by the House of Delegates of the American Bar Association and the type of preventive detention proposal contained in the legislation before this Committee. The American Bar Association's Minimum Standards of Pretrial Release proceed on the general principle that the law favors the release of defendants pending determination of guilt or innocence and that before resorting to outright preventive detention, with all its attendant problems and drawbacks, attempts should be made to protect the community through alternate methods more consistent with the individual rights which our American system of jurisprudence has traditionally safeguarded.

Central to the structure proposed by the Minimum Standards is the use of restraining orders embodying carefully defined restrictions on the activities of the released defendant. The Standards borrow from the power frequently exercised by courts when they place convicted defendants on probation.

By imposing such conditions, the Standards provide varied methods of controlling a defendant believed likely to engage in criminal conduct when released. For example, his movements, associations and activities may be carefully circumscribed. He may be prohibited from possessing any weapons. He may be placed under the close supervision of a probation officer. These methods impose restraints short of detention. In addition, the standards provide that when the defendant violates the conditions of his release or where a competent court or grand jury has found probable cause to believe the defendant has committed a serious crime while released, the judge may, after hearing, review and revise the release conditions or revoke the release where indicated, provided that in the latter instance there is the right to an immediate trial.

These standards in themselves are far reaching proposals and seek to prevent crime in pretrial release situations by strictly supervising the accused. Moreover, if the accused nonetheless violates his release, further sanctions, which may or may not include detention, are proposed. However, the treatment of the accused under the Minimum Standards focuses on specified acts by the given individual involved—not subjective guesswork of future conduct. We believe that the Minimum Standards which I have described are reasonable and desirable methods of treating the problem and should be undertaken before resorting to the extreme measure of outright preventive detention.

At this point, it is appropriate to discuss some of the concerns expressed in the report of the Advisory Committee regarding preventive detention. Essentially, the problems inherent in outright preventive detention proposals which led the Advisory Committee to recommend against the adoption of preventive detention provisions such as those before this Committee fall into the following general categories:

1. The constitutional infirmities.
2. The detrimental effects on the defendant.
3. The lack of empirical evidence justifying preventive detention.
4. The overburdening of the system of administering justice.

I shall discuss each briefly.

1. THE CONSTITUTIONAL PROBLEMS

Initially, it is apparent that preventive detention statutes such as H.R. 12806, H.R. 16196, S. 2600 and S. 2601 raise grave constitutional problems. Although I do not propose to discuss these in any detail since leading constitutional scholars have amply pointed out the constitutional defects, they are of serious concern and can hardly be ignored.

The most obvious constitutional problem is presented by the Eighth Amendment, which prohibits "excessive bail." Although the Federal Constitution, unlike many state contitutions, does not explicitly state that there is a right to bail, leading authorities on this subject have argued that the Eighth Amendment prohibition of excessive bail cannot be viable unless read to provide a general right to bail. On the other hand, dictum in at least one opinion of the Supreme Court of the United States has indicated that the prohibition against excessive bail applies only in cases where there is an initial determination in favor of granting bail. Whatever the ultimate result under the Eighth Amendment, it is clear that preventive detention would violate present constitutional and statutory provisions in numerous states and no system could be generally adopted in state courts without major constitutional and statutory changes.

Additionally, preventive detention raises due process problems, since it would deprive a defendant of his liberty prior to conviction. Thus, preventive detention measures under consideration before this Committee provide that an accused can receive as much as a 60-day jail sentence, *not* on proof of guilt beyond a reasonable doubt, but on a unique finding of "probable guilt" and "dangerousness". Moreover, due process problems may arise from subjecting the detained defendant to strategic and representational disadvan-

tages. I will discuss these problems more fully later on in dealing with the adverse effect which preventive detention has on an accused. Suffice it to say for now that these and other constitutional problems raised by preventive detention are of sufficient dimension to becloud seriously any proposal of this type.

2. THE DETRIMENTAL EFFECTS ON THE DEFENDANT

Anyone sophisticated in the practice of criminal law appreciates that defendants subjected to preventive detention are likely to suffer considerable damage.

Most apparent, some defendants who subsequently are acquitted will have been subjected to punishment without trial. Current proposals do not provide for the compensation of these persons; in any event, financial remuneration will hardly compensate for time spent in a detention center by innocent persons.

Preventive detention is likely to have other serious adverse effects on the accused. Detained defendants are deprived of an opportunity to work to support themselves and their families, and this, of course, would be especially detrimental to the poor defendant. Preventive detention also hinders the defendant in the preparation of his case. Even if the accused is given access to his attorney while under detention, jailhouse conferences cannot compare to the opportunity for consultation and preparation available on release. The problem is particularly critical when, as so often is the case, the defendant must rely on witnesses whose identity and whereabouts are difficult to ascertain. In many instances, the defendant is the person with the best chance of finding those witnesses. In the case of indigent defendants, in particular, the burden of investigation must be largely borne by the defendant, something he obviously cannot do if he is behind bars.

Additionally, the quality of the representation of a detained defendant is likely to be impaired. There are obvious disadvantages stemming from conditions unconducive to effective representation. If counsel is an appointed lawyer with a large clientele, having to visit his client in jail imposes a burden; the result may well be a reduction in pretrial consultations.

Moreover, there is strong evidence that detention has an adverse effect on the outcome of the defendant's case. Studies in Philadelphia, the District of Columbia and New York indicate that the conviction rate for jailed defendants materially exceeds that of bailed defendants. For example, the Rankin Study which appeared in the New York University Law Review in 1964 indicated that, while 64 percent of convicted defendants who did not obtain pretrial release were ultimately sent to prison, only 17 percent of those convicted who had been out on bail were similarly sentenced. Furthermore, the acquittal rate amongst those who were not detained prior to trial was 20 percent higher than amongst those who were subject to pretrial detention. By holding other causative factors constant, the study indicated that there is a strong causal relationship between detention and unfavorable disposition.

The severity of the sentence is also likely to be affected. For example, there is evidence to indicate that defendants at liberty are more likely to receive suspended sentences if they are convicted than those who have been forced to stay in jail. Quite apart from statistical studies, common sense would indicate that a man who has been working, supporting his family and comes into court from his home, not a cell, stands a better chance of impressing the judge that he is a good risk for probation than the man who has been locked up in jail for a month or more.

Another significant consideration emphasized by the Advisory Committee is the devastating effect on a defendant who has been detained because he was found too dangerous to walk the streets. The most careful precautions concerning pretrial publicity would surely not prevent news of a court finding of dangerousness from reaching the public press.

3. THE LACK OF EMPIRICAL EVIDENCE SUPPORTING THE NEED OR EFFECTIVENESS OF PREVENTIVE DETENTION

When one considers the above legal and practical problems and defects of a system of preventive detention, it would seem clear that such a system should not be employed without a clear demonstration both of need and of the predictive techniques required to operate the system with tolerable accuracy. No such demonstration has been forthcoming from the proponents of preventive detention.

Despite many assertions of the need for preventive detention, the empirical evidence supporting these claims is not convincing. On the other hand, statistics provided by release on recognizance projects (see, e.g., 70 Harv. Law Rev. 1489, 1496–7) reveal that few of the defendants are rearrested while on pretrial release; these studies, too, need further analysis and corroboration.

The off-cited D.C. Crime Commission Study found that approximately 7.5 percent of defendants released in a given period were later alleged to have committed offenses while at liberty and of these only 4.5 percent involved crimes of actual or potential violence. If these statistics are representative, the claims made by proponents of preventive detention proposals for the efficacy of such proposals in reducing the crime rate would seem highly exaggerated. It appears particularly inappropriate to undertake the extreme of a system of preventive detention when there is so little evidence that it will accomplish much benefit.

Apart from the lack of data on need, there remains the large question of whether the courts could have identified in advance the 4.5 percent or 7.5 percent of the defendants in the D.C. study who committed crimes while awaiting trial. The answer would appear to be that the courts are unable to make such predictions reliably. Nothing in the D.C. statistics or any other indicate that those defendants who did commit crimes while released were distinguishable beforehand from other defendants who had similar records and charges but who did not commit crimes while released. To have been able to isolate the 4.5 percent or 7.5 percent of the defendants who committed crimes when released with any reasonable degree of accuracy, would have required more sophisticated predictive techniques than are presently available to even the most perceptive and experienced judge.

Necessarily, the principal criteria for prediction would be the past criminal record and the nature of the present charge. Inevitably, more defendants would be detained than necessary. One of the most serious dangers in the process is that errors would not be discovered because each detention would involve a self-fulfilling prophecy—no detained defendant would commit crimes while released.

This factor leads to another danger—the inevitable pressure upon judges to resolve in favor of detention. The judge who erroneously predicts dangerousness will not be confronted with the consequences of his error. But if he makes an erroneous prediction of non-violence, he may learn of it from newspaper headlines announcing a subsequent crime and condemning the release. All too few judges, especially in election years, will be able to resist the modus operandi which Professor Dershowitz succinctly termed: "When in doubt, don't let him out. . . ."

4. THE OVERBURDENING OF THE SYSTEM OF ADMINISTERING JUSTICE

Few would disagree that the problem of pretrial crime would be minimized if means could be found for insuring prompt trials. Obviously, the long delays that presently exist in the processing of criminal cases maximizes opportunities for commission of crime while on pretrial release. At the same time, it should be pointed out that the existence of current conditions of delay make it more difficult to justify pretrial detention as a solution to the problem. Obviously, in most urban centers of the nation, including the District of Columbia, trials are not now held within 60 days. This means that the current 60-day detention proposals would not accomplish the objectives of the proponents of preventive detention, even assuming the validity of the assumptions on which the proposals are based. Indeed, if the proposals are adopted, the public would be faced with the phenomenon of defendants being released at the end of 60 days even though they have been found by a court to be dangerous. Such a situation is not likely to instill confidence in the law and is also likely to lead to demands for increasing the detention period.

Another serious problem is that a preventive detention system is itself likely to add to the already intolerable delay. For preventive detention hearings to be constitutionally valid, they will frequently have to resemble full scale trials and will thus add an additional heavy burden to already overcrowded dockets. This will make speedy trials even more difficult. Moreover, if a preventive detention system complicates the task of reducing the time lag between arraignment and trial, it is possible that defendants who have been released after their 60-day detention will, overall, spend more time out of jail than might be the case if there was no preventive detention system. Even if the defendants who are candidates for preventive detention are tried by an expedited procedure, this will simply mean that other defendants, who may as a matter of fact be just as dangerous as those detained, will spend even more time on release. Thus, preventive detention has serious self-defeating aspects to it.[1]

A more desirable alternative would seem to be to reduce pretrial crime by focusing on speedy trials and reduction of the criminal backlog. The American Bar Association Standards Relating to Speedy Trial recommend some much needed provisions. In most jurisdictions, there is also the need for more judges, additional court facilities, increased staffing of prosecutor and defender officers, improved administrative court procedures and firmer handling of requests for continuances. All such measures should be tried on a crash program and present a much more fruitful approach to the problem. Of course, such measures will require a greater commitment of funds than appropriating bodies have thus far been willing to make.

It was because of problems such as these I have described that the Advisory Committee decided against adoption of preventive detention proposals and even rejected a Model Provision which it had under consideration. In this connection, I believe it is pertinent that the particular bills before this Committee fall short even of the Model Provision which the Advisory Committee rejected. A few brief comments will illustrate this.

For example, HR 12806 does not require that a detention order be issued only by a judge of a court of general jurisdiction and

[1] The public also suffers in an economic way when defendants are unnecessarily detained. The detention of prisoners is costly and results in still further drain upon the resources of already overcrowded detention facilities.

presumably even inferior judicial officers in a system would be authorized to detain. When one considers the level of inferior judicial officers in many parts of the country, it seems highly undesirable to vest the awesome power to detain at the lowest level of the criminal process.

Another failing is the definitions employed in H.R. 12086 and its companion bills. As Dean Ares has pointed out, they are exceedingly broad and have the defect of proceeding on a categorical rather than on an individual basis. For example, a "dangerous crime" includes "unlawful breaking and entering or attempting to break and enter any premises adopted for overnight accommodation of persons or for carrying on business with an intent to commit an offense therein." A person could therefore be charged with a dangerous crime even though the alleged specific crime constituted no actual danger to persons. The same is true of a number of the other dangerous crimes listed in the Act. The addition of a crime of conspiracy in the definition of "crime of violence" emphasizes the broad categories of crime which may be the basis for preventive detention. By contrast, the Model Provision requires, as a prerequisite to preventive detention, a specific finding that there be a high degree of probability that if released the accused would inflict serious bodily harm on another person. Furthermore, the Model Provision specifically places the burden of proving the necessity for detention by clear and convincing evidence on the prosecution.

Another serious failing in the proposed bills is that they would relieve the judicial officer of the necessity of conducting a truly evidentiary hearing; hearsay and other incompetent evidence would apparently be admissible.

The Model Provision also shows greater sensitivity than do the proposed bills to the prejudice to the defendant inherent in preventive detention. Thus, the Model Provision states that, "The fact that the defendant has been detained pending trial should not be allowed to prejudice him at the time of trial or sentencing. Extreme care should be taken to insure that the trial jury is unaware of the defendant's detention." It further provides that all defendants should be accompanied into the courtroom by apparently unarmed personnel in plain clothes, and that detained defendants should not be dressed or treated differently than defendants who have been at liberty pending trial.

The Model Provision also provides that in the event of conviction the sentencing court "should not regard a pretrial detention order as any evidence of the need to impose a prison sentence. In the event a prison sentence is imposed, the defendant should receive credit for all time spent in custody as a result of the criminal charge for which the sentence is imposed, or as a result of the underlying conduct upon which such a charge is based."

The Model Provision also provides that any detained defendant who is not subsequently convicted should receive compensation, with the compensation to be made available to dependents for support and maintenance, if necessary.

This comparison points up some of the serious failings in the legislation before this Committee. If a preventive detention measure is to be adopted, the Model Provision at least shows a sensitivity and awareness of the need to protect individual rights and dignity and is a decided improvement over such bills as H.R. 16196, H.R. 12806, S. 2600 and S. 2601.

In sum, the American Bar Association endorses the principle that the law favors the release of defendants pending determination of guilt or innocence and that deprivation of liberty pending trial is harsh and oppressive. It recognizes also that the interest of society may require the imposition of conditions of release and sanctions for violation of those conditions. The Minimum Standards of Criminal Justice adopted by the American Bar Association propose reasonable and well thought out means of handling this problem, and we recommended heartily their adoption; but at this stage of our knowledge and experience, the Standards do not recommend the adoption of preventive detention proposals such as those before the Committee.

One final observation. As Bernard G. Segal, the President of the American Bar Association, has emphasized in major addresses, the Association, like all thoughtful citizens, is deeply concerned with the problems created by the nation's high crime rate; a society cannot progress and flourish when its urban centers are beset by crime and are unable to afford the citizenry essential security and freedom from the devastations of lawlessness. We recognize that every effort must be made to combat crime with all of the resources at our disposal, and we must do much more than has been done until now. At the same time, the remedies we fashion must be consistent with the spirt of liberty and due process which is part of our heritage and which is the basis for our claim to moral leadership in the free world. In the last analysis, we recognize that the problem of crime is not alone a problem of more effective law enforcement, of better administration of justice and of penal reform—important as these are. The real inroads on crime will be made as we progress in remedying the conditions of slum housing, unemployment, lack of education, racial discrimination and the other conditions of helplessness, despair and alienation which for so long have been root causes of crime.

Mr. ERVIN. Mr. President, I also ask unanimous consent that a statement by former Federal prosecutors on the District of Columbia crime bill be inserted in the RECORD at this point.

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

STATEMENT OF FORMER FEDERAL PROSECUTORS ON THE DISTRICT OF COLUMBIA CRIME BILL

We are all former Federal prosecutors for the District of Columbia. We are united in opposition to certain provisions of the omnibus crime bill for the District of Columbia passed by the House of Representatives and presently in conference between the House and Senate. None of us considers himself "soft on crime" or a "bleeding heart." As members of the United States Attorney's Office we committed ourselves to the goal of effective law enforcement. We remain committed to that goal. We also believe that this community should not be subjected to measures of doubtful constitutionality, questionable necessity, and demonstrable ineffectiveness. We urge the Congress to reject provisions which will impede the cause of law enforcement rather than help it.

We have set forth our views on certain provisions of the House bill in some detail in the hope that they may assist the members of the conference and the Congress before they finally act on this legislation.

A. The mandatory sentencing and severe penal provisions of the House bill are among its most objectionable features:

(1) This bill makes breaking into a gum machine, a pay phone, or a parking meter second degree burglary, a felony punishable by up to 15 years imprisonment. By contrast arson, a crime far more dangerous to life and property, carries a penalty of up to ten years and robbery by force and violence a penalty of up to 15 years. It is utterly disproportionate to treat breaking into a vending machine as a crime of the same or greater severity than these offenses.

(2) This bill provides that any person convicted of three so-called "violent" crimes shall be sentenced to a mandatory life sentence, with no possible parole until he has served 20 years. "Violent crimes" include assault with a dangerous weapon, which can be commited in circumstances which would not justify the imposition of the harsh sentence contemplated by the bill.

(3) Furthermore, any person convicted of a "crime of violence" while armed with a weapon, including an imitation pistol, must be sentenced to a minimum of three years imprisonment and may be sentenced to life imprisonment. Since burglary is a "crime of violence" under this provision, a person apprehended breaking into a vending machine while carrying a toy pistol would receive at least three years in prison and might receive a life sentence.

(4) Mandatory sentencing provisions are contrary to experience in penology and are likely to be counter-productive from the standpoint of law enforcement and corrections. The report on Standards for Criminal Justice of the American Bar Association has concluded: "the legislature should not specify a mandatory sentence for any sentence category or for any particular offense." (ABA Standards Relating to Sentencing Alternatives and Procedures, p. 48) These provisions embody a distrust of the ability of trial judges to protect the community in their sentencing of convicted offenders. This distrust is misplaced. Mandatory sentences deprive trial judges of discretion to make the punishment fit the crime and the criminal. Moreover, mandatory sentencing provisions discourage guilty pleas and force more defendants to take their chances at trial, even though they actually are guilty. Since at least some of these defendants are likely to be acquitted after trial, such provisions virtually guarantee that guilty defendants who would otherwise be convicted will be set free. Mandatory sentencing provisions also can create serious disciplinary problems for our prison authorities. By precluding the prisoner from shortening his time, they impede correction and rehabilitation by destroying a prisoner's principal incentive for good behavior and self-improvement.

(5) Another provision of this bill provides that any person convicted of any three felonies, whether violent or not, may be sentenced to life imprisonment. The House bill, however, lacks the procedural safeguards contained in the Senate bill, which requires a judicial determination, with the assistance of psychiatric and psychological experts, that the defendant is beyond rehabilitation before a life sentence may be imposed.

(6) Still another provision of the House bill would create a presumption that sentences for two or more offenses shall run consecutively, even if the offenses arise out of the same transaction. This is contrary to the leading authorities on sentencing, such as the ABA's study which states: "Consecutive sentences are rarely appropriate." (ABA Standards Relating to Sentencing Alternatives and Procedures, p. 171)

B. The provisions of the House bill relating to juveniles would give the District of Columbia one of the most backward Juvenile Codes in the United States.

(1) It is provided that any juvenile 16 or older who is merely *charged* with any of a number of crimes—including breaking into a vending machine if this bill becomes law—will automatically be treated as an adult criminal defendant. Not even a judicial determination of probable cause that he committed the offense would be required to treat him as an adult, much less a judicial inquiry whether he can be rehabilitated in a juvenile institution.

(2) This bill would lower to 15 the age for transferring a juvenile charged with any felony, violent or not, to adult criminal

court. The presumption is apparently in favor of transfer, instead of consigning the juvenile to adult court and adult penal institutions only when it is evident that other methods of rehabilitation and protection of the community have failed or are unavailable. Perhaps most extraordinary, a juvenile who has once been transferred to adult criminal court could never again be treated as a juvenile—*even if he is acquitted of the charge in the adult criminal court.* He must thereafter be treated as an adult criminal even if charged with the most trivial offense.

(3) These provisions for relegating greater numbers of juveniles to adult criminal processes come at a time when adult penal facilities in the D.C. Jail and at Lorton are notoriously overcrowded. These institutions are breeding grounds for more crime. On the other hand, for the first time the District has an outstanding institution for hard-core juvenile offenders—the new Juvenile Facility at Laurel, Maryland. This institution provides maximum security for juvenile offenders and, unlike the adult institutions, it is not overcrowded. This is the wrong time to give up on the possibility of rehabilitating juvenile offenders, especially when it can be done while protecting the community at the same time.

(4) Further, at a time when the procedural rights of accused juvenile delinquents are being enlarged in the United States, this bill would abolish the right to trial by jury, the most important safeguard developed by our legal system for the determination of guilt or innocence. Trial by jury was explicitly provided when our present Juvenile Court Act was enacted in 1938 because Congress was convinced that the Constitution requires this right for any juvenile charged with an offense which would be a crime if committed by an adult. Nothing in the history of the last 30 years indicates that Congress was wrong. Moreover, since the question of the constitutional right to trial by jury in a juvenile delinquency proceeding is presently before the Supreme Court, there is every reason to avoid precipitate action in advance of a decision by the Court.

(5) This bill would also authorize the transfer of a delinquent from a juvenile institution to an adult penal institution without affording him the full procedural rights that any adult would have before he could be convicted of a crime and confined in such an institution. Whatever the arguments may be for affording a juvenile in a delinquency proceeding fewer procedural rights than adults, there is no justification for confining a juvenile in an adult penal institution without first according him the procedural rights of an adult. Moreover, the bill would authorize the mingling in the same institution of juveniles found to have committed criminal acts and those found merely in need of supervision such as truants from school. The effect of such provisions would be to subject juveniles who might be salvaged to influences which could turn them into incorrigible criminals. Everyone will lose in the process and the community will be rendered less safe rather than more so.

C. Other criminal procedure provisions of the House bill are so constitutionally dubious that they must by their nature invite trouble. It is no service to law enforcement to subject criminal convictions to certain constitutional attack and endless litigation. All this does is to remove the deterrent effect of swift and sure punishment, multiply appellate issues, and undermine the principle of finality in criminal cases.

(1) For example, the House bill authorizes appeal by the prosecution from certain rulings during trial and directs the trial court either to adjourn the trial or to declare a mistrial until the appeal is determined. But the law governing former jeopardy is clear that a mistrial may be declared over a defendant's objection only in case of "manifest necessity." It is difficult to see how this provision of the bill can be squared with the constitutional limitation. The effects of this provision, if implemented, are readily predictable: there will be attacks on the motives of the prosecution any time such an appeal is taken, on the ground that the prosecutor is seeking a mistrial because he fears the jury will decide against him.

(2) Moreover, the House bill authorizes appeal by the prosecution even after trial and directs the appellate court to decide the appeal even if the defendant has been acquitted. Few principles have been more firmly settled in the courts of the United States than that judges should decide only cases of actual controversy in which there are genuine adversary interests. This is the essence of the doctrine of judicial restraint. But this provision would purport to compel a court to decide questions which cannot affect the outcome of the case and in which the acquitted defendant has no interest in presenting the other side.

(3) This bill would also place the burden of proof on the defendant with respect to the issue of insanity. This is contrary to the tradition of Anglo-American law that the prosecution must prove every element of a criminal offense—including the criminal intent and guilty mind of the defendant—beyond a reasonable doubt. This requirement of proof beyond a reasonable doubt is an essential of due process of law under our Constitution.

Provisions like these are a threat, not an aid, to the orderly enforcement of the criminal law. If they are struck down by the courts, convictions will be overturned and guilty men may be freed.

D. (1) The so-called "no knock" provisions of the House bill raise serious questions of public policy, wholly apart from constitutional considerations. These provisions are sufficiently obscure in language, purpose, and effect that their enactment may leave the law more confused and less workable than it was before. Depending on how they are interpreted, these provisions may do any one of three things, each of doubtful wisdom:

(i) They may make no change in the existing powers of law enforcement officers to enter private premises without prior announcement of their authority and purpose. If so, they are superfluous and will merely spawn prolonged litigation.

(ii) Or they may expand the existing "no knock" powers of law enforcement officials by creating a looser concept of exigent circumstances than the courts have heretofore recognized as justification for dispensing with an announcement of authority and purpose. For example, if officers or judges construe these provisions as authorizing a "no knock" entry whenever narcotics, gambling paraphernalia, or other easily destroyed evidence are sought, the exceptions would swallow up the general rule that an announcement of authority and purpose is ordinarily required.

(iii) Or these provisions may actually curtail the existing powers of law enforcement officials. These provisions can be interpreted as requiring law enforcement officials to obtain a "no knock" warrant whenever it is feasible to do so, even though exigent circumstances would justify an entry without an announcement under existing law. The officers' failure to obtain such a warrant will give the defendant an additional argument against the legality of their actions and may make the job of the police harder, rather than easier.

(2) More fundamentally, the question is whether Congress should enact such provisions, without a greater showing of need than has so far been made, over the opposition of many law-abiding people in this community. Many people, correctly or incorrectly, believe that these provisions threaten privacy and justify resort to self-help and resistance to entry by law enforcement officers. It is no benefit to law enforcement officers to expose them unnecessarily to greater risks of resistance or attack by citizens. It is easily forgotten that the requirement of an announcement of an officer's authority and purpose is not just to protect the occupant. It is also to protect the officer by giving the occupants of the premises notice and opportunity to comply with his request for entry. Otherwise the citizen may think the intruder is a housebreaker. No responsible person can welcome the prospect of "shoot-outs" between officers and citizens, each acting on the facts as he sees them at the moment.

E. The preventive detention provisions of the House bill also raise grave questions of public policy. Reasonable men may differ as to the constitutionality of the principle of preventive detention. But the absence of certain essential procedural safeguards makes these provisions unsatisfactory on those grounds alone.

(1) The procedural protections of the House bill are deficient. They do not require that the judicial findings in support of detention be supported by admissible evidence and they contemplate detention merely on a proffer of information by the prosecutor. The bill apparently gives the defendant no right of cross-examination at the detention hearing. Pretrial detention evidently can be authorized solely on unsworn hearsay and other materials which no court would consider admissible proof of a defendant's guilt or innocence. It is surely reasonable for the prosecution to present some admissible evidence, subjected to the test of cross-examination, in justification for the pretrial detention of a defendant whose guilt has not yet been proved.

(2) These provisions also make it a felony for a defendant "willfully" to fail to appear in court when required to do so. Yet they allow conviction of this offense on his failure to appear, even if he has not received actual notice of an appearance date. We are aware of no precedent in our legal system and no constitutional principle which would allow conviction of a defendant of a serious felony, involving a guilty state of mind, without requiring proof of that element of the offense. Proper provision should be made to deal with defendants who willfully thwart court processes, but there is little point in enacting self-nullifying statutes which hold out an illusory promise to the community of greater safety.

F. Perhaps the most extraordinary feature of the House bill is the provision that in any civil suit against a police officer for wrongful arrest, the court must order the plaintiff—even if he wins the case—to pay the defendant an attorney's fee. We have never heard of such a requirement anywhere in the English-speaking world. This provision is obviously designed to deter the bringing of such lawsuits, whether they are meritorious or not. It seems as if the framers of this provision assume that Metropolitan Police officers make illegal arrests so frequently that they must be made immune from the law by blocking the free access of citizens to the courts. The insult to the Metropolitan Police Department that is implicit in this provision is sufficient reason to defeat it. And it is a strange concept of law and order that would prevent people from taking their cases to courts of justice.

David C. Acheson, 950 L'Enfant Plaza, SW.
Judah Best, 18919 H Street, NW.
Miss Joan A. Burt, 1822 11th Street, NW.
William L. Davis, 1100 Vermont Avenue, NW.
Charles T. Duncan, 1001 Connecticut Avenue, NW.
David Epstein, 1730 K Street, NW.
Mrs. Carol Garfiel Freeman, 888 17th Street, NW.

Gerald E. Gilbert, 815 Connecticut Avenue, NW.
Henry H. Jones, Howard University Scho ' of Law.
Ayan Kay, 1225 19th Street, NW.
John R. Kramer, 1000 Wisconsin Avenue NW.
Robert E. Levetown, 1710 H Street, NW.
James C. McKay, 888 16th Street, NW.
David W. Milller, 734 15th Street, NW.
Edward T. Miller, 1828 L Street, NW.
Allan M. Palmer, 1707 N Street, NW.
Daniel A. Rezneck, 1229 19th Street, NW.
Sidney S. Sachs, 839 17th Street, NW.
Bruce P. Saypol, 888 17th Street, NW.
John P. Schmertz, Jr., 506 E Street, NW.

Mr. ERVIN. Mr. President, I ask unanimous consent that a letter from Robert S. Rankin, of Duke University, stating that the bill which underlies this conference report is unwise and unnecessary, be placed in the RECORD at this point.

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

DEPARTMENT OF POLITICAL SCIENCE,
DUKE UNIVERSITY,
Durham, N.C., Sept. 11, 1969.

Hon. SAM J. ERVIN, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: I am pleased to respond to your request for my views on S. 2600; a bill which would allow the consideration of "dangerousness to the community" as a factor in determining conditions of release of persons charged but not convicted of criminal offenses and providing for preventive detention of dangerous persons. The preventive detention part of the bill, § 3146A provides that upon a finding by a judicial officer, after a full hearing, that there is clear and convincing evidence that a person charged with a dangerous crime or a crime of violence, or determined to be a addict, may not be released, because regardless of such conditions of release which the judicial officer could impose, the safety of the community can not reasonably be assured. The bill also provides an appeal procedure from findings at detention hearings and for additional penalties for crimes committed by an accused person while on release. Passage of this bill, in my opinion, would be unwise and is unnecessary.

The motivation behind the preventive detention proposal appears to be the high and growing crime rate in this nation's cities, and in particular, the Capital. We are all deeply concerned with this problem.

In dealing with this intolerable increase of crime, there are many improvements and changes in the system of criminal justice which might be useful. However, preventive detention, which upon its face seems to offer some positive direction, upon closer examination, presents many problems.

The bill assumes that persons who are charged with crimes of violence are more likely to commit additional offenses than others. However, much of the recent research in this area appears to be to the contrary; the most frequent recidivists are generally persons who have committed property offenses, whereas persons charged with crimes of violence are less likely to engage in future criminal behavior. [*The Challenge of Crime in a Free Society;* Report by the President's Commission on Law Enforcement and Administration of Justice, 45 (1967)] Hence, any preventive detention bill should be based on a more thorough study of the characteristics which are most frequently found among persons who recidivate. This would allow courts to have some factual basis upon which to make a release decision.

Another drawback to the entire concept of preventive detention is that it can have a negative effect on the accused's chances in court. In a study of bail, the Vera Institute of Justice's Manhattan Bail Project determined that persons released pre-trial were found not guilty at a rate 2½ times greater than that of persons who were incarcerated pre-trial (National Conference on Bail and Criminal Justice, Report, May 1964 to April 1965). Some correctional experts also maintain that persons incarcerated prior to trial have less of a chance of having their case diverted out of the criminal process (see, e.g. Freed & Wald, *Bail in the United States: 1964,* at 55 (1964)). Preventive detention will also prevent the accused from keeping or obtaining employment. If found guilty, his chances of probation are lessened. In a study done by the District of Columbia Crime Commission, it was determined that . . . "40 percent of the . . . convicted persons who had obtained pre-trial release were placed on probation, whereas only 18 percent of the . . . convicted defendants who had not been released were granted probation." [*Report of the President's Commission on Crime in the District of Columbia,* 505 (1966)]

It is also doubtful whether the Bail Agency, set up by the Bail Reform Act of 1966 in the District of Columbia has had sufficient time and resources to enable it to function effectively. Testimony before this committee indicates that the Agency is understaffed, and that a full use of conditions which can be attached to releases, has not been made. [Statement of Tim Murphy, Judge of the D.C. Court of General Sessions, *Hearing on Amendments to the Bail Reform Act of 1966 Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary,* 91st Cong. 1st Sess., at 218–220 (1969)] Both of the Experimental Bail Reform Projects which preceded the passage of the 1966 Bail Reform Act had significantly high success rates. The Manhattan Project, for example, had a return rate of 98.4 percent for appearance at court, of people it recommended for release. One can only wonder whether there would be any need to discuss preventive detention at all, if the original plan as embodied by the 1966 Act were to be fully effectuated.

I would be less disturbed by the prospect of preventive detention if some groundwork had been laid for its usefulness. If crimes are being committed by those who have been released pending trial, then a primary step in meeting the problem should be a maximum reduction in the time between arrest and trial. As of 1965, in the District of Columbia, the median time between indictment and disposition in felony cases was 4.8 months. [Report of the President's Commission on Crime in the District of Columbia, 245 (1966)]. A second method would be provision for an "accelerated trial process for presumably high risk defendants." [*The Challenge of Crime in a Free Society;* Report by the President's Commission on Law Enforcement and Administration of Justice, 131 (1967)]. Such a procedure would require a fully operative Bail Agency which would provide the judicial officer with a broad range of facts about the defendants upon which a determination of what constitutes a "high risk" defendant could possibly be made.

If these two methods were used I would expect the amount of crime committed by persons awaiting trial to be reduced substantially. Those who advocate preventive detention should use these methods; if they are unsuccessful, at that time requests for the more drastic measure can be made. Accompanying such a proposal should be statistical proof of the need for and the efficiency of the measure. Such proof is now lacking.

As you, Senator Ervin, are one of the leading constitutional experts in the nation, it is unnecessary for me to present a detailed analysis of the constitutional problems that appear to be inherent in this bill.

The Supreme Court of the United States has not had occasion to specifically rule on preventive detention. A determination of constitutionality will involve a look into the historical context and background of our Constitution. One of the traditional premises of Anglo-American criminal law has been that it is far preferable to free the guilty than to convict the innocent. Predicting future crimes is so difficult that, as Professor Dershowitz points out, "in order to spot a significant proportion of future violent criminals, we would have to reverse the traditional maximum of the criminal law and adopt a philosophy that it is better to confine ten people who would not commit predicted crimes, than to release who would." (A. Dershowitz, *On Preventive Detention,* 12 N.Y. Rev. of Books 22, 24 (Mar. 13, 1969).)

Pre-trial preventive detention conflicts with two basic principles—not always followed—of our criminal law: The threat of subsequent punishment is a method of deterring crime; and imprisonment should not be imposed upon a person *until* he is convicted of a crime. That these principles are sometimes ignored is not a reason for further breach, but a reason for greater vigilance in the future. Given the far less than clear need for preventive detention, and the conflict between such detention and basic principles, it is doubtful whether the preventive detention provision of S. 2600 could meet the requirements of the Eighth Amendment or the Due Process Clause of the Fifth.

Certain features of S. 2600 are open to particular question. Section (1)(e) of the bill provides that persons detained pursuant to the Act "shall be confined, to the extent practicable, in facilities separate from convicted persons awaiting or serving sentences or being held in custody pending appeal." While this provision is beneficial, it does not go far enough. Criminologists maintain that a jail experience for the innocent person can create the future criminal.

Secondly, the proposed 18 U.S.C. § 3146A-(c)(5) provides that "[i]nformation stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law." The rules of evidence are designed to assist in the determination of truth and to prevent unfounded testimony. I do not see the justification for depriving the defendant of such protection in proceedings related to preventive detention.

Thirdly, in its recommendation for preventive detention the President's Commission on Crime in the District of Columbia provided the safeguard that "any evidence taken at such hearing shall not be admissible at the trial either as impeachment or in lieu of *de novo* proof of the facts alleged." This safeguard is partially, and in my opinion unjustifiably, removed by the proposed 18 U.S.C. § 3146A(a)(6), which makes the testimony of the defendant available for impeachment purposes in subsequent proceedings.

As Senator Hruska pointed out when he introduced S. 2600, "although the bill is national in scope it is particularly important to the District of Columbia because of the Federal jurisdiction over all crimes. Over 40 percent of all Federal crimes are committed in the District." I hope that the people of Washington, D.C. will have ample opportunity to be heard on this bill, and that their advice will be given substantial considerations, as they are most directly affected by the bill.

Sincerely yours,
ROBERT S. RANKIN.

Mr. ERVIN. Mr. President, I ask unanimous consent that a letter to me from Lionel H. Frankel, professor of law of the University of Utah, stating that the proposal for preventive detention flies

in the face of Anglo-American traditions of fairness and justice and is, as a practical matter, unlikely to afford any additional protection to the public, be printed in the RECORD at this point.

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

THE UNIVERSITY OF UTAH,
Salt Lake City, Utah, August 5, 1969.

Senator SAM J. ERVIN, Jr.,
Chairman, U.S. Senate, Committee on the Judiciary, Subcommittee on Constitutional Rights, Washington, D.C.

DEAR SENATOR ERVIN: My colleague, Professor John Flynn, allowed me to read your letter and enclosures to him concerning S. 2600. I very strongly agree with your position; the bill is unconstitutional, flies in the face of Anglo-American traditions of fairness and justice and is, as a practical matter, unlikely to afford any additional protection to the public.

As you pointed out in debate on July 16, 1969, the bill would be unworkable because of the impossibility, given the present state of knowledge, of predicting which defendants constitute a sufficient danger to justify preventive detention. The inherent unworkability of predictive detention has been demonstrated by Professor Caleb Foote in his article, "The Coming Constitutional Crisis in Bail," in 113 University of Pennsylvania Law Review, pages 959 and 1125 (1965) at pages 1169–1174. The point is also made by Livermore, Malmquest and Meehl in their article, "On the Justifications for Civil Commitment," in Vol. 117 University of Pennsylvania Law Review, page 75 (1968) at pages 84–85.

Given the unavoidable inaccuracies of detention on purely predictive grounds, any system of preventive detention adopted at the present time would require the detention of two or three harmless persons for every dangerous person detained. This is a price in the liberty of American citizens not convicted of crime which we should not and constitutionally may not pay.

Apart from the inherent weaknesses of prediction there are other practical factors which demonstrate that preventive detention will not protect the public. As you indicated in your speech, a major cause of preconviction recidivism is the long delay between arrest and trial caused by court congestion. Even if preventive detention were otherwise constitutional there would be a constitutional requirement for a full adversary hearing before detention could be imposed. This would require that counsel be provided the defendants and that they be furnished psychiatric and other expert assistance to defend against the claim that they were dangerous. The government would have to employ sufficient psychiatrists and other experts to make investigations and reports necessary for accurate determinations as to whether preventive detention should be imposed. All of this would involve great expense and impose a considerable burden on courts, judges, attorneys and expert witnesses. Thus, the adoption of a scheme of preventive detention would require a great increase in the legal resources available or would divert such resources from present judicial proceedings, thereby increasing court delay and aggravating rather than lessening the problem of preconviction recidivism.

I believe a partial answer to preconviction recidivism lies in providing more speedy trials with, perhaps, a right in the prosecution to move for a calendar preference in cases where the defendant is thought to be dangerous. Another approach would be the development of a defense probationary agency to supervise defendants pending trial. A defense attorney could work with such an agency to develop a pretrial supervision program to assure that his client avoided situations which might tempt him to crime pending trial. Defendants and their attorneys would have a considerable stake in the success of such a program of supervision since a defendant who had been successful in staying out of trouble while on pretrial defense probation would have a strong argument for probation or other leniency from the trial judge if he were later convicted of the crime with which he was charged. In addition, by developing a system of supervision and counseling prior to trial, it would be possible to initiate reformative supervision more promptly, thus breaking the chain of causal circumstances and motivation which may have lead to the first crime. By making such services optionally available to the defense, constitutional objectives could be avoided, and the defense could be brought into the rehabilitative and correctional process in a meaningful way at a time when the defendant's motivation to achieve rehabilitation may be at its greatest point, following arrest and before trial.

I must concede that this notion for pretrial defense probation is just an idea I have been toying with—it may or may not be workable, but I am convinced that preventive detention is not the answer; that it would not protect the public and would not lead to more effective correction of offenders. I am also convinced that there are more suitable means well within our constitutional system and the Anglo-American legal tradition which could be developed.

May I express my appreciation for your position with regard to S. 2600 and my willingness to assist in any way possible to defeat this unconstitutional and unwise proposal. Enclosed is a reprint of a recent article by me on the subject of preventive restraints.

Sincerely yours,

LIONEL H. FRANKEL,
Professor of Law.

CHICAGO BAR OPPOSES PREVENTIVE DETENTION

Mr. ERVIN. Mr. President, the Chicago Bar Association recently issued its study of the pretrial detention features of the District of Columbia omnibus crime bill. In opposing preventive detention, the association thoroughly considered some very relevant questions concerning both the constitutional problems and the unacceptable practical effects of such measures.

The study points out that the proposed pretrial detention legislation raises some very grave constitutional issues within the fifth and eighth amendments. While the study realizes that more than one interpretation of these amendments is certainly possible, it further concludes that the drastic measures embodied in the present preventive detention proposals violate any reasonable reading of the Constitution.

The Chicago Bar Association, however, chooses to base its opposition primarily upon other grounds. Principal objections are raised because of a vital need for a more carefully thought-out and factually supported program for improving the administration of criminal justice than is represented by these current legislative proposals. The association feels that detention would further aggravate the situation of court congestion, and a better solution is needed. That solution, as the study suggests, would be more solidly based in the area of expediting criminal justice through a guaranteed speedy trial.

I wholeheartedly agree with the Chicago Bar Association that a better solution than preventive detention is needed. I have recently introduced a "speedy trial bill" which would more fully meet the pressing problems at which pretrial detention is aimed. I ask unanimous consent that the text of this study be printed in the RECORD.

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

THE CHICAGO BAR ASSOCIATION,
Chicago, Ill., July 7, 1970.

Re S. 2600

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights of the Committee on the Judiciary, U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR ERVIN: Enclosed is a copy of a report of the Civil Rights Committee of this Association, which has been approved by the Board of Managers. The report expresses opposition to the provisions originally embodied in S. 2600 for pre-trial detention in criminal proceedings.

The objections to the bill stated in the enclosed report are so important to the administration of criminal justice throughout the country that we urgently request that serious consideration be given to the views expressed.

Very truly yours,

JAMES A. VELDE,
President.

REPORT OF CIVIL RIGHTS COMMITTEE ON VARIOUS PROPOSALS FOR PRE-TRIAL DETENTION EMBODIED IN PROPOSED AMENDMENTS TO THE BAIL REFORM ACT OF 1966 AND THE DISTRICT OF COLUMBIA OMNIBUS CRIME BILL

I. BACKGROUND

Of the many causes cited as contributing to the increase in crime, one which in recent months has been the subject of significant attention—the pre-trial release of criminal defendants—has risen to prominence principally as a result of legislative, rather than judicial, action.

The Bail Reform Act of 1966 enacted by the 89th Congress revised existing eligibility standards for the pre-trial release of defendants in non-capital cases. 18 U.S.C. §§ 3041, 3141–43, 3146–52, 3568 (Supp. III, 1968). The Act provides that any person charged with a non-capital crime shall be released on his personal recognizance or upon the execution of an unsecured appearance bond, unless it is determined that additional safeguards are required to assure the appearance of such a person, whereupon a judicial officer may impose any one or any combination of the following additional conditions:

(1) place the person in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after speci-

fied hours. 18 U.S.C. § 3146(a) (Supp. III, 1968).

Thus, the Act does not permit, in the making of such determination, consideration of possible risk the released defendant might represent to the community. The legislative history of the Act makes this point quite clearly:

"This legislation does not deal with the problem of the preventive detention of the accused because of the possibility that his liberty might endanger the public, either because of the possibility of the commission of further acts of violence by the accused during the pre-trial period, or because of the fact that he is at large might result in the intimidation of witnesses or the destruction of evidence. . . . Obviously, the problem of preventive detention is closely related to the problem of bail reform. A solution goes beyond the scope of the present proposal and involves many difficult and complex problems which require deep study and analysis. The present problem of reform of existing bail procedures demands an immediate solution. It should not be delayed by consideration of the question of preventive detention. Consequently, this legislation is limited to bail reform only." H.R. Rep. No. 1541, 89th Cong., 2d Sess. 18 (1966) (remarks of Congressman Celler).

With the opening of the present 91st Congress it became evident that there was a desire in both Houses to take a further look at the Bail Reform Act. Hearings held by the Subcommittee on Constitutional Rights of the Senate Judiciary Committee indicate that, while many members endorse the objectives of the Act, there is considerable sentiment for providing discretionary authority to judicial officers to consider factors other than likelihood of a defendant's appearing for trial in determining eligibility for release. This attitude was reflected in President's call on January 31, 1969 for legislation to permit pre-trial detention of defendants in non-capital cases whose pretrial release is considered dangerous to the community at large or to particular individuals. 27 Cong. Q. Weekly Rep. 238 (Feb. 7, 1969). Pursuant to the President's request, the Department of Justice sent the Senate a proposed amendment to the Bail Reform Act of 1966. This proposed amendment, S. 2600, was introduced by Sen. Roman L. Hruska, Neb., R., on July 11, 1969. Congressional Record, vol. 115, pt. 14, pp. 19259–19264.

S. 2600 would amend the Bail Reform Act for the purpose of reducing crime committed by persons released on bail. The principal features of the bill are:

1. Authority to consider danger to the community in setting conditions of pre-trial release;

2. Authority to deny pre-trial release for a sixty day period to specific categories of defendants who are found to be dangerous after an adversary hearing with appropriate procedural safeguards;

3. Authority to revoke pre-trial release and detain defendants who violate release conditions; and

4. Provision for mandatory additional terms of imprisonment to be served consecutively by persons found guilty of bail jumping or of committing an offense while on pre-trial release. Congressional Record, vol. 115, pt. 14, p. 19261.

This report is concerned solely with the most controversial of these provisions—namely those summarized in sub-paragraph 2 above, dealing with pre-trial detention for a period of sixty days. These provisions are also set forth in detail in Appendix A to this report.

The legislative history of these pre-trial detention provisions is further complicated by the following developments. On July 11, 1969, Sen. Hruska and others introduced S. 2601 for the Nixon Administration, proposing a reorganization of the courts of the District of Columbia. Congressional Record, vol. 115, pt. 14, p. 19259. S. 2601 passed the Senate within 70 days of its submission, on September 16, 1969. (See remarks by Sen. Ervin, 116 Cong. Rec. 8914 (March 24, 1970)). On March 19, 1970, the House of Representatives passed H.R. 16196, the "District of Columbia Omnibus Crime" bill, substituting this omnibus bill for the Senate text of S. 2601 and returning S. 2601 to the Senate with a request for a conference. 116 Cong. Rec. 8086–8221. H.R. 16196 includes preventive detention legislation; S. 2601 is entirely devoid of any reference to preventive detention. Moreover, the preventive detention measures contained in H.R. 16196 are identical to the principal features of S. 2600 previously summarized.

On March 24, 1970, the Senate amended S. 2601 as amended by the House, substituting bills previously passed by it and omitting all provisions for preventive detention; the Senate also requested a conference with the House on the disagreeing votes of the two Houses thereon, 116 Cong. Rec. 8975 (March 24, 1970). It is somewhat disturbing to observe that the senators who were most critical of preventive detention (such as Senator Sam Ervin of North Carolina) were not included among those appointed to represent the Senate on the Conference Committee.

II. CONSTITUTIONAL ISSUES

The question whether pre-trial detention of a defendant considered dangerous to the community at large or to particular individuals would be constitutional entails two separate issues: first, whether the "excessive bail" clause of the Eighth Amendment gives or implies an absolute right to bail, and makes its denial unconstitutional; and second, whether the due process clause of the Fifth Amendment prevents the imprisonment of a defendant on the basis of a prediction of future misconduct. Neither of these two issues has been decided by the Supreme Court.

The most recent consideration of the meaning of the Eighth Amendment is *Carlson* v. *Landon*, 342 U.S. 524 (1952), (5–4 decision). In an opinion by Mr. Justice Reed, the Court held that alien members of the Communist Party were not entitled to be released on bail, pending final determination of their deportability. Mr. Justice Reed said:

"The bail clause was lifted with slight changes from the English Bill of Rights Act. 1 Wm. & Mary II, ch. 2, § 1(10). In England that clause has never been thought to accord a right to bail in all cases, Petersdorff, on Bail, 483 et seq., but merely to provide that bail shall not be excessive in those cases where it is proper to grant bail. When this clause was carried over into our Bill of Rights, nothing was said that indicated any different concept. I Annals of Congress 753. The Eighth Amendment has not prevented Congress from defining the classes of cases in which bail shall be allowed in this country. Thus in criminal cases bail is not compulsory where the punishment may be death. I Stat. 91, § 33; Rules of Criminal Procedure, 46(a). Indeed, the very language of the Amendment fails to say all arrests must be bailable. We think, clearly, here that the Eighth Amendment does not require that bail be allowed under the circumstances of these cases." *Carlson* v. *Landon*, 342 U.S. at 545–546.

Although Justice Reed does not *explicitly* say, here, that the only properly bailable cases are those which Congress has defined as bailable, it should be observed that he did say that, "The Eighth Amendment has not prevented Congress from defining the classes of cases in which bail shall be allowed in this country." To illustrate this point, he observed that, "Thus in criminal cases bail is not compulsory where the punishment is death."[1]

Arguing in dissent in *Carlson*, Mr. Justice Black rejected the Court's interpretation of the Eighth Amendment, as expressed by Justice Reed, saying:

"As to (1): The Eighth Amendment is in the American Bill of Rights of 1789, not the English Bill of Rights of 1689. And it is well known that our Bill of Rights was written and adopted to guarantee Americans greater freedom than had been enjoyed by their ancestors who had been driven from Europe by persecution. As to (2): It is true bail has frequently been denied in this country 'when the punishment may be death.' I fail to see where the Court's analogy between deportation and the death penalty advances its argument unless it is also analogizing the offense of indoctrinating talk to the crime of first degree murder." *Carlson* v. *Landon*, p. 557.

The other three dissenting justices (Frankfurther, Douglas and Burton) did not join in Mr. Justice Black's dissent, but Mr. Justice Burton, besides joining in Mr. Justice Frankfurther's dissent, added "the suggestion that the Eighth Amendment lends support to the statutory interpretation he advocated. That Amendment clearly prohibits federal bail that is excessive in amount when seen in the light of all traditionally relevant circumstances. Likewise it must prohibit unreasonable denial of bail." (p. 569)

Stack v. *Boyle*, 342 U.S. 1, is another recent case which considers the meaning of the Eighth Amendment's "excessive bail" clause. In an opinion by Mr. Chief Justice Vinson, the Court held that the constitutional prohibition of excessive bail was violated when a District Court uniformly fixed an amount of $50,000 for each of twelve members of the Communist Party charged with conspiring to teach or advocate the overthrow of the government by force or violence. Speaking for the Court, Mr. Chief Justice Vinson said:

"From the passage of the Judiciary Act of 1789, 1 Stat. 73, 91, to the present Federal Rules of Criminal Procedure, Rule 46(a)(1), federal law has unequivocally provided that a person arrested for a non-capital offense *shall* be admitted to bail." p. 4.

"The right to release before trial is conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty." pp. 4–5.

"Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is 'excessive' under the Eighth Amendment." p. 5.

"Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant. The traditional standards as expressed in the Federal Rules of Criminal Procedure are to be applied in each case to each defendant." p. 5.

In a separate concurring opinion, Mr. Justice Jackson, with whom Mr. Justice Frankfurter joined, agreed with Chief Justice Vinson's understanding of the function of bail adding: "But the judge is not free to make the sky the limit because the Eighth Amendment to the Constitution says: 'Excessive bail shall not be required. . . .'" (p. 8)

Suffice it to say, then, that from the fore-

[1] The rule in point, here, is: (1) *Before Conviction.* A person arrested for an offense not punishable by death shall be admitted to bail. A person arrested for an offense punishable by death may be admitted to bail by any court or judge authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense. Federal Rules of Criminal Procedure, 46(a)(1).

going quotations there are basically two ways of reading the Eighth Amendment: (1) either as guaranteeing an absolute right to bail in non-capital criminal cases; or (2) as a guarantee to a reasonable sum of money calculated according to standards relevant to assuring the defendant will not flee the jurisdiction and based upon provisions of federal law as determined by Congress.

Professor Caleb Foote, in a historical study of the Eighth Amendment and its framers, argues that the right to bail was acknowledged as a primary right that had to exist in a large class of cases and that reference to excessive bail was merely one method of preventing any circumvention of this right. Foote, "The Coming Constitutional Crisis in Bail": I, 113 U. Pa. L. Rev. 959, 965–989 (1965). Foote builds a strong case explaining why the inadequate expression of this intent to have an absolute right to bail was the result of a historical accident. See too his testimony in *Hearings On Amendments To The Bail Reform Act Of 1966*, Before Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary, 91st Cong., 1st Sess., at 357 (1968). But with all due respect for Professor Foote's argument of historical accident, it is certainly true that an explanation of this historical event as an accident appears to be less than immune to attack. See *e.g.*, Mitchell, Bail Reform and the Constitutionality of Pre-trial Detention, 55 Va. L. Rev. 1223 (1969).

In short, the argument for the absolute right to bail interpretation of the Eighth Amendment rests on a shaky foundation. Federal law has always provided for the right to bail by statute; and the statutes have traditionally denied the absolute right to bail in capital cases. Moreover, it would not be taking liberties to deduce from Mr. Chief Justice Vinson's remarks in *Stack* v. *Boyle* that the purpose and function of bail is to assure the presence of the defendant at trial. If this is correct, then it may reasonably be argued that setting bail and the application of the Eighth Amendment to this procedure was not meant to apply to people considered so dangerous to the community that they ought not be released. Whether this would be a worthwhile argument to pursue or not, it is interesting to note that bail is generally discussed in terms of assuring the appearance of the accused for his trial and not in terms of protecting society from dangerous persons.[2] Even the rationale for denying bail in capital cases is based on the idea of assuring the appearance of the accused for his trial, since it is assumed that a man who knows that conviction could mean his life would attempt to flee the jurisdiction. If Congress, consistently with the Eighth Amendment, could enact the statutes which gave the right to bail in non-capital criminal cases and denied this right in capital cases, based upon the ostensible purpose of assuring that the accused would be brought to trial, Congress apparently, with equal consistency, could also pass a new statute denying the right to bail to persons because of predictions about their dangerousness to society.

Even assuming that preventive detention will survive an attack based on the Eighth Amendment, the due process issue must still be faced. Due process problems concerning the nature of the procedural system for administering preventive detention are exceedingly difficult. Aside from the obvious argument that preventive detention would violate due process *ex hypothesi*, since it would deprive the defendant of his liberty before a conviction, the outstanding fact is that we simply do not have available the predictive techniques that an acceptable system would require. As a result of this lack of technical proficiency, would there not be an inevitable tendency to over-detain? This emerged with particular clarity during the 1969 hearings of the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary. See especially testimony of Professor Dershowitz, Hearings on Amendments to Bail Reform Act, pp. 172–185. While it has been argued that the civil commitment of the mentally incompetent to stand trial, sexual psychopaths, narcotics addicts, chronic alcoholics, and the mentally ill provide analogous situations (see Mitchell, *supra* at pp. 1233–1234) the analogies are far from compelling. The essence of the problem is that comparable standards of judgment are unavailable in ordinary criminal cases, prior to full trial. Although some of the proposals for preventive detention try to minimize the dangers of abuse by specifically defining the offenses to which the procedure would be applicable, and by providing for some form of adversary, though summary, proceedings, they do not obviate the basic difficulty of lack of adequate knowledge and standards for judgment. Indeed the closer that the hearing on detention comes to a full trial, the more it accentuates the underlying evil of court congestion and delayed trials.

It has also been argued that pre-trial detention has in effect been authorized, without violation of due process, in the denial of bail in capital cases as well as in the setting of prohibitively high bail in non-capital cases. In response to this argument, it should be noted first that the denial of bail in capital cases is primarily to assure appearance at the trial rather than to prevent danger to the community; and second that setting of prohibitively high bail is an abuse of the bail process which has been increasingly frowned upon both by judicial decisions (*e.g.*, *Stack* v. *Boyle*, *supra*) and by the Bail Reform Act itself. Consequently it is doubtful that such arguments will be very persuasive in countering the due process objection.

III. CONCLUSION

Our opposition to the current proposals for pre-trial detention is not, however, based primarily upon constitutional objections, even though these are serious and might be conclusive. Rather it is based upon the need for a more carefully thought out and factually supported program for improving the administration of criminal justice than is represented by these current legislative proposals. Almost all the experienced and well-informed witnesses at the 1969 Hearings of the Subcommittee on Constitutional Rights agreed that the most fundamental step toward solving the problem of crimes committed by criminal defendants awaiting trial would be the substantial expediting of the processes of criminal justice. It was testimony such as this which convinced Senator Ervin that pre-trial detention, instead of contributing toward such a fundamental solution, might even aggravate the situation by increasing court congestion through the need for additional, adversary pre-trial hearings.

Finally, Senator Ervin was particularly disturbed by the lack of a basic factual study to support the administration proposals. As he said in the last Senate debate on the District of Columbia Omnibus Crime Bill:

"If there was one thing upon which all witnesses were agreed in the January 1969, hearings of the Constitutional Rights Subcommittee, it was that there was inadequate information upon which to judge the necessity for such a gross invasion of the Bill of Rights." 116 Cong. Rec. 8914–8917 (March 24, 1970).

This was especially surprising because a major scientific study was commissioned by the Law Enforcement Assistance Administration and conducted by the National Bureau of Standards to ascertain the amount of pre-trial crime committed, to develop reliable predictive devices, if possible, to support preventive detention, and to search out ways to prevent and control pre-trial crime short of preventive detention. This commissioned study was completed on March 31, 1970, and it is astonishing that the Department did not allow for its completion and utilize its conclusions so that any legislation on preventive detention could be considered objectively on its merits. Senator Ervin has suggested that the study "will refute much of the frantic rhetoric the Department has issued about the need for preventive detention". 116 Cong. Rec. 8914–8917 (March 24, 1970).

In the last analysis, however, the concept of due process must achieve a reasonable balance between essentially protections of the individual and the essential protection of society. In this balancing process, fundamental fairness requires that the less extreme remedies must be explored and tested before going on to the more extreme ones. This has not been done in the situation at hand. Attorney General Mitchell himself admits that alternative methods for dealing with the problem of crimes committed by persons released pending trial, such as speedier trials, better and more complete supervision of such released persons, and prompt revocation of the release in case of violation of such conditions, including of course, any subsequent offenses, have not been either extensively or effectively used. (See Mitchell, *op. cit. supra*, 55 Va. L. Rev. at 1242.) Whatever may be said with respect to the merits of such intermediate proposals, the case has certainly not been made out for proceeding immediately to so drastic a remedy as a pre-trial detention with all its concomittant evils, based on such elusive standards as are now being proposed.[3]

The problems we face in America, today, are exceedingly frustrating; but we must not allow frustration to lead us to extreme and costly overreactions which may undermine our way of life. As Chief Justice Burger has just reminded us.

"In periods of stress there are always some voices raised during that we suspend fundamental guarantees and take shortcuts as a matter of self-protection.

"But this is not our way of doing things short of a giant national emergency. * * *

"In those few periods of our history when we suspended basic guarantees of the individual in times of great national emergency we often found, in retrospect, that we had overreacted." (Speech to the American Law Institute, May 19, 1970, reported in Chicago Daily News, May 20, 1970.)

---

[2] This statement does not apply to bail after conviction and pending appeal.

[3] In this connection attention is called to the Report of the Advisory Committee on Pre-trial Proceedings of the American Bar Association Project on Minimum Standards for Criminal Justice, which states in its Introduction:

"After lengthy consideration, and not without misgivings by some members, the Committee proposes new and far-reaching methods of meeting the problem but stops short of recommending outright preventive detention. In essence, the standards provide for revocation of release where the defendant violates the conditions of his release. (Section 5.6 *infra*). If a released defendant is indicted or held to answer for a subsequent serious crime his release will be revoked. (Sections 5.6–5.8 *infra*). While these measures do not, of course, provide absolute protection against crime while on release, the present state of knowledge about the magnitude of the problem, the difficulties of predicting criminal behavior in the immediate future and the fact that measures short of detention have never been tested, persuade the Committee that outright preventive detention could not be proposed." Pp. 6–7.

APPENDIX A. PRETRIAL DETENTION PROVISIONS OF S. 2600

"§ 3146A. Pretrial detention in certain non-capital cases

"(a) Whenever a judicial officer determines that no condition or combination of conditions of release will reasonably assure the safety of any other person or the community, he may, subject to the provisions of this section, order pretrial detention of a person charged with:

"(1) a dangerous crime as defined in section 3152(3) of this title;

"(2) a crime of violence, as defined in section 3152(4) of this title, allegedly committed while on bail or other release, or probation, parole or mandatory release pending completion of a sentence, if the prior charge is a crime of violence, or if the person has been convicted of a crime of violence within the ten-year period immediately preceding the alleged commission of the present offense; or

"(3) an offense who, for the purpose of obstructing or attempting to obstruct justice, threatens, injures, intimidates, or attempts to threaten, injure, or intimidate any prospective witness or juror.

"(b) No person described in subsection (a) of this section shall be ordered detained unless the judicial officer—

"(1) holds a pretrial detention hearing in accordance with the provisions of subsection (c) of this section;

"(2) finds that—

"(A) there is clear and convincing evidence that the person is a person described in subsection (a) of this section;

"(B) based on the factors set out in subsection (b) of section 3146 of this title, there is no condition or combination of conditions of release, which will reasonably assure the safety of any other person or the community; and

"(C) except with respect to a person described in subparagraph (3) of subsection (a) of this section, on the basis of information presented to the judicial officer, there is a substantial probability that the person committed the offense for which he is present before the judicial officer; and

"(3) issues an order of detention accompanied by written findings of fact and the reasons for its entry.

"(c) The following procedures shall apply to pretrial detention hearings held pursuant to this section:

"(1) Whenever the person is before a judicial officer, the hearing may be initiated on oral motion of the United States attorney.

"(2) Whenever the person has been released pursuant to section 3146 of this title and it subsequently appears that such person may be subject to pretrial detention, the United States attorney may initiate a pretrial detention hearing by ex parte written motion. Upon such motion the judicial officer may issue a warrant for the arrest of the person and such person shall be brought before a judicial officer in the district where he is arrested. He shall then be transferred to the district in which his arrest was ordered for proceedings in accordance with this section.

"(3) The pretrial detention hearing shall be held immediately upon the person being brought before the judicial officer for such hearing unless the person or the United States attorney moves for a continuance. A continuance granted on motion of the person shall not exceed five calendar days, in the absence of extenuating circumstances. A continuance on motion of the United States attorney shall be granted upon good cause shown and shall not exceed three calendar days. The person may be detained pending the hearing.

"(4) The person shall be entitled to representation by counsel and shall be entitled to present information, to testify, and to present and cross-examine witnesses.

"(5) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

"(6) Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but such testimony shall be admissible in proceedings pursuant to sections 3150, 3150A, and 3150B of this title, in perjury proceedings, and as impeachment in any subsequent proceedings.

"(7) Appeals from orders of detention may be taken pursuant to section 3147 of this title.

"(d) The following shall be applicable to persons detained to this section;

"(1) To the extent practicable, the person shall be given an expedited trial.

"(2) Any person detained shall be treated in accordance with section 3146 of this title—

"(A) upon the expiration of sixty calendar days, unless the trial is in progress or the trial has been delayed at the request of the person; or

"(B) whenever a judicial officer finds that a subsequent event has eliminated the basis for such detention.

"(3) The person shall be deemed detained pursuant to section 3148 of this title if he is convicted.

"(e) The judicial officer may detain for a period not to exceed five calendar days a person who comes before him for a bail determination charged with any offense, if it appears that such person is presently on probation, parole, or mandatory release pending completion of sentence for any offense under State or Federal law and that such person may flee or pose a danger to any other person or the community if released. During the five-day period, the United States attorney or the Corporation Counsel for the District of Columbia shall notify the appropriate State or Federal probation or parole officials. If such officials fail or decline to take the person into custody during such period, the person shall be treated in accordance with section 3146 of this title, unless he is subject to detention pursuant to this section. If the person is subsequently convicted of the offense charged, he shall receive credit toward service of sentence for the time he was detained pursuant to this subsection."

Mr. ERVIN. Mr. President, I also ask unanimous consent that an editorial from the New York Times of March 30, 1970, entitled "D.C. Injustice Bill," also be printed at this point in the RECORD.

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

[From the New York Times, Mar. 30, 1970]

D.C. INJUSTICE BILL

The District of Columbia omnibus crime bill is a stalking-horse for similar legislation on the national level. If it is permitted to go through a House-Senate conference with its repressive features untouched, Congress will have set precedents that it will be sure to regret later on.

There are useful provisions in this lengthy bill, mainly concerning reorganization and consolidation of the District of Columbia courts. In addition, the Federal Government would assume a greater part of the financial burden of new public safety programs in the District.

The objectionable sections in the House version—following the tough line of the Department of Justice—contain broad wiretapping and "no-knock" search warrant authority, stringent requirements of adult trials for sixteen-year-olds and a change in the burden of proof in juvenile courts, mandatory sentencing and preventive detention. There is a section requiring a citizen suing for false arrest to pay the policeman's attorney—even if the citizen wins the case.

Senator Ervin of North Carolina succinctly describes the Administration-supported House bill as "repressive, nearsighted, intolerant, unfair and vindictive legislation." It contains probable violations of the First, Fourth, Fifth, Sixth and Eighth Amendments.

The District of Columbia crime bill is political legislation with a vengeance. It would inspire new disrespect for the law and seriously interfere with the major function of the courts, which is the administration of justice.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 16916) making appropriations for the Office of Education for the fiscal year ending June 30, 1971, and for other purposes; that the House receded from its disagreement to the amendment of the Senate numbered 9 to the bill and concurred therein; and that the House receded from its disagreement to the amendments of the Senate numbered 3 and 38 to the bill, and concurred therein, each with an amendment, in which it requested the concurrence of the Senate.

OPPOSITION TO COMPULSORY BUSING OF STUDENTS TO ACHIEVE RACIAL BALANCE

Mr. BYRD of Virginia. Mr. President, I strongly oppose the compulsory busing of students to achieve racial balance. I believe this practice is unfair to students and parents of all races.

The true mission of the schools should be quality education. It is time that we give more emphasis to the education of schoolchildren and less to sociological theory.

There is no logic in requiring students to be transferred many miles from their homes to achieve an artificial racial balance in the schools.

I have spoken against the practice of compulsory busing on many occasions, and I have voted in the Senate against permitting that practice.

At a recent committee hearing, I drew from the Under Secretary of Health, Education, and Welfare the admission that his Department has no legal authority to order compulsory busing for racial balance.

So deeply concerned am I over this problem that I am today sending a telegram to Attorney General Mitchell, asking that the Justice Department enter court cases on behalf of parents and pupils who are, or may be, adversely affected by decisions in these cases.

I have sent a similar telegrams to Secretary Richardson of the Department of Health, Education, and Welfare, asking that representatives of that Department be instructed that school districts are not to be compelled to institute busing to overcome racial imbalance.

Mr. President, I ask unanimous con-

sent that the text of my telegrams to the Attorney General and the Secretary of Health, Education, and Welfare be printed at this point in the RECORD.

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

JULY 16, 1970.

Hon. JOHN N. MITCHELL,
Attorney General, Department of Justice, Washington, D.C.:

The Civil Rights Act of 1964 specifically provides that there shall be no assignment of students to schools solely for the purpose of achieving racial balance.

Section 401 of the act defines "desegregation" and states that this term "shall not mean the assignment of students to public schools in order to overcome racial imbalance".

Spokesmen for the administration have stated on several occasions that the policy of the present administration is to honor this requirement of the law.

In February, a spokesman for the White House issued a statement saying: "The President has consistently opposed, and still opposes, compulsory busing of children to achieve racial balance."

During a hearing before the Senate Finance Committee, Mr. John Veneman, the Under Secretary of Health, Education and Welfare, stated in response to questions by me that HEW does not have the right to require school districts to order the busing of students to overcome racial imbalance.

In the light of these statements of policy and the hardship now being imposed on parents and students alike—of all races—I feel it is imperative that your Department take vigorous action to insure that section 401 of the Civil Rights Act of 1964 is upheld.

I urge that representatives of your department be instructed to enter court cases on behalf of parents and pupils who are or may be adversely affected by decisions in these cases.

The administration should take a firm stand against compulsory transfer of pupils to achieve an artificial racial balance by taking the initiative in pending court cases.

HARRY F. BYRD, Jr.,
U.S. Senator.

JULY 15, 1970.

Hon. ELLIOT L. RICHARDSON,
Secretary of the Department of Health, Education and Welfare, Washington, D.C.:

The Civil Rights Act of 1964 specifically provides that there shall be no assignment of students to schools solely for the purpose of achieving racial balance.

Section 401 of the act defines "desegregation" and states that this term "shall not mean the assignment of students to public schools in order to overcome racial imbalance."

Spokesmen for the administration have stated on several occasions that the policy of the present administration is to honor this requirement of the law.

In February, a spokesman for the White House issued a statement saying: "the President has consistently opposed, and still opposes, compulsory busing of children to achieve racial balance."

During a hearing before the Senate Finance Committee, Mr. John Veneman, the Under Secretary of Health, Education and Welfare, stated in response to questions by me that HEW does not have the right to require school districts to order the busing of students to overcome racial imbalance.

In the light of these statements of policy and the hardship now being imposed on parents and students alike—of all races—I feel it is imperative that your department take vigorous action to insure that Section 401 of the Civil Rights Act of 1964 is upheld.

I urge that all representatives of your department dealing with school desegregation cases be instructed that school districts are not to be compelled to institute busing to overcome racial imbalance.

The administration, I feel, is obligated to take a firm stand against compulsory transfer of pupils to achieve an artificial racial balance.

HARRY F. BYRD, Jr.,
U.S. Senator.

DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970

The Senate resumed the consideration of the report of the committee of 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.

Mr. TYDINGS. Mr. President, just a few comments on the remarks of the Senator from North Carolina and the Senator from New York.

The conference report on the District of Columbia crime bill must stand on its own merits. The broad characterization that the House was successful on the important issues means nothing. One must investigate item by item in any group of issues. With respect to the ones specified by the Senator from North Carolina (Mr. ERVIN) in his remarks before the District of Columbia Committee on the approximately 68 issues which he raised there as being objectionable in the House version, in the conference the Senate's position prevailed in 50 percent of these issues, the House's position in 32 percent, and the others were genuine compromises.

Take the statement of the managers on the part of the House. It will be seen that less than 30 percent of the House's positions remain.

On the no-knock issue the Senate prevailed, as it did on the money, Lorton Reformatory, almost all the mandatory provisions, on tests and experiments on persons, and on many others. But the fact is that the crime bill must stand on its own merits. It is a good proposal. If it can stand on its own merits, on what is in the bill, and not on the clouds of rhetoric going up in all directions, it will pass.

I might say that, despite the parliamentary devices which the Senator from North Carolina has prepared, he is only kidding himself and kidding Members of the Senate if he thinks any other crime measure with respect to the District of Columbia is going to pass in the 91st Congress.

With respect to the remarks of the Senator from New York, the specifics are what we are concerned with, not the generalities. We would have had the signatures of seven of the Senate conferees, including the three Senators who did not sign, had we not included pretrial detention. Pretrial detention is an arguable issue. Positions differ, but the Senate-House conference report is a good, sound measure.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BAKER. Mr. President, the debate on this conference report, both in the legislative halls and in the media, reminds me of the man who reported he did not think much of the "Mona Lisa" because there was a nick in the frame. With all the furor over one or two issues, we are in danger of losing sight of the scope and importance of this legislation.

This conference report represents a needed and significant judicial reform in the Nation's Capital. Some of it is uniquely adapted to this city but much of it presents a model for States and cities throughout the country.

This legislation establishes the first truly local court system in the District of Columbia's history. The peculiar mixture of both Federal and local business in the Federal courts is ended, and the Federal courts are freed to devote themselves entirely to Federal matters. The local courts are given full responsibilities for local cases and the manpower to meet these responsibilities. This constitutes a real breakthrough in court administration, in my judgment one of the most important though little publicized aspects of the report.

For the first time the District will have a true family court as a division of the new trial court. The family disintegration and social problems which plague this city as they plague every city can be met in the judicial process with a unified approach aimed at solution rather than a piecemeal processing of the individual in a vacuum. Those outbursts which are symptoms of family problems will be treated as such—not as crimes.

For the first time since this generation of parents was born, the juvenile code has been completely revised and modernized. The vagueness and inadequacy of the existing code is replaced with a comprehensive procedural code designed to protect the child, weed out the youthful criminal, and assure all the necessary flexibility to fashion a treatment and rehabilitation program for the individual child.

Within this basic framework of court reform are a number of related provisions which merit but never seem to receive the proper attention—the transfer to the local courts of the jurisdiction over admission to the local bar, the replacement of the obsolete coroner system with a modern medical examiner, elimination of the concurrent jurisdiction over local tax cases, resolution of some of the confusion surrounding the District of Columbia Administrative Procedure Act, a modern long-arm statute. This report contains more than court reform—it is a reform of the criminal justice system as well. The legal aid project which has long since proved its worth is graduated to a full public defender system. The Bail

Agency, which has not yet reached its full potential, is given expanded power and responsibility to aid and supervise those released while awaiting trial. The criminal procedure code, most of which dates from 1901, is revised and codified.

For the most part, the average newspaper reader is led to believe that this criminal procedure code is all that is contained in the conference report and that it consists solely of three provisions—the so-called no-knock section, pretrial detention, and wiretapping. While it is these provisions that have generated the debate, I believe it is most important that this body consider also the many other provisions relating to criminal procedure in the conference report.

The new criminal procedure code gathers in one title of the District of Columbia Code the statutory provisions scattered throughout the code and fills in the gaps now covered by case law. For the first time it details procedures to be followed when prior convictions leading to increased penalties are to be brought before the court. Without jeopardizing the rights of the accused, it permits appellate resolution of motions to suppress evidence.

In view of the many urgently needed measures in this conference report, I intend to give it my support. To reject the conference report would, in my judgment, result in another year of increasing crime and frustration for the people of the Nation's Capital. I, therefore, urge its adoption.

Mr. KENNEDY. Mr. President, at increasingly regular intervals, the U.S. Senate is called upon to be the conscience of the country, to reassert the Nation's confidence in our Constitution, to prevent the American people from being fooled, or fooling themselves.

Today we are again presented with that challenge and that opportunity. We are told that the question before us is whether we wish to put a stop to crime. But that is not the question at all. Every one of us wants to stop crime, and we will take every appropriate step to do so. The real question today is whether we want to put a stop to the great crime hoax which is being put over on our citizens, the rash promises and rhetoric and irresponsible propaganda that misleads the Nation into believing that there are easy answers to the crime problem, that we can end crime on the streets tomorrow—"if only."

In 1968 it was "we can end crime if only we get a new Attorney General." And so we got a new Attorney General, but murders in the Nation went up twice as fast as they did under the previous Attorney General. We were told crime would end if only we could get a new Chief Justice. And we got a new Chief Justice. But burglaries rose three times as fast as they did under the old Chief Justice. And now we in Congress are the scapegoats. Crime can be stopped, they say, if only Congress passes new laws to dilute the Constitution and shortcircuit the traditions of justice and liberty that have kept us free and strong.

But, of course, once again, the fact is that the promises are empty. Even if every one of the objectionable bills and parts of bills before the Congress is passed, no American will be any safer on the streets or in his shop or at home.

For the fact is that Attorneys General, and Chief Justices, and congressional enactments tampering with court procedures, have very little to do with burglaries and murders and robberies. And the fact is that there are no easy answers. No one bill, no five bills, no 13 bills, are the answer to crime. And anyone who claims that they are is perpetrating a cruel fraud on the public.

What makes this deception even crueler is the fact that it distracts attention from the serious defects in the operations of the Federal anticrime programs which do hold some potential for crime control. The past 18 months have been disastrous for the most promising Federal anticrime programs. The Law Enforcement Assistance Admistration established under the Safe Streets Act is in such such poor shape administratively that Congress has been asked for less than half of the funds which we were probably prepared to offer.

Under the administration request we would have been investing $2.50 less on crime control for every man, woman, and child in America, than we could be investing. I am confident that we will decide to make full investment, but to do so will have to bypass the operational nightmare that has been created downtown. Equally sad the plight of the National Institute of Law Enforcement and Criminal Justice, a tool for the future which held out hope for new answers to old problems, but which has been weakened by lack of executive support and by the turmoil in the Law Enforcement Assistance Administration. Similarly, the juvenile delinquency program went for over a year without a director, and it is in such pitiful shape that it has requested only one-fourth of its authorized funds. And such programs as the Narcotics Addict Rehabilitation Act have been allowed to lie fallow and deteriorate.

These are scandals of the first order. These are truly missed opportunities for a Federal contribution to crime control. These are performance gaps which deserve the attention of the Congress, and the press, and the public.

Yet these have been lost in a smokescreen of rhetoric about the great golden pot of crime control at the end of the legislative rainbow. Rather than worrying about how to make the programs we already have work, the bright lawyers downtown have been spending their time devising and promoting new laws that cannot possibly work. Today we consider the granddaddy of them all, the amalgam of the worst parts of all the other bills, the Christmas tree long dreamed of by the laziest prosecutors, the wastebasket for judicially rejected investigative and prosecutive mistakes and misjudgments of the past decade, the much heralded, and little read, District of Columbia crime bill.

We can get some insights into the nature of the bill, and the attitudes of those who drafted it, from the table of contents which opens the conference report. One looks in vain through its 3 pages and 78 sections for the words "no-knock," or "preventive detention"; or "wiretapping," or anything like them. They appear nowhere in this guide to the bill. Instead there is a cryptic reference to "Codification of Title 23 of District of Columbia Code," without even a hint as to what title 23 is all about. Was this an effort to hide the most controversial provisions? Were the sponsors so ashamed of them that they did not want them easily found? I do not know. But I do know that once they are exposed to the light of day and of public debate, once the Senate understands what they mean, how little they promise, and how dangerous they are, and once we find and ventilate the dozens of other hidden provisions which are equally destructive of our criminal justice system, the Senate will reject the Conference version of the District crime bill and opt for one of the substitute versions which have been introduced.

In fact I doubt that any of us in the Senate, or even more than a handful of lawyers outside the Senate knows precisely all of the ways in which these 200-odd pages of legislation would change present law. The conference report tries to explain those 200 pages in only 20 pages. Moreover, it itemizes only the differences between the House bill and the conference bill, and contains no explanation or justification for the differences between the Senate bill and the conference bill. Nor do we have anywhere a detailed presentation in the usual form of the precise differences between the proposed enactment and existing law. In view of the myriad changes in well established law in this District which the bill entails, I think such a presentation is necessary for intelligent debate, and I hope the managers of the bill will prepare and distribute it.

Mr. President, it is my understanding that this explanation was placed on the desk of each Senator within the last hour or so, and that it will provide at least some description and explanation.

For, what I have heard and read in the 24 hours since the text of the bill became available to us, convinces me that, while there is substantial doubt whether this bill can have any beneficial effect on the crime rate, there can be no doubt that our courts will be clogged up for years unraveling its mysteries and undoing its mischief. Rules of law and procedures which have become settled during years of detailed litigation are arbitrarily overturned, in many cases without there having been any attempt at public justification, or any adequate public or professional discussion and debate. The judicial economies in the court reorganization may thus be totally dissipated as judges are burdened with learning, applying, testing, and in many instances overturning the dozens of minor harassing provisions incorporated in the bill, apart from the serious questions which will be raised under the major controversial provisions.

Of course, however, it is these provisions that are most disturbing. They treat the District of Columbia like a conquered colony. They threaten to create an atmosphere of division and hatred

at a time when the community is beginning to achieve some cohesiveness. They threaten to bring the police into distrust and disrepute at a time when the police are beginning to be, and to be respected as, professionals who share community interests.

The pretrial imprisonment provision is probably unconstitutional to begin with. It not only reverses our basic tradition that an accused person is presumed innocent until proven guilty, but it convicts and punishes him for a hypothetical future act which has not even occurred. Even if its words could pass constitutional muster, in practice it would be doomed to failure. For if it is passed, it will invite abuse, and only if it is abused, only if very large numbers of defendants are imprisoned before they are tried, can it conceivably work. The facts before Senator ERVIN'S Judiciary Subcommittee, where this legislation is under the thorough and proper kind of consideration it deserves, demonstrates clearly that the device cannot work to prevent, or postpone, even the minutest amount of crime, unless many accused citizens are kept in jail who do not in fact deserve to be kept in jail. Our proper course in this field is to wait for the Judiciary Committee to complete its detailed assessment of this proposal.

The no-knock situation has become almost a joke. The conference report claims that the bill merely enacts current law. Yet the U.S. attorney in the District of Columbia, and other officials, claim that they cannot now do what the new law will permit them to do, unless the new law is passed. If those who favor the provision cannot get straight among themselves what it does, then I do not think it is ripe for enactment. My reading of the provisions is that it vastly loosens the standards and circumstances for no-knock searches. My fear is that while it may possibly bring about the arrest of a few more bookies or kids smoking pot, that marginal benefit will be at the expense of bloody gun battles and dead policemen and injured innocent citizens. My plea to the Senate is that we reject this kind of lopsided bargain.

As for the wiretap section, I think it raises the most serious technical questions and deserves the most careful scrutiny and analysis in the coming weeks of debate. But for now, I can only point out that this city is already a place where very many innocent people live in constant fear that they are tapped or bugged. For the full force of Federal electronic surveillance is available here to dozens of agencies, whether upon court order in criminal cases, or in the sole discretion of the Attorney General when he feels there is a national security justification. To feed that fear by creating a whole new class of those who may tap and bug, a whole new group of authorizing judges, and a whole new range of justifications for tapping and bugging is to make a hollow shell of liberty and privacy in the city which is the very symbol and center of our constitutional democracy.

Let me stress again that the vote on this conference report will not be a vote for or against crime in the District. The bill before us is not the only alternative. It is one approach. It is basically the House approach. It contains major provisions which a majority of the Senate conference committee is on record against. It is an approach which has engendered opposition from every segment of the community and from leading professional groups elsewhere as well.

There are alternatives, and if we decide against the conference report we can easily adopt one of the alternatives. The chairman of the Senate District Committee has himself written to each of us that, and I quote,

> Court reform is both the heart and the overwhelming bulk of this bill.

If this is so, and if the court reform provision is as constructive as its sponsors assert, then I say pass court reform; pass it now; do not let it be held hostage; do not pay ransom for it. It is ours to pass anytime we wish. We can do so right now, next week, or after we reject the conference report. That is our choice and our power. And that is the only course which meets our duty to the District, to the Nation, and to our own consciences.

Mr. TYDINGS. Mr. President, before the Senator leaves, just for the record, a copy of the draft Senate statement of managers was sent to each Senator's office on Monday night. I hope the Senator will read it. The no-knock version in the conference report is the version which passed the Senate without a dissenting vote. With respect to pretrial detention issue the Senator referred to, we had hearings on it in the District of Columbia Committee last year, in which we had testimony from the third-ranking judicial figure in Great Britain, Lord Denning, Master of the Rolls, former Secretary to the Lord Chancellor Sir George Coldstream, and the Chief Magistrate of the British magistracy, to explain that for some 200 years the issue of dangerousness with respect to the release of a person accused of a crime had been met head on, and the judge had the absolute right to detain until trial a person who he felt would be dangerous if released to the community.

I think the Senator knows that throughout the Nation today, we cloak pretrial detention in the hypocrisy of high bail, that every judge considers dangerousness to the community, and that when he determines not to release an individual, he may set very high bail which the person cannot raise.

What we have offered is basic to the British system, but with much more narrow restrictions—not nearly so broad as theirs—with reference to an adversary hearing, the right of representation by counsel, the right of appeal. If the judge finds serious dangerousness in narrowly prescribed cases, in order to provide for the protection of the community, he may detain the defendant for up to 60 days. The trial must begin within 60 days, however.

The wiretap provision is essentially the Senate version, approximately as it passed the Senate, again without a dissenting vote. It provides a great many protections which the present title III of the 1968 Omnibus Crime and Safe Streets Act does not have. It makes it a felony to intercept any telephone conversation or any conversation electronically without court authorization or approval. Under title III we have to prove interstate commerce. It makes it illegal in the District of Columbia to sell, manufacture, or possess electronic eavesdropping devices. It sets up a special category of protected communications between the attorney and his client, the cleric and his flock, the doctor and his patient, the husband and his wife, with respect to court orders which permit interception of wires, which is not present in the existing law. It provides, in short, for a number of safeguards which are not present in existing law today. It eliminates the so-called national security wiretap for police officers in the District of Columbia.

I would hope that my colleague, as I asked when I sent the Senate statement of the managers to each Senator, will read the statement and the conference report.

Mr. BAYH. Mr. President, will the Senator from Maryland yield?

Mr. TYDINGS. I yield.

Mr. BAYH. As I stated earlier, I have nothing but the highest respect for my good colleague from Maryland, and I do not in any way envy him the arduous turmoil that he has been subjected to in this conference.

Mr. President, I rise to express my opposition to the conference report on the District of Columbia crime bill.

In many ways, the bill is a laudable and necessary step in the fight against crime in the District of Columbia. I am sure every Member of this body wants to do his part in reducing the incidence of crime in the District. I support wholeheartedly many portions of the bill as it is now before us. And I commend our conferees, particularly Senator TYDINGS, for his successful efforts over the past few months, efforts which have resulted in the elimination of some of the most repressive features of the bill passed by the House.

In particular, I wholeheartedly endorse the court reorganization section of the bill. The statement of the Senate managers fully explains those provisions and points out the advantages of creating a new and strengthened court system for the District. Likewise, there is a desperate need for the public defender service which the conference bill would establish. A more vigorous and extensive program of defense for the indigent is essential if we are truely to provide "equal justice under law."

Many of the criminal law and procedure sections of the report also deserve the strong support of this body.

However, despite the pressing need of the District for these improvements, I am unable to support the conference bill as it now stands. Before I explain by opposition, let me make clear that there is a viable alternative to passage of the conference bill in its present form. Along with Senator ERVIN and eight other Senators, I have introduced legislation which encompasses virtually all of the confer-

ence bill. We have only eliminated those provisions of the bill which we considered totally inconsistent with modern concepts of criminology and penology, and those provisions which we felt to be unconstitutional. Furthermore, in nearly all the cases in which we felt it necessary to depart from conference language we introduced similar provisions from bills passed recently by the Senate.

Thus, there is a realistic alternative to accepting this unwise conference bill. The alternative will not result in any further delay in attaching the very real problems of crime in the District of Columbia. Indeed, we intend to press for Senate action on this measure immediately following our defeat of the conference bill. I urge every one of my colleagues to consider this realistic alternative to the "all or nothing" proposal which the House has presented us with. We need not—we must not—sacrifice individual rights and liberties in order to reverse the alarming rate of crime.

I will mention only briefly the three major provisions which compel me to vote against the conference bill: Preventive detention, no-knock searches and arrests, and wiretapping. These are the three major sections which we have eliminated altogether in the alternative proposal. I have previously spoken out against the proposal to establish a program of preventive detention. If we accept the conference report, a judge would be empowered to detain a suspect arrested for a dangerous or violent crime for up to 60 days prior to trial. My objections to this proposal are twofold. Preventive detention at least raises serious constitutional questions when considered in the light of the eighth amendment's guarantee of "reasonable bail," the sixth amendment's guarantees of "access to counsel and the opportunity to participate in the preparation of a defense," and the fifth amendment's requirement of "due process."

It is, of course, quite possible that a very limited form of preventive detention, drafted with careful attention to the real dangers of crimes committed while on bail, might pass constitutional muster. But this is not a limited form of preventive detention. It authorizes detention of almost any criminals, as long as the Government makes a pro forma certification. Indeed, it could include a purse snatcher with no prior criminal record, if he allegedly used force, or the threat of force. No bill with such far-reaching and dangerous consequences should be considered by the Senate until we have had full hearings, committee action, and a chance for debate.

None of the studies which have been done on preventive detention have been able to come up with objective factors which allow anyone to predict which defendants will commit crime while on bail. There simply is no evidence that we can successfully separate, before trial, those who will commit crime on bail from those who will not. That should come as no surprise—we have never contended that we could separate the guilty defendants from the innocent, before trial.

Furthermore, in discussing preventive detention, we should not be misled into equating those rearrested while on bail with those who commit crime while on bail. According to the study done by the National Bureau of Standards, fully 52 percent of those rearrested while on bail were eventually acquitted.

I have pointed out before, and I do so again today, that there is only one answer to the problem of crime committed while awaiting trial. The solution does not lie in confining the innocent and the guilty together in our overcrowded prisons. James V. Bennett, who was director of the Bureau of Prisons for 27 years, recently testified against the administration's "preventive detention" legislation and described Federal jails in the following manner:

> Most of these institutions are madhouses . . . once a boy or a man has been committed to jail for any reason—guilty or innocent—there is at least a 60 percent chance he will go out to become part of the unwanted, the rejected, the unemployable, with no alternative but to resort to crime or join the anti-social subculture.

The only meaningful answer to crime committed while awaiting trial is to guarantee every defendant a speedy trial and final judicial determination. That is why I have joined with the Senator from North Carolina and others in sponsoring S. 3936, which would provide meaningful reform in this area. That is the kind of measure this administration should be introducing.

The conferees have also adopted in essence the no-knock provisions proposed by the House. One of our most sacred rights is the right to be secure in the privacy of our homes. This right, protected by the fourth amendment, is placed in grave jeopardy by the no-knock provision. The conference bill would authorize a policeman, or any person aiding a policeman, to break and enter, even in the nighttime under some circumstances, without any announcement of identity or purpose, when making either arrests or searches. The bill allows such no-knock entry if there is probable cause to believe the evidence is likely to be destroyed, or if such notice would be a "useless gesture," whatever that means.

This no-knock provision has already inflamed popular opinion in the District of Columbia. It creates the danger of violent attacks on police officers by innocent homeowners defending their residences against unwarranted intrusions. That is too great a price to pay.

The Senate conferees have made much of the bill's use of prior judicial approval as a supposed safeguard against abuse of this offensive tactic. But the bill's language only requires prior approval if a warrant was, in fact, sought, and if the individual applying for the warrant personally knew at the time of the application about the circumstances supposedly justifying the no-knock entry. But arrest warrants need not be sought. And even if one is sought, the legality of the entry is related to the personal knowledge of the officer. So this judicial safeguard is, in fact, pitifully little protection.

No-knock has been defended by the conferees as a codification of existing law. At the same time the conferees tell us that the language is neutral, susceptible to the interpretation of the House conferees that no-knock is justifiable in every narcotics or gambling raid. I do not think that such an interpretation by any stretch of the imagination is a codification of existing law. If it is merely a codification, it is useless; if not, it is unconstitutional. In either case it should be rejected.

Our fourth amendment freedoms are further endangered by those sections of the conference bill dealing with wiretapping. At best these provisions are unnecessary, since the FBI already has the power to execute wiretaps in the District. To my mind these provisions may violate the Supreme Court's ruling in Katz against United States.

Our alternative bills also make other improvements. In the interests of brevity I pass over those provisions.

Mr. President, I wish to reiterate that a vote against the conference report is not a vote to delay further a solution to the grave problems of crime in the District of Columbia. It is a vote to reject unwise and unconstitutional encroachments upon individual liberties. It is a vote to stand up for careful and effective legislation aimed at the problems and not the public eye. Only when the conference bill is defeated can the Senate pass the court reform package, and proceed to enact the criminal law reform package, with a chance for reasoned debate on the merits of these difficult issues.

There is a great deal about the conference report that I support. There are two or three items covered by the distinguished Senator from Massachusetts a moment ago that concern me deeply. I have discussed them with my friend the Senator from Maryland and hope to have a chance to discuss them further with him.

The reference he made in the conference report to the no-knock provision might be interpreted to suggest that there was unanimity among the conferees that the bill maintains the effect of the Senate language.

Is it fair to suggest that the House conferees interpret that provision differently than the Senator from Maryand?

Mr. TYDINGS. We were concerned with that in the conference. So, before we concluded the conference, contrary to normal procedure, we had to try and agree on the House statement of the managers with reference to no-knock. So we have both a statement on the part of the managers of the House as well as a statement of the managers on the part of the Senate, binding the House much in the way that we bind ourselves in this debate.

We insisted on certain major aspects of that statement of the managers of the House, just as though it was an important statutory part of the report.

Mr. BAYH. I think the Senator from Maryland realizes what I am driving at. As I recall his statement in yesterday's CONGRESSIONAL RECORD, he said that the issue was resolved in favor of neutral

language adaptable to either the House or the Senate interpretation. What concerned me, as one concerned about the whole no-knock provision, is that if I were a judge and trying to determine exactly what the congressional intent was in passing this measure—if we do indeed pass it—would I be accurate in looking at the Senate provision or would I be accurate in referring to the remarks made earlier in the House?

Mr. TYDINGS. The answer is both.

Let me read it so that there can be no possibility that the House statement of the managers would be considered to be basically different from the statement of Senate managers.

This is an issue which was fought out in actual conference before the conference was agreed to. This is an item that had to be agreed to by us before we had a conference bill. Let me read from page 236:

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.

Now, let me turn to page 28 of the statement of the Senate managers. At the bottom of the page it reads:

Fifthly, the Senate conferees did not recede from their original position that only particular facts, bearing upon any given particular case, may serve as grounds for "no-knocking." The House conferees urged to the contrary that particular facts are unnecessary; they urged, for example, that "no-knocking" would be appropriate in nearly all narcotics or gambling cases, based on the destructibility of the evidence usually involved. The issue was resolved in favor of neutral language, adaptable to either the House or the Senate interpretation; but with the limitation of specific reference to the *Ker* case.

Then if we turn to the last paragraph of the House statement of the managers, we will see on page 237 the following:

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).

Then going back to the statement of the Senate conferees at the bottom of page 28, it reads:

Just as the Senate conferees are of the view that the particularity requirement is affirmed in *Ker* and rooted in the Constitution, in like manner the Senate conferees contemplate implicit incorporation of the requirement in the S. 2601 provision.

The point I make is that we anticipated that there would be the possibility in the House statement of the managers of different versions. We spelled it out.

Mr. BAYH. Mr. President, as we write this legislative history, I am still concerned that it will not be as clear as my friend the Senator from Maryland thinks it will be.

The Senator from Maryland, as I interpret his remarks, feels that the particularity of the facts and circumstances surrounding a case should be considered in the application of the no-knock. Is that an accurate statement?

Mr. TYDINGS. Mr. President, that is correct. But if there is any question on the interpretation of the no-knock provision there, the binding law is Ker against California. The House managers say so. And we say so.

Mr. BAYH. But as I recall—and the Senator from Maryland can correct me if I am wrong—the way the House conferees interpret the Ker case, the House conferees feel that any drug or gambling case comes within the provisions of the conference bill. But in the Ker case there were particular facts involved that met the test that the Senator from Maryland feels should be adhered to.

Mr. TYDINGS. That is why we required the House to write into the statement of the managers that the Ker case is controlling. That is the law of the land. We did not want any question about it. We required as a condition precedent to agreeing to the bill that that language be written into the House statement of the managers so that the Ker decision is controlling. The language of that decision is controlling.

Mr. BAYH. Mr. President, I would rest a lot more easily if the House managers interpreted the Ker case in the same manner the Senator from Maryland interprets it. The way I interpret the Ker case and the way the Senator from Maryland interprets it are identical.

Mr. TYDINGS. Mr. President, the interpretation of the Ker case will be done by a court. The House managers stated it is controlling. The Senate managers stated that the Ker case is controlling.

Any court passing on it will have to say that the Ker case is controlling. It is up to the court to pass on what it held. In my judgment it is clear as to what it held. And I think that the U.S. Court of Appeals in the District of Columbia will construe the Ker case in the way the Senate intends. We spelled it out. It is in there.

Mr. BAYH. Mr. President, I hope the Senator is right when he talks about neutral language. I think the Senator did as well as one could possibly do in trying to reconcile the differences between the House and Senate on this matter.

I wonder if there is any possibility at all of avoiding ambiguity when the two bodies are as far apart as they were.

I salute the Senator from Maryland for what he has done. I hope that he is right. But I must say that I do not think he is.

Mr. TYDINGS. Mr. President, the House position is the same. One fact that we have to realize is that conflicting language in the original House report is not in the conference bill.

ORDER FOR RECOGNITION OF SENATOR MUSKIE TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on tomorrow morning, following the disposition of the reading of the Journal, the able junior Senator from Maine (Mr. MUSKIE) be recognized for not to exceed 30 minutes.

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

ORDER FOR ADJOURNMENT FROM TOMORROW TO MONDAY, JULY 20, 1970, AT 11 A.M.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand adjourned until 11 o'clock Monday morning next.

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

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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 TO 11 A.M. TOMORROW

Mr. KENNEDY. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 11 o'clock tomorrow morning.

The motion was agreed to; and (at 5 o'clock and 21 minutes p.m.) the Senate adjourned until tomorrow, Friday, July 17, 1970, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate July 16, 1970:

IN THE NAVY

Having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, Rear Adm. Fred G. Bennett, U.S. Navy, for appointment to the grade of vice admiral while so serving.

Rear Adm. Dick H. Guinn, U.S. Navy, for appointment as Chief of Naval Personnel for a term of 4 years pursuant to title 10, United States Code, section 5141.

Having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, Rear Adm. Dick H. Guinn, U.S. Navy, for appointment to the grade of vice admiral while so serving.

Having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, Rear Adm. Ralph Weymouth, U.S. Navy, for appointment to the grade of vice admiral while so serving.

Having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, Vice Adm. Ralph W. Cousins, U.S. Navy, for appointment to the grade of admiral while so serving.

Having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, Read Adm. Gerald E. Miller, U.S. Navy, for appointment to the grade of vice admiral while so serving.