By Mr. FOLEY:
H.R. 18528. A bill to amend section 4182 of the Internal Revenue Code of 1954; to the Committee on Ways and Means.
By Mr. FOREMAN:
H.R. 18529. A bill to repeal certain laws relating to Indians; to the Committee on Interior and Insular Affairs.
By Mr. FUQUA:
H.R. 18530. A bill to amend the Agricultural Adjustment Act of 1938 to authorize the sale of tobacco acreage allotments under certain conditions; to the Committee on Agriculture.
By Mr. HAGAN:
H.R. 18531. A bill to authorize the Secretary of Commerce to transfer surplus Liberty ships to States for use in marine life conservation and fishery programs; to the Committee on Merchant Marine and Fisheries.
By Mr. HECHLER of West Virginia:
H.R. 18532. A bill to end conscription under the Military Selective Service Act of 1967, to provide increased military pay and other benefits necessary to effect a voluntary system of meeting the military manpower requirements of the United States, and for other purposes; to the Committee on Armed Services.
By Mr. MESKILL:
H.R. 18533. A bill to establish an Intergovernmental Commission on Long Island Sound; to the Committee on Interior and Insular Affairs.
By Mr. MILLER of Ohio:
H.R. 18534. A bill to amend the National Environmental Policy Act of 1969 to provide a program for honoring industry and other private efforts to contribute to the maintenance and enhancement of environmental quality; to the Commission on Merchant Marine and Fisheries.
By Mr. RIVERS:
H.R. 18535. A bill to amend title 10, United States Code, to authorize the Secretary of a military department to adjust the legislative jurisdiction exercised by the United States over lands or interests under his control; to the Committee on Armed Services.
By Mr. STUBBLEFIELD:
H.R. 18536. A bill to amend appropriate section of Omnibus Rivers and Harbors bill with respect to western Kentucky tributaries, Kentucky; to the Committee on Public Works.
By Mr. VANIK:
H.R. 18537. A bill to amend section 7275 of the Internal Revenue Code of 1954 (as added by the Airport and Airway Revenue Act of 1970) to require that airline tickets, with respect to the transportation of persons by air which is subject to Federal tax, show the amount of such tax separately from the cost of the transportation involved; to the Committee on Ways and Means.
By Mr. WATSON:
H.R. 18538. A bill to amend title IV of the Higher Education Act of 1965 to establish a Student Loan Marketing Association; to the Committee on Education and Labor.
By Mr. BINGHAM:
H.R. 18539. A bill to limit the authority of the President of the United States to intervene abroad or to make war without the express consent of the Congress; to the Committee on Foreign Affairs.
By Mr. HOWARD:
H.R. 18540. A bill to permit actions against the United States for damage to the good name and reputation of members of the Armed Forces wrongfully charged with committing certain crimes against civilians in combat zones, and for other purposes; to the Committee on the Judiciary.
By Mr. ROYBAL:
H.R. 18541. A bill to authorize the coinage of 50-cent pieces to commemorate the Apollo Moon Landing and to assist in the construction of the National Air and Space Museum; to the Committee on Banking and Currency.
By Mr. CHARLES H. WILSON (by request):
H.R. 18542. A bill to amend the Federal Property and Administrative Services Act of 1949 in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government; to the Committee on Government Operations.
By Mr. GERALD R. FORD:
H.J. Res. 1312. Joint resolution proposing an amendment to the Constitution of the United States extending the right to vote to citizens 18 years of age or older; to the mittee on the Judiciary.
By Mr. KLEPPE:
H.J. Res. 1313. Joint resolution proposing an amendment to the Constitution of the United States extending the right to vote citizens 18 years of age or older; to the Committee on the Judiciary.
By Mrs. MAY:
H.J. Res. 1314. Joint resolution proposing an amendment to the Constitution of the United States extending the right to vote to citizens 18 years of age or older; to the Committee on the Judiciary.
By Mr. MILLER of Ohio:
H.J. Res. 1315. Joint resolution proposing an amendment to the Constitution of the United States extending the right to vote to citizens 19 years of age or older; to the Committee on the Judiciary.
By Mr. RHODES:
H.J. Res. 1316. Joint resolution proposing an amendment to the Constitution of the United States extending the right to vote to citizens 18 years of age or older; to the Committee on the Judiciary.
By Mr. WYATT:
H.J. Res. 1317. Joint resolution proposing and amendment to the Constitution of the United States relative to equal rights for men and women; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. ANNUNZIO:
H.R. 18543. A bill for the relief of Mrs. Waclawa Tosta; to the Committee on the Judiciary.
By Mr. VANIK:
H.R. 18544. A bill for the relief of Dulcie Beatrice Morgan; to the Committee on the Judiciary.
By Mr. WYATT:
H.R. 18545. A bill for the relief of Clyde W. Deal; to the Committee on the Judiciary.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

425. By the SPEAKER: A memorial of the House of Representatives of the Commonwealth of Massachusetts, relative to an international conference to discuss the exploitation of fishery resources in international waters adjacent to the Atlantic shoreline; to the Committee on Foreign Affairs.
426. Also, a memorial of the Legislature of the State of California, relative to a national wildlife refuge for South San Francisco Bay; to the Committee on Merchant Marine and Fisheries.
427. Also, a memorial of the House of Representatives of the Commonwealth of Massachusetts, relative to reimposition of the excess profits tax; to the Committee on Ways and Means.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

547. By the SPEAKER: Petition of the 182d General Assembly, United Presbyterian Church in the United States of America, relative to equal rights for men and women; to the Committee on the Judiciary.
548. Also, petition of the Association for Grand Jury Action, Inc., Rochester, N.Y., relative to impeachment proceedings; to the Committee on the Judiciary.
549. Also, petition of Andrew Huggins, Avon Park, Fla., relative to redress of grievances; to the Committee on the Judiciary.

SENATE—*Monday, July 20, 1970*

The Senate met at 11 a.m. and was called to order by Hon. ERNEST F. HOLLINGS, a Senator from the State of South Carolina.

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

Almighty God, infinite and eternal, who orders our daily walk and to whom all history belongs, speak to our hearts as we undertake the tasks of this new week. Send us to our waiting work with fresh vigor, high purpose and new wisdom. In all we do make us aware of Thy rulership, knowing that apart from Thee nothing endures. Make strong our faith in the omnipotence of good and the invincibility of righteousness. Keep us from satisfaction with the second best when perseverance and faith can achieve the very best. As we work lift our eyes to behold beyond the things which are seen and temporal, the things which are unseen and eternal.

In the name of the Sovereign Lord. 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 of the Senate (Mr. RUSSELL).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., July 20, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. ERNEST F. HOLLINGS, a Senator from the State of South Carolina, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

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

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. HOLLINGS) 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.)

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, July 17, 1970, be dispensed with.

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

ORDER FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, at the conclusion of the remarks by the distinguished Senator from Virginia (Mr. SPONG), there be a period for the transaction of routine morning business, with a time limitation of 3 minutes on statements made therein.

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

WAIVER OF THE CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the legislative calendar, under rule VIII, be dispensed with.

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

ORDER FOR ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 a.m. tomorrow.

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 temmore. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR YOUNG OF OHIO TOMORROW

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

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider a nomination on the executive calendar.

There being no objection, the Senate proceeded to the consideration of executive business.

The ACTING PRESIDENT pro tempore. The nomination on the executive calendar will be stated.

The assistant legislative Clerk read the nomination of Glenn T. Seaborg, of California, to be a member of the Atomic Energy Commission.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of this nomination.

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

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

MILTON KYHOS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1024, S. 2104.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. S. 2104, for the relief of Milton Kyhos.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered, ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2104

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Milton Kyhos, of Bladensburg, Maryland, the sum of $1,205 in full settlement of his claims against the United States arising out of costs incurred with respect to the termination of a lease by him incident to a change of official station required by his employment by the Government of the United States.

SEC. 2. No part of the amount appropriated in the first section of this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91–1020), explaining the purposes of the measure.

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

PURPOSE

The purpose of the bill is to pay to Milton Kyhos, of Bladensburg, Md., the sum of $1,205 in full settlement of his claims against the United States arising out of costs incurred with respect to the termination of a lease by him incident to a change of official station required by his employment by the Government of the United States.

STATEMENT

The Department of the Treasury is opposed to enactment of the bill. In its report on the bill, the Treasury Department has said:

"The proposed legislation would authorize and direct the Secretary of the Treasury to pay the sum of $1,205 to Milton Kyhos in full settlement of his claims against the United States arising out of costs incurred with respect to the termination of a lease incident to a change of official status required by his employment by the Government of the United States.

Milton Kyhos is and was at the time in question a special agent in the Intelligence Division of the Internal Revenue Service. In 1967 he was stationed in Cumberland, Md., under the jurisdiction of the district director, Baltimore. Mr. Kyhos alleged that he was informed by Kenneth L. Wilson, his group supervisor, that the Cumberland office would close around July 1, 1967. (The group supervisor denied this allegation.) Mr. Kyhos stated that he relied on the group supervisor's alleged statement and engaged a real estate agent to sell his home in Cumberland. A buyer was found and a contract was signed on May 26, 1967. Mr. Kyhos alleged that shortly after signing the contract to sell the house he was informed by Elmer M. Stapleton, who at the time was the Chief, Intelligence Division, Baltimore, that the Cumberland office would not close before December 1, 1967. (This statement is the only evidence offered to prove that Mr. Kyhos was informed by the Chief, Intelligence Division, Baltimore, that the Cumberland office would not close before December 1, 1967. Our records do not indicate this statement was either affirmed or denied by Mr. Stapleton.) On June 10, 1967, Mr. Kyhos signed a lease for 1 year on a townhouse in Cumberland, Md. He alleged that leases for less than 1 year were not available. On June 28, 1967, the contract to sell the house in Cumberland was settled.

The Chief, Intelligence Division, notified Mr. Kyhos by telephone on July 17, 1967, that the Cumberland office would be closed and that he would be reassigned to the Washington, D.C. office. This telephone call was followed on July 28, 1967, by a letter from the district director, Baltimore. The letter notified Mr. Kyhos that he was reassigned to the Washington office starting October 1, 1967.

Mr. Kyhos filed a claim for reimubursement of the expenses of moving from Cumberland to Washington, including $1,100.75 for expenses related to selling his house. The claim for reimbursement of the expenses incident to selling the house was initially disallowed under the Internal Revenue Service's regulations governing employees' moving expenses. Under section 21.023 of the Internal Revenue Service's Manual Supplement 17G–124 (dated January 30, 1967) an employee claiming reimbursement for the expenses of selling a former residence must have been living in the residence at the time he was officially notified of his transfer. Mr. Kyhos appealed the decision to the Comptroller General. The Internal Revenue Service was reversed and Mr. Kyhos was reimbursed $1,100.75 for the expenses of selling the house. (Decision of the Comptroller General No. B–163043, dated January 31, 1968.) The decision stated that "* * * Mr. Kyhos sold his

residence in Cumberland only because he believed that his transfer from that place had been definitely decided upon and * * * his transfer was officially ordered shortly thereafter * * *."

Mr. Kyhos later filed a claim for $1,320 for reimbursement of the expenses of terminating the lease on the townhouse in Cumberland. These expenses were $820 for damages for unpaid rent awarded in a lawsuit to Mr. Kyhos' former landlord and $500 for Mr. Kyhos' attorneys fees. This claim was disallowed under the Internal Revenue Service's regulations governing employees' moving expenses. Under section 21.01 of Internal Revenue Service's Manual Supplement 17G-124 (dated January 30, 1967) an employee is allowed reimbursement of "* * * expenses * * * in connection with the sale of one residence at [the] old duty station * * * or the settlement of an unexpired lease at [the] place of residence at the old station * * *." These regulations were issued pursuant to 5 U.S.C. Supp. IV, 5724a(a)(4), which allows reimbursement of "* * * expenses of the sale of the residence (or the settlement of an unexpired lease) * * *."

This decision was affirmed by the Claims Division of the General Accounting Office. A letter to Mr. Kyhos dated March 11, 1969, from the General Accounting Office explained that the regulations issued under 5 U.S.C. Supp. IV, 5724a(a)(4) allowed reimbursement of either the expenses of selling a former residence or the expenses of settling an unexpired lease at the old station. The letter concluded that "* * * since you elected reimbursement for the expenses required to be paid by you in connection with the sale of your residence at your old official station, there is no basis for the payment of expenses alleged to have been incurred in the settlement of your lease. * * *." In addition, the letter noted "* * * your decision to employ counsel does not obligate the United States to reimburse you for the legal services so obtained since such expenses are considered personal and advisory in nature."

Specific authority to issue regulations is contained in the same legislation providing for rembursement of the expenses in question. The regulations issued under this authority permit reimbursement of either (but not both) the expenses of selling a former residence or the expenses of settling an unexpired lease. These regulations are not an unreasonable interpretation of 5 U.S.C. Supp. IV, 5724a(a)(4), which is phrased in the disjunctive. Under the statue reimbursement is permitted for "* * * expenses of the sale of the residence (or the settlement of an unexpired lease) * * *."

Moreover, the same regulations, issued pursuant to the same statutory authority, require an employe to be living in the residence at the time he was officially notified of his transfer. These regulations are not unreasonable in providing for official notification as a prerequisite for reimbursement. Official notification is essential in order to prevent the type of confusion illustrated by the events in this case. Even assuming all of his allegations are correct, Mr. Kyhos incurred additional expenses because he acted before he received official notice of the closing of the Cumberland office.

Enactment of the proposed legislation would encourage any employee who felt that the particular circumstances of his situation merited special relief to seek legislative redress of a seemingly inequitable administrative determination even though the decision is consistent with uniform standards previously announced by Congress.

In addition, enactment of the proposed legislation would be unfair to other employees who have accepted administrative decisions as final adjudications of their claims. In the future, these employees, as well as other employees, would be reluctant to accept an administrative decision as a final determination of a claim.

Finally, ad hoc review and reversal of administrative decisions which are consistent with the legislation and regulations governing employees' moving expenses would yield arbitrary and inconsistent results. The resulting lack of certainty regarding the rules governing employees' moving expenses would make the management of employees more difficult.

The sponsor of the bill, the Honorable Joseph D. Tydings has written the committee as follows:

"Mr. Kyhos was ordered to move from Cumberland, Md., to Washington, D.C., in the spring of 1967 by his superiors in the IRS. Accordingly, he sold his home in Cumberland and was reimbursed for the expenses suffered in the process of sale as provided for by Federal law. Shortly thereafter the IRS reversed itself and requested that Mr. Kyhos remain in Cumberland. Mr. Kyhos rented an apartment with a lease of one year in order to remain in Cumberland. Then, in July, the IRS changed its mind again, ordering Mr. Kyhos to report to Washington. Mr. Kyhos did report to Washington, as ordered, forcing him to leave the lease 8 months before it expired.

"The relevant Federal law does not permit reimbursement for losses due to moving of Federal employees more than once per year. Thus, although Mr. Kyhos would have been compensated for the losses involving the sale of his house or the losses connected with the apartment, both could not be covered within the same year. Because I feel that the intent of Congress was to reimburse employees under such circumstances and because Mr. Kyhos incurred these losses following the mandatory instructions of his superiors, I introduced the bill to compensate Mr. Kyhos for this unfair situation."

The committee believes that the bill is meritorious and recommends it favorably.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Pastore rule of germaneness be not applied to S. 2104 just passed.

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

DISTRICT OF COLUMBIA CRIME CONFERENCE REPORT—TIME FOR A VOTE

Mr. SCOTT. Mr. President, I should like to ask the distinguished majority leader when he anticipates that we may reach a vote on the District of Columbia crime conference report.

Mr. MANSFIELD. In response to the question raised by the distinguished minority leader, on Thursday last I thought it might be possible to reach a vote on the conference report today. On Friday last, I thought it might be possible to reach a vote on the conference report tomorrow, Tuesday. On Saturday, I was talking with some of the Senators who are in opposition to the conference report and the best I could determine was that there would be a possibility of a vote on Wednesday next.

I would hope that we could get to a vote tomorrow or Wednesday at the latest, because I understand that, following on the heels of this conference report, the Senate may well have to consider the conference report on the education appropriation bill. If that procedure is followed it means that the military procurement bill, which we are all eager to face up to, may be delayed. As the minority leader knows a conference report does have a privileged position under Senate rules and can be called up at any time.

Mr. SCOTT. I should like to point out that in some quarters there is considerable pressure to get to the military procurement bill because there are many Senators who feel that some of their amendments would be useful in accelerating the decision regarding ending the war. I have some personal reservations on that, but I can only point out that if Senators feel compelled to debate the pending District of Columbia crime bill too long, they are perhaps defeating their own purposes with regard to the military procurement bill, since the urgency expressed regarding the military procurement bill does seem to apply when we get into debate on other bills.

It is, of course, the right of every Senator to take positions that seem to other Senators to be a little inconsistent. In fact, it is not only a right and a privilege but at times perhaps a duty to do so. But I hope that we can agree to the District of Columbia crime conference report promptly, because the crime clock never stops running. There will be murders, rapes, robberies, and burglaries in the District of Columbia today, tomorrow, and the next day, and all the time Congress—not the Senate, and with all due respect to the other body—has been handling this matter with something less than due deliberate speed.

I should like very much to see it disposed of so that we could accommodate those Senators who believe they can end the war by legislative fiat, and I would like to get on to the military procurement bill, to see whether they can or not.

Mr. MANSFIELD. I am delighted that the distinguished minority leader has spoken up as he has. We are all too prone to talk about the war on crime and all too reluctant to act on it.

I would hope that the vote on this measure would occur soon so that we could have the opportunity to express our views in open session and to be on record. I hope that the disposition of this conference report would be followed by other crime legislation as well.

Crime stops for no one. It is a factor, especially in the urban areas, which must be faced up to. This measure will not prove to be a cure-all by a long shot. But we must continue to seek to bring about an end to the crime wave. It is sweeping the country today and every effort must be made to stem the tide. Other proposals should include broad and sweeping prison reforms and enough support to local law enforcement agencies to bring about effective controls.

HEALTH AND SANITATION INSPECTION OF ALL LIVESTOCK PRODUCTS IMPORTED INTO THE UNITED STATES

Mr. MANSFIELD. Mr. President, on June 2, 1970, I introduced a bill to provide for the thorough health and sanitation inspection of all livestock products

imported into the United States, and for other purposes.

On July 16, last week, I appeared before the Subcommittee on Agriculture and Forestry, to testify in support of this measure. I should say that in reality, this measure is the Melcher bill. Originally it was introduced in the House by Representative JOHN MELCHER from Montana's Second District—a man known as one of the best veterinarians in the Northwest.

I have received a copy of a letter dated July 16, sent to the Honorable ALLEN J. ELLENDER, chairman of the Committee on Agriculture and Forestry, by the Department of Agriculture. This letter flatly indicates Agriculture's opposition to the passage of the legislation.

I cannot understand the administration's position against health and sanitation inspection of all livestock products imported into the United States. It is a position that is clearly indefensible.

I hope sincerely that the Committee on Agriculture and Forestry will look into this most important question and consider the matter on its merits. It has much to commend it and it is a proposal that should be enacted.

Mr. President, I ask unanimous consent that a copy of the bill, and a copy of my remarks before the subcommittee, and the letter from the Department of Agriculture recommending against passage of this legislation, be printed in the RECORD.

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

S. 3942

A bill to provide for thorough health and sanitation inspection of all livestock products imported into the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture is directed to establish a system of thorough examination and inspection of all livestock products imported into the United States, including all fresh and frozen or chilled meats after thawing, providing for such examination at the time of entry or before any processing or offering for sale to consumers, to prevent the entry of any disease or distribution of any unwholesome products. The Commissioner of Customs shall levy on such animal products entering the United States, in addition to any tariffs, a charge or charges set by the Secretary of Agriculture, sufficient to defray the cost of such examinations and inspections and of United States surveillance of all establishments abroad slaughtering animals or processing animal products for export to the United States.

S. 3942—INSPECTION OF IMPORTED MEATS

Thank you, Mr. Chairman and members of the Committee, for this opportunity to appear before you in behalf of the Melcher bill, S. 3942, on inspection of imported meat.

There is nothing more important to consumers and to those who produce meat in this country—and we have both in Montana—than the maintenance of absolute confidence in the purity, wholesomeness and sanitary quality of the meat and animal products offered consumers.

Per capita consumption of beef has grown from 85 pounds in 1960 to 110 pounds last year, and of all meats from 161 pounds to 183 pounds per person. The Department of Agriculture is forecasting continued growth, and this is all because American consumers have confidence in our system of inspection and, therefore, in the quality of the meat allowed to be offered to the public at stores.

In recent years, when proof was offered that some slipshod practices existed in handling of meat, Congress has promptly provided for poultry inspection and for improved meat inspection. We have voted the most rigid requirements considered desirable on our own meat packing and processing establishments, and we have voted to require that meat imported into the United States be produced under equally sanitary conditions so it will meet standards of wholesomeness equal to ours.

My confidence in the quality and thoroughness of inspection of imported meat was shaken when Dr. Joseph Melcher, a Montana veterinarian who was elected to Congress just a year ago at a special election, described to me what he had learned as a result of a personal investigation into the nature of our inspection of foreign meat plants and of meat as it comes into the United States.

We have only 14 or 15 men who travel the globe to make sure that more than 1,100 foreign packing plants are designed and operated to meet our sanitation requirements, and that the day-to-day inspection of meat as it moves down the packing house lines is equal to the inspection standards and requirements we maintain. The annual report of the inspection branch at USDA shows that one of these men frequently inspects three plants a day, which certainly isn't much of an inspection of the plant, the pre-mortem or post-mortem procedures, the boning, cooking or freezing, packing and handling of meat destined for the United States. In his hour or two visit, he cannot, of course, assure himself that there is pre-mortem examination of all animals butchered around the year, or that there is thorough post-mortem inspection of every carcass on the packing line 365 days a year—that has to be taken on faith that the governments in Central and South America, Oceania, Europe and the East all provide rigid day-to-day inspection equal to ours.

We run a check on the results of the inspection on foreign plants when meat arrives in the United States. The equivalent of about 75 man years is devoted to sampling the 1.6 billion pounds of meat shipped to us to make sure that the defects in it do not exceed certain tolerances: one minor defect per 30 pounds, one major defect per 400 pounds, and one critical defect per 4,000 pounds. Congressman Melcher will discuss those defects and their classification.

It is my understanding—and if it is not correct we should make it so—that as meat moves down processing lines in an American packing plant, if any defect is discovered which affects the absolute wholesomeness of a piece of meat, that piece of meat is pulled off the line and the defect eliminated or the meat "tanked" and removed completely from any possibility of human use.

The bill which I introduced in the Senate, a companion to Congress Melcher's H.R. 17444, provides for thorough inspection of all animal products imported into the United States, and that means piece by piece inspection, after thawing, of the fresh and frozen meat which arrives at our ports of entry.

We cannot provide hundreds or even thousands of United States inspectors in foreign plants to maintain daily vigilance over meat produced in each of them which may be shipped to us. We can inspect these products thoroughly which are offered for our markets, and that is what the bill proposes be done.

I am concerned about the volume of meat and animal products being imported into the United States. Unregulated, it can have extremely serious consequences for our domestic producers, upon whom we must rely for the great bulk of our meat, dairy products and other animal foods. We deal with the problem of volume in separate import quota legislation. With other members, I authored the Meat Import Law of 1965.

This question of thorough inspection is a separate question, just as important as any import quota, for failure to guarantee American consumers that imported meat—which is mixed with our own in ground and processed products and is unidentifiable as imported meat except in rare instances where it comes in consumer packages—is absolutely wholesome and sanitary can destroy confidence in the meat and animal products on the shelves and in the coolers of our stores.

Congressman Melcher will testify today. As a veterinarian he can discuss with you in some detail the existing inspection procedures, and such problems as the failure of Australia to eliminate certain defects in shipments to us. The aspect of the problem is very technical and I defer to my colleague, Dr. Melcher, who is a very thorough person. At least, we have found him to be as a veterinarian in Forsyth, Montana; as a Congressional candidate from the Second District, and as a Congressman.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., July 16, 1970.

Hon. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry, U.S. Senate.

DEAR MR. CHAIRMAN: Thank you for your requests for the views of this Department on S. 3942 and S. 3987, identical bills "To provide for thorough health and sanitation inspection of all livestock products imported into the United States, and for other purposes."

The Department does not recommend passage of this legislation.

The Department supports the goal of ensuring a wholesome meat supply to the public. However, these bills would not significantly improve the Department's capacity to do so. For several reasons, they might make inspection of imported meat and meat products more difficult.

First, the language is too broadly drawn. It would direct the Secretary to provide a system of ". . . thorough health and sanitation inspection of all livestock products imported into the United States. . . ." [emphasis supplied] This provision would apply in three ways. It would require inspections for animal disease, for which this Department already has sufficient authority (Attachment A describes existing statutes and activities in detail). It also would require inspection of edible livestock products other than meat or meat products, such as butter, nonfat dry milk, cheese, and so forth. Finally, it would require inspection of indelible animal by-products. Such breadth of language would make the proposed legislation very difficult to administer.

Next, the wording of these bills is unclear as to intent. The bills direct inspection of imported livestock products, ". . . including all fresh and frozen or chilled meats after thawing. . . ." This phrase could be interpreted as requiring that *every piece* of imported meat be individually defrosted and inspected. Such defrosting of large quantities of frozen meat would actually add to potential problems of unwholesomeness. On the other hand, it could be interpreted as requiring only that a sound statistical sample of imported meats be defrosted and inspected. This is the procedure now used under the authority of the Wholesome Meat Act of 1967.

Additionally, we have concluded that this legislation directs itself only to the examination and inspection of imported products

within the United States. The bills appear not to contemplate increased surveillance of overseas slaughtering or processing establishments.

Finally, the system of reimbursement charges proposed in these bills could lead to inequities if such charges were based on volume of imports. For example, a foreign country with an excellent inspection system requiring little foreign review, but having relatively large exports to the U.S. would pay a disproportionate share of the cost. On the other hand, a foreign country with a poor system of inspection—and hence high costs to the Department due to the intensive foreign review needed—but relatively low exports to the U.S. would pay very little. Also, such charges could be viewed as an indirect constraint on foreign trade. However, if such charges are to be levied, they should be based on the actual cost of surveillance in each foreign country.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

USDA STATEMENT ON STATUTES AND ACTIVITIES FOR PREVENTING INTRODUCTION OF ANIMAL DISEASES

The Tariff Act of 1930, as amended (19 U.S.C. 1306) contains an absolute prohibition against the importation of all ruminants and swine (except wild zoo animals) and fresh, chilled or frozen meats of such animals from countries declared by this Department to be infected with foot-and-mouth disease. Under very stringent restrictions including authority for permanent post-entry quarantine, wild ruminants and swine may be permitted entry under the Act when such animals are solely for exhibition at an approved zoological park from which they cannot be moved except to another approved zoological park.

Provisions in the Act of February 2, 1903, as amended (21 U.S.C. 111) and the Act of July 2, 1962 (21 U.S.C. 134 *et seq.*) provide additional authority to prohibit or restrict importation of livestock and poultry, meat, and other articles in order to prevent the introduction and dissemination of foot-and-mouth disease and other destructive animal diseases and pests such as African swine fever, rinderpest, exotic ticks, and African horse sickness.

These statutes are implemented by extensive and strict regulations in 9 CFR Parts 92, 94, 95 and 96, with respect to importation of animals, meats, animal by-products and related materials such as hay, straw, forage, etc., from countries of the world where foot-and-mouth disease exists, as well as other countries. These regulations are based on the best scientific information available, including the research being done at our Plum Island Animal Disease Laboratory, Long Island, New York.

During the 91st Congress, 2nd Session, the Congress passed S. 2306, which became Public Law 91-239 on May 6, 1970. This Act provides the authority for establishing and operating an off-shore animal quarantine station. The above described statutes notwithstanding, animals could be imported through such station, under adequate safeguards for the purpose of improving livestock breeds in this country. The station would be under the complete control of this Department.

Foot-and-mouth disease is one of the principal foreign animal diseases against which these statutes afford protection. North America, Central America, some of the Islands in the Caribbean area, Greenland, Iceland, Norway, Ireland, Northern Ireland, Channel Islands, New Zealand, Japan and Australia are the only major land areas which this Department considers to be free of foot-and-mouth disease. The disease is widespread in Europe, Asia, Africa, and South America. Under the Tariff Act of 1930, this Department established and maintains continuously through public notice a list of countries declared infected with foot-and-mouth disease.

A country is removed from the prohibited list only when this Department is convinced that foot-and-mouth disease has been eradicated in a given country. In making this determination, we consider the length of time elapsed since an outbreak of the disease last occurred; trade association with other countries still infected; presence or absence of the disease in neighboring countries; availability of adequate veterinary services; whether or not foot-and-mouth vaccine was used; disposition of infected animals, etc. We do not rely solely on data and evidence obtained from any given country in question. Additional data and views are obtained from International trade and health organizations, veterinary officials of other foreign countries and from other sources. Finally, on-site inspections are conducted by scientific personnel of this Department before an infected country is declared free of foot-and-mouth disease. We do not take lightly the removal of a country from the list of those countries which have been declared infected with foot-and-mouth disease. If a country is removed, the first report of a recurrence of the disease immediately places the country back on the prohibited list.

We are waging a day-by-day battle to prevent the introduction of destructive animal diseases and pests from foreign countries, including foot-and-mouth disease. An inspection force of professional and trained inspectors is on duty at air, ocean, and land ports-of-entry, enforcing agricultural inspection and quarantine measures designed to prevent the introduction from abroad of diseases and pests capable of causing severe economic damage to livestock production in this country. In addition, the Bureau of Customs, the Immigration and Naturalization Service, the Public Health Service, and the Military Services are cooperating in the neverending struggle to keep out unwanted diseases and pests.

Constant vigilance is the price that must be paid to keep the United States free of the dreaded animal plague—foot-and-mouth disease. The expansion of world trade and travel adds to the importance of remaining ever alert to the increasing threat of the disease gaining entry into the United States. The Congress has supported this Department in these efforts by making available additional appropriations to strengthen and expand the inspection force at ports-of-entry to meet increased inspection workload.

CONCERN OVER CAMBODIAN INCURSION

Mr. MANSFIELD. Mr. President, some weeks ago I was visited by a group of Harvard University teachers who came to see me to express their concern at what had transpired in Cambodia. One of them, Prof. T. C. Schelling, has just forwarded to me a paper which reflects their retrospective appraisal of the Cambodian adventure in the light of the pullout of June 30.

The paper is a careful, thoughtful, and reasonable commentary on the implications of the so-called incursion into Cambodia and its aftermath. I commend it, therefore, to the attention of the Senate and ask unanimous consent that it be included in the RECORD, and also that an editorial entitled "The Greater Danger," published in the Independent Record, of Helena, Mont., on June 29, 1970, an editorial entitled "Betrayed Ideology," published in the Missoulian, of Missoula, Mont., on July 8, 1970, and an editorial entitled "The Cambodian Temptation," published in the Los Angeles Times of was ordered to be printed in the RECORD.

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

DRAFT ASSESSMENT OF THE CAMBODIAN CAMPAIGN

On June 30, sixty-one days after the President announced the ground offensive across the Cambodian border, the local action was complete and American troops withdrawn. It is time to assess where we are, what lies ahead, and whether our Cambodian involvement is safely over. The President made his initial assessment as early as the fifth week—"the most successful operation of this long and difficult war"—and reconfirmed that assessment in early July on the basis of materials confiscated, base areas cleared, and enemy killed.

But what are the prospects now in Cambodia?

Has North Vietnam at last been deterred from increased activity in Indochina?

Has North Vietnam been brought closer to the bargaining table?

Has world-wide respect for American wisdom, resolve, and leadership been enhanced?

Has the United States incurred new obligations or issued new warnings that may have to be fulfilled in months to come?

Have the military achievements in the enemy base areas been of such magnitude as to justify, when all else is considered, greater confidence in speedy withdrawal, lower casualties, and a "just peace" in Indochina?

And is the Cambodian campaign now a finished episode, a local security operation in which "all our major military objectives have been achieved"?

The purpose of these questions is not to score the President on his decision two months ago but to anticipate decisions that may confront him yet. He *is* pledged to the withdrawal of a large number of troops, including virtually all U.S. ground-combat troops by the anniversary of his April announcement in spite of the recent delay. And he *has* pledged himself to unspecified but decisive moves of the enemy does anything to endanger the troops that remain in defense of South Vietnam.

The North Vietnamese disregarded the President's explicit warnings of April 20 and earlier. He has emphasized that their disregard was a reason for the action announced April 30. He reiterated those warnings April 30, and again in May, June, and July. It is not evident yet that the enemy is heeding those repeated warnings. Whatever was at stake April 30, when the President felt the situation so grave, may be repeatedly at stake as American ground strength diminishes over the coming months.

Where have we come since April 30?

First Cambodia. The President said April 30 that thousands of North Vietnamese soldiers were invading Cambodia. "If North Vietnam also occupied this whole band"—indicated by a gesture of his hand toward the map—"it would mean that South Vietnam was completely outflanked and the forces of Americans in this area as well as the South Vietnamese would be in an untenable military position." That situation appears little better than it was in late April.

The President then said that the enemy was moving to encircle Phnom Penh. Today's newspaper says the enemy may be encircling Phnom Penh. Names on the maps in early May were Parrot's Beak and Fishhook; now it is towns to the north and west of Phnom

Penh as well. The question how the Communists could supply themselves cut off from Sihanoukville is now paralleled by the question, how Phnom Penh will get oil with Sihanoukville cut off. The northeastern part of the country is conceded to be under North Vietnamese control. However much the enemy has been weakened in his attack westward toward Phnom Penh and the rest of Cambodia, he has not been crippled. The country is menaced. One goes back with apprehension to the President's address and reads again that if the enemy succeeds in Cambodia, South Vietnam will be outflanked and American troops there in an untenable position.

Second, deterring North Vietnam. On April 20 the President explicitly warned the enemy from taking advantage of troop withdrawals. On April 30 he began by reminding us, "At that time I warned against enemy activity in Laos, Cambodia or South Vietnam and, despite that warning, North Vietnam has increased military aggression in all these areas and particularly in Cambodia." He went on, "Tonight I again warn the North Vietnamese," and, "if the enemy response is to increase its attacks and humiliate us, we shall react accordingly." May 8 he again referred to his warning that went unheeded and said his action "puts the enemy on warning that if it escalates while we are trying to de-escalate, we will move decisively and not step by step."

Have we, in the last two months, at last deterred Hanoi from an effort to conquer Cambodia, and from all future efforts in South Vietnam and elsewhere to take advantage of diminishing American ground strength Have we shown them the risks they run, shown the risks to be too great to accept, and shown them clearly how to avoid those risks by staying within the bounds the President set for them?

Evidently not in Cambodia. There is no conspicuous holding back. Consolidation of supply routs in southern Laos and northeast Cambodia has been undeterred. Occupation of towns and airstrips north and west of Phnom Penh has been attempted. Perhaps what we witness is not enemy strength but Cambodian weakness; but whatever the enemy was attempting in Cambodia on April 30 he is still attempting, undeterred, in July.

The enemy may be confused, as Americans are, about just what the President intended, what he hoped to demonstrate, and how his decisions related to North Vietnamese activity. The President personally said that he had to act as he did to put the enemy on warning for the future and to preserve American credibility in the eyes of the world. Defense officials repeatedly gave a different interpretation—that the events in Cambodia during March and April provided an "opportunity" to attack the base areas there, North Vietnamese activity having relieved us of any obligation to respect the neutrality of Cambodia.

If Americans were confused by the apparent confusion within their own government about the purpose of the enterprise—whether this was a local military opportunity or a grave national crisis—maybe the North Vietnamese are confused, too. And confused, too, may be those in the Middle East, Latin America and Europe, whose judgment of American character or policy is influenced by our response. Just what *is* the warning that the President keeps reiterating—is it clear at last to the enemy—and how is he going to carry out his threat as the day approaches when the actions available to him no longer include ground combat?

Third, the bargaining table. Have the last two months changed Hanoi's assessment of what it stands to gain or lose in Paris? Is Hanoi more fearful now of letting events take their military course in Indochina? Has Vietnamization been so advanced during these last two months as to leave the enemy no hopes outside a negotiated settlement? Has the President taught them the dangers of stepped-up military activity that they would be deterred from any military success that might otherwise look achievable?

It is too soon to tell. Taking Cambodia into account, Hanoi may estimate that victory will take longer, but encompass more, as a result of all the recent events in Cambodia. They may prefer to "outflank" South Vietnam, as the President feared, rather than negotiate a settlement as the Americans withdraw. Must we wait for them to be either wholly successful or wholly discouraged in Cambodia before they turn to negotiation over South Vietnam? Or is it that, however forthcoming the President wishes to be about a just political settlement in South Vietnam, the North Vietnamese have, and have had all along, no real interest in negotiation? Whatever the answer, there is little sign that our strategy can now rest more confidently than two months ago on Hanoi's eagerness to speed our departure through negotiation of a "just" settlement.

Fourth, American prestige. On April 30 the President said, "If we fail to meet this challenge, all of the nations will be on notice that despite its overwhelming power the United States when a real crisis comes will be found wanting." Again on June 3, "Carried out in the face of explicit warning from this government, failure to deal with this enemy action would have eroded the credibility of the United States before the entire world." And he asked, "if an American President had failed to meet this threat," "would those nations and people who rely on America's power and treaty commitments for their security . . . retain any confidence in the United States?"

This question is hard to assess on short notice. It has less to do with popular respect for American courage than with the estimates of particular governments about particular actions in particular contingencies—support for Berlin, maintenance of a U.S. "presence" in Europe, arms sales in the Middle East, successful strategic talks in Vienna, or whatever it may be. The President did, though, invite the world to judge him by his response to Hanoi's refusal to heed his warnings. He has repeatedly refreshed those warnings. The world may still be watching. One has to hope that with the return of American troops from Cambodia on June 30, the world may watch less closely and forget those repeated warnings, unless Hanoi does at last heed the warnings and stops obliging the President either to retaliate fearsomely or to be caught bluffing. To the extent that the warnings themselves forced the President's hand, and made North Vietnamese activity a provocation in the eyes of the world, there is a cautionary lesson to be drawn.

Fifth, new commitments. Spokesmen for the Administration tell us that the United States is not committed to the defense of Cambodia. The President told us April 30, though, that Phnom Penh was threatened, that the government of Cambodia had asked for aid, that for the safety of U.S. troops we could not let Cambodia become controlled by the Communists. However careful the President has been to avoid formal commitments, he may have given the appearance of commitment or resolve; and when the President is so concerned to show allies and enemies alike what to expect of the United States in meeting challenges and fulfilling commitments, appearances can be almost as binding as reality.

Furthermore, by action and statement the Government of South Vietnam has occasionally shown intent to include Phnom Penh, if not all of Cambodia, within its theater of action. It has never been made clear whether it is American policy that allied troops remain indefinitely deployed in Cambodia, or is an independent policy of South Vietnam. What is clear is that any diversion of South Vietnamese military resources will be at the expense of American withdrawals.

Though the American intrusion into Cambodia was temporary, it is permanently of record that the United States, with ambiguous acquiescence from a government to which no formal commitment was acknowledged, crossed a boundary with a large ground force to conduct violent military activity. It did so under strong provocation and with legal excuse. But after a decade of resistance right there in Indochina to the violation of international boundaries by armed force, and as a country that undoubtedly has a long-run interest in inhibiting the crossing of boundaries, the United States may have paid a high price for the crossing. It clearly ended anybody else's inhibitions about Cambodia's borders. The prompt withdrawal and limited territorial scope of American ground action may not succeed in limiting the responsibility attributed to us for what occurs henceforth in Cambodia.

Sixth, the local military action. The President has said that it is "the most successful operation of this long and difficult war." So be it; the comparison does it but modest credit. More than three hundred Americans died, and many more were injured in Cambodia; how many would have been killed in III Corps and IV Corps, where the war was already being Vietnamized, by the rockets and mortar and artillery shells that were captured and that cannot be replaced? How many North Vietnamese soldiers or Viet Cong guerrillas will go hungry for want of that rice (and how many Cambodians, as the rice is replaced)? We were promised COSVN—"the headquarters for the entire Communist military operation in South Vietnam"—and settled for something less. Did earlier offensive sweeps in southern South Vietnam have such lasting effects on enemy capabilities as to insure that this one will deny enough ammunition and other supplies to buy enough time to be worth not only the uproar at home and abroad, but the American dead in Cambodia, to say nothing of dead Cambodians?

The events of these past two months and the President's explanations have somewhat clarified the President's strategy in Indochina.

Until April 30 it was easy to think of troop withdrawals as the very embodiment of de-escalation, and of a commitment to withdraw as a commitment to de-escalate the violence, the casualties, the geographical scope and the weapons. In two-and-a-quarter years the United States reduced and then virtually discontinued the bombing of North Vietnam, withdrew ground troops, reduced offensive action, got casualties down to half the earlier rate, discontinued defoliants (as we have already told), offered political compromise, and generally displayed a pattern of determined de-escalation. Some of us heard, but didn't listen, when the President repeatedly emphasized that North Vietnam should not take advantage of our de-escalation—implying that they probably could if they dared—or else they would find the United States ready to deal effectively and decisively.

The North Vietnamese may not have been the only ones who gave little heed to the President's warnings of April 20, selectively hearing the news that 150,000 troops were to be withdrawn and passing over, as perfunctory, the warning that went with this announcement (as with earlier announcements). The President has now shown that he meant it. He says he still means it. When a threat fails, it is hard to tell whether our government communicated badly or the enemy listened poorly (or, hearing, was still undeterred). Between the two parties, though, there was either failure of communication, a misjudgment by the President of what it would take to deter Hanoi as events unfolded in March and April, or misjudgment by Hanoi

of what the President would do and of whether he would remain continually pledged to repeated escalation if they continued heedless of his renewed warnings.

Punctuated by the attack on the Cambodian bases, the more recent warnings—these threats of decisive but unspecified measures—are less likely to go unnoticed in this country. We now understand, as he quite clearly told us, that the President's program for Vietnamization and withdrawal is balanced by a deterrent threat of enlarged violence. De-escalation of troop strength has been balanced by an escalation of threats. While the *contents* of the threats—renewed bombing, return of troops to Indochina, or whatever the President might choose in the event—are left to conjecture, the *role* that these threats play in the President's strategy has become unmistakably clear. "If the enemy response to our most conciliatory offers for peaceful negotiations continues to be to increase its attacks and humiliate and defeat us, we shall react accordingly." (April 30)

His first warning having failed, the President (as he told us in his June 30 report) "concluded that, regardless of the success of Communist assaults on the Cambodian government, the destruction of the enemy's sanctuaries would . . . emphasize to the enemy whether in Southeast Asia or elsewhere that the word of the United States—whether given in a promise or a warning—was still good." Does the enemy believe him now? Does the enemy get his message? Does the enemy understand it? Is the enemy impressed? If so, how rapidly can we withdraw the rest of the American troops?

If not, has the President committed us to carrying out his threat? What does he intend to use, and where does he intend to use it, when ground-combat troops have been withdrawn? If this second threat fails as the first one did, and if the President then feels obliged to go through with it, will we then have gained or lost—in Indochina, in the eyes of the world, in our relations with bigger potential enemies than North Vietnam, in American lives, and in the confidence that American citizens and legislators have in our Indochina strategy?

It has also become increasingly clear that "Vietnamization" can have two quite different interpretations. One is an open-ended commitment to support South Vietnam indefinitely in pursuit of what the President calls a "just peace." The other is a commitment to a terminal program that offers South Vietnam a "fair chance." In his most recent statements the Preisdent appears to be resolving the earlier ambiguity in terms of the more open-ended commitment. "Vietnamization" is thus not so much a program as a permanent criterion for the degree of American involvement in South Vietnam's defense.

The open-ended commitment—corresponding to the preceding administration's strategy—may so discourage Hanoi as to bring them into negotiation. If Hanoi thinks that the President—any American President—will indeed keep forces in the theater and keep escalatory threats alive indefinitely, Hanoi may so behave that the President does not have to. But we have the President's word that they show no sign of overcoming their disdain for our offers.

And the open-ended version of "Vietnamization" has two disadvantages. One is that we cannot "honorably" depart on a fixed schedule, taking a fair chance on what happens afterward, unless we convince ourselves and others that that is all we have obliged ourselves to do. The second is that Saigon's interest in assuming responsibility and avoiding diversionary commitments depends on its being clear to that government that it cannot delay in assuming those responsibilities. If South Vietnam can spend its own resources on new commitments, or avoid the internal pains of reform and responsibility, knowing that we have to stay on hand to make up the deficit, its interests will not be ours and we shall not get out so promptly or so safely.

The *Los Angeles Times* recently concluded that "this nation has—bravely and honorably—done everything and more, that could reasonably have been expected of it. American men prevented Communist forces from precipitately seizing South Vietnam. American men, at an enormous cost in lives, have secured for the South Vietnamese a reasonable length of time for improvement of their army and consolidation of their country and government. Short of permanent occupation, there is no more America can reasonably be expected to do for Vietnam."

This sentiment provides a decent basis for a terminal program of Vietnamization and withdrawal, but only if the President explicitly makes it his own. Otherwise, Vietnamization as an open-ended commitment is but another name for the the *Los Angeles Times* bluntly called "permanent occupation."

[From the Independent Record, June 29, 1970]

THE GREATER DANGER

By sometime tomorrow, President Nixon has promised, all American ground troops will be out of Cambodia.

The United States will have said, in effect, "We've won and we're pulling out."

We won't have won, of course. We have cleaned out some Communist sanctuaries, captured a lot of weapons, killed a lot of Viet Cong and North Vietnamese (and probably a lot of other people, too). Thus we have handed the enemy a temporary setback. We have temporarily pushed him out of his sanctuaries on the Cambodian side of the Vietnamese border, and he has diverted his attack toward the Cambodian capital, which is in extreme danger of capture.

President Nixon holds that the foray into Cambodia was necessary to assure the withdrawal of another 150,000 U.S. troops from Vietnam by November, as he had previously pledged. He should now declare that the Cambodian expedition was so successful that all American troops will be withdrawn from Vietnam by November.

He should now declare that Vietnamization has been far more successful than he had ever dreamed—that if South Vietnamese can continue to fight in Cambodia after we have pulled out, they surely are capable of defending their homeland.

In other words, he should say of Vietnam as he has said of Cambodia: "We've won and we're pulling out." Even if it is no more true of Vietnam than it is of Cambodia, the President surely must recognize by now that the danger to the United States is far greater within our borders than it is in Southeast Asia.

Without debating the nobility of our intentions in Indochina, the longer we stay there the more this country is being torn apart internally.

Our involvement in Indochina is the leading cause of student disorder, of civil unrest, of inflation. It is deterring programs of such urgency as housing, aid to cities, cleansing the environment, controlling crime.

President Nixon must face the facts—whatever benefits there may be in prolonging our involvement in Indochina are no longer worth the cost of what is happening in the United States. If America must honor its commitments, the first commitment must be to Americans.

[From the Missoulian, July 8, 1970]

BETRAYED IDEOLOGY

If there is such a thing as an American ideology, it is a belief in our own fundamental goodness—in our generosity and dedication to fair play and to individual freedom.

It was largely that feeling that got the United States into South Vietnam. Big-hearted America did not want communism rammed down the throats of people who did not want it.

But where is that feeling as far as Cambodia is concerned? As the gloomy material on this page today indicates, it apparently doesn't figure in our thinking about that small and now tragic land.

Our motive for entering Cambodia, according to President Nixon, was to help us disengage our troops in South Vietnam. According to the President, that objective was fulfilled.

Whether time proves the President right or wrong about that specific proposition, the questions remain: What effect did our invasion have on Cambodia, and how did our big-hearted ideology fit in, if at all?

The effects so far have been to destroy rubber production, disrupt rice production and distribution, drive up prices, drive down imports, drive up Cambodian government spending, and bring widespread devastation to the land. The Cambodian economy is headed toward chaos. The Cambodian army is headed toward defeat and the nation cannot expect permanent military or economic help from either Thailand or South Vietnam.

What the U.S. achieved, if anything, was to strengthen its ability to bring troops home more swiftly. It did this by helping to sow chaos in a small and helpless land.

While that might placate some unrest at home, it cannot be said to be in line with the old, altruistic, big-hearted American ideology. The general and even official U.S. attitude now seems to be that we should make bleating protests and send some aid and arrange other measures in behalf of Cambodia, but that is all. If Cambodia falls to the Communists, why tough luck, and we're sorry, but that's the way the cookie crumbles if it helps us vacate Vietnam.

It is impossible to make our Cambodian intervention conform to the ideological or strategic reasons that caused the U.S. intervention in South Vietnam, or even to make it conform with the domino theory which President Nixon asserted only last week.

Cambodia is in danger of a Communist takeover. If South Vietnam has strategic value, so does Cambodia. It is a domino. It contains a popular majority opposed to communism. Yet if it is in danger of falling, we will let it fall.

That reflects a chastened, hardened, more selfish ideology, altogether different from the generosity of spirit in which we took such pride when we entered Vietnam. In our brutal haste to get out, we will victimize the helpless and leave them to their fate.

Irony of ironies, it was to preserve others from that fate that caused us first to get involved in Indochina.

[From the Los Angeles Times, July 12, 1970]

THE CAMBODIAN TEMPTATION

(Issue: How much support should the United States give to the Lon Nol regime in view of the necessity of quitting Indochina?)

As in Vietnam, the Cambodian problem for the United States is how long to stay, and how to get out.

Not as to troops: the President has taken out the American troops he sent in, and he has said we do not intend to send more American troops back. The question is rather that of the American commitment to the current government of Cambodia.

For the United States has a commitment of a sort to that government, and that commitment is growing.

Washington is now putting together for Cambodia a new package of military aid estimated at $50 million or $60 million. This aid, in addition to the $7.9 million worth of small arms and ammunition already sent to Cambodia, will be in the form of small arms,

jeeps, trucks, communications equipment and the like.

American military officials hope thereby to double the weak, 30,000-man Cambodian army and make it a fighting force capable of resisting the Communist forces which now range through the country.

A small but recently increased group of U.S. military advisers is in Phnom Penh to oversee this aid, under Jonathan F. Ladd, the former Special Service chief in Vietnam who was called back from retirement for his present task. A force of Cambodian guerrillas trained by the United States in South Vietnam has been sent to Cambodia.

The Administration is said to be also considering some economic aid, for the fighting in the last three months crippled Cambodia's principal export, rubber, and damaged its rice crop.

In northern and eastern Cambodia, American bombers are hitting the Communist supply lines that feed from the lower reaches of the Ho Chi Minh Trail into South Vietnam.

The South Vietnamese are still operating in Cambodia, in reduced numbers and chiefly, though not entirely, in the Communist sanctuary areas along the border. South Vietnamese ships patrol the Cambodian coast to prevent the shipment of Communist supplies. A small group of Thais has apparently ventured into Cambodia.

Where will all this lead?

One need not doubt the President's intentions to have grave misgivings, as we do, about the possible consequences of his actions.

Granted that the United States has no treaty with Cambodia and does not intend to make one; granted that American officials have said that the American operations in Cambodia have largely discounted such effect as a Communist takeover of Cambodia might have, we nevertheless believe that the growing American involvement in Cambodia, limited as it is, may some day put to the United States the difficult, unnecessary choice of either going to the rescue of a country we have supported, or seeing it slip away to the Communists.

We believe that the basic purpose of American policy in Indochina should be the withdrawal, during the next year and a half, of all American forces.

What the United States does in Cambodia should be in support of that purpose. Nothing the United States does should entangle, as what we are doing already threatens to entangle, American prestige with the survival of the Cambodian government.

It would, of course, assist the orderly and safe withdrawal of American troops from Vietnam if the Communists were prevented from launching heavy attacks across the border.

The President should be taken at his word that their ability to do so was damaged by the recent fighting. The South Vietnamese ought to be able to keep them off balance by making limited forays into the sanctuary areas, and by maintaining a blockade of the Cambodian coast. Bombing of the Ho Chi Minh Trail—strictly confined to harassing supply movements in areas where no civilians live—would serve the same end.

If the South Vietnamese and maybe the Thais can on their own prevent the Communists from taking all Cambodia, so much the better for them; and, if done at not too great a cost in Cambodian lives, so much the better for the pathetic Cambodians, caught in a war they did not seek.

But we see nothing but trouble ahead for this country if the United States proceeds with a substantial military aid program for Cambodia.

It would tend to draw us deeper into a war from which it is urgently necessary to get out.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair now recognizes the Senator from South Dakota (Mr. McGOVERN) for 20 minutes.

MIDDLE EAST POLICY

Mr. McGOVERN. Mr. President, the situation in the Middle East, where the Soviet presence has added to the existing tensions between Arabs and Israelis, is inherently unstable and explosive. Such a perilous state of affairs may persist for some time, threatening to turn into an all-out conflict at any moment.

The objectives of American policy in the Middle East must remain what they have always been. The United States seeks peace in the area not as a way of sanctifying the status quo, but as the only way that the countries of the Middle East can satisfactorily develop politically, economically, and socially. In addition, the United States seeks to maintain the traditionally good relations it has had over the past decades with all countries—Israel and the Arab nations alike.

The Nixon administration has now put forward suggestions for bringing Israel and the Arab nations to the negotiating table. I sincerely hope that these proposals will help move the countries of that area back from the brink of war toward more stable relations.

But the present proposals are limited largely to tactics for getting both sides to negotiate. They appear to be running into tough obstacles. I submit that if the United States made know the kind of equitable solutions of the major issues in the Middle East, it would be prepared to support, chances would be markedly improved for acceptance of our suggested steps for opening the talks.

The debate over American policy in the Middle East appears to have crystallized around the single question: Should we sell aircraft to Israel? This is, of course, the most immediate problem requiring an answer now. But its resolution will not, in itself, bring peace or nurture good relations with the Middle Eastern countries.

I have joined with three-quarters of the Members of the Senate in urging the administration to sell Israel the planes needed to insure its defense in the face of the continued buildup of armed forces in the Arab nations and the appearance of Soviet military personnel in Egypt.

The delivery of planes to Israel may help lessen the likelihood of war resulting from a miscalculation of the relative strength of Arab and Israel forces. If the well-trained Israel Air Force is given sufficient airpower to make it clear that Israel could repel any attack that might be launched against it, the chances of such an attack should be lessened. This is the fundamental reason for which the United States should sell aircraft to Israel. Such aircraft should not be made available for forays over Arab territory for the purpose of sustaining the limited but real war which has persisted since the 6-day conflict in 1967.

The question has been asked whether the sale of aircraft to Israel would be consistent with the necessary and long-overdue withdrawal of American forces from Southeast Asia. It has been argued that if the United States sold aircraft to Israel to support a nation that was faced with a threat by Soviet forces in Eygpt, it should be prepared to continue defending the South Vietnamese Government from its enemies.

The situations in the Middle East and in Southeast Asia are sharply different. In the Middle East, a democratic state is seeking to assure its security with its own fighting men. It asks only that it be permitted to purchase essential aircraft from the United States. In Vietnam, a government which does not even enjoy the support of its own people, is asking American troops to continue fighting in its defense and in addition to supply billions of dollars of assistance.

The sale of American planes to Israel may help convince the Arab leadership that there is no point in escalating a costly armaments race. They might better understand that the only path to a settlement of the outstanding problem in the Middle East is through peaceful means.

A balanced arms race does not, in itself, lead to lasting peace. As a result, the United States should not limit its policy to a simple decision to sell aircraft to Israel. Instead, it should move simultaneously to make clear its commitment to some traditional policies in the Middle East and its resolution to evolve new policies which could help bring peace there. These are some of the policies I would propose:

First. The United States is committed to aid in the preservation of the State of Israel. This has been American policy for more than two decades. At the same time, the United States is committed to the preservation of all Arab States in the area. One of the purposes of peace in the Middle East is to insure that no Arab country should be threatened with dismemberment and collapse because of the aggression of any other country or because of wholesale domestic subversion resulting from a continuing state of war and turbulence in the area.

Second. The state of war that exists between Israel and the Arab States must be brought to an end. Both sides have seen in the past 3 years that there is nothing to be gained, except the maintenance of a status quo of terrorism, by armed incursions across the battlelines which separate them. Thus, these incursions should be halted. The United States should express clearly its wish that the aircraft sold to Israel should not be used for such incursions to extend the area of combat. Such a declaration would signal to the Arab leaders the American intention to seek directly some restraint on the part of Israel. This would help restore credibility in American policy. Though it would cost them nothing in strategic terms, the Arabs should reciprocate by ending the formal state of war between the two sides, which might have an important psychological effect. At the

very least, if Israel reduced or halted military action across the battlelines, the Arabs would be subjected to considerable pressure to do the same.

Third. Negotiations among the nations of the Middle East are the only method by which tensions may be reduced. These negotiations should begin at the earliest possible date. In view of the tinderbox situation, both sides should be willing to negotiate in any way feasible—directly, through intermediaries, in the open or in secret. The unfortunate "Goldmann affair" in which Israel seemed to have missed the opportunity for informal direct contacts with the Arab leaders should not be repeated. If both the Arabs and Israelis make it clear that they are sincerely ready to talk about any problem, that would represent a powerful impetus toward negotiations. Should the Arab nations so desire, representatives of the Palestinian Arab organizations should be permitted to participate in the negotiations.

Fourth. Before the Arab governments can be expected to gain full credence in any negotiations, they should recognize the fundamental rule of international law which requires each country to accept the responsibility for acts of aggression committed from bases in its own territory. As long as the Arab governments admit, in effect, that they cannot control activities taking place on their own territories, they are not in a position to guarantee that they will keep any commitments they might make in negotiations with Israel.

Fifth. The policies of the nations of the Middle East have been plagued by the insistence of both sides on basing their position on some past wrongs done to them. Both sides can point to United Nations resolutions that they have been willing to accept but which have been rejected by the other side. This kind of debate is sterile and fruitless. It may represent one of the major obstacles to acceptance of the administration's present proposals. Instead, attention should be focused on the present and future, on achieving the reasonable goals of all the parties. By the same token, the United States itself should pursue such a forward-looking policy. This would not mean that there was no merit in many of the claims arising from the past, but that it is impossible to move forward by looking back. If all debate about Middle East policy continues to be cloaked in historical rhetoric, however justified, there can be little hope of a peaceful settlement.

Sixth. The need to look ahead is especially apparent in solving the problem of the Arab refugees, the question to which the senior Senator from Oregon (Mr. HATFIELD) addressed himself thoughtfully a few days ago. The present situation is quite clear. Israel was created as a Jewish state. As a result, it cannot accept a large, hostile population in its midst. If Israel were to admit all Arabs who wished to return to their homes and property on its territory, it would have to accept just such a disaffected group. At the same time, it is undeniable that thousands of Palestinians sincerely feel that they have been unjustly barred from their homes. Since repatriation is not possible, reparations are necessary. Some Palestinians might be able to enter Israel, to return to their former homelands, but most could find new homes in underpopulated Arab nations.

Israel has already said that it is willing to compensate the Palestinian Arabs. Since such compensation is an inevitable part of any possible settlement, Israel might now proceed a step further as a token of its willingness to negotiate an agreement with the Arab nations. It could allocate a specific sum of money for compensation and place it in an escrow account for the Palestinian Arabs. The amount to be placed in the account could cover not only the losses in real property but an adequate indemnity for the psychological loss suffered by Arab people who have no prospect of ever returning to their homes. Even if the total amount eventually to be placed in escrow account were beyond the present resources of the Israel Government, the total goal could be publicly designated and regular contributions could be made to the account. In the interest of creating the conditions of peace in the Middle East, other nations including the United States and European countries could contribute to this Palestinian refugee account.

The feeling of the Palestinians that they have unjustly lost their homes and property is perhaps the most important source of tension and conflict in the Middle East. A unilateral act of Israel recognizing this to be the case could be the greatest single step toward peace in the Middle East.

Seventh. Because Israel wants to maintain its integrity as an essentially Jewish state, it cannot, in the long run, continue to occupy vast territories in which a sizable Arab population lives. Hundreds of thousands of Arabs are now under Israel jurisdiction as a result of the June 1967 war. Thus, for this reason alone, Israel must be prepared to yield much of the territory gained in that war.

Naturally, the question of Israel withdrawal from occupied territories will be one of the key elements in any negotiations. Israel will almost certainly have to indicate its acceptance of this point in order for negotiations to have any real chance of success. The ultimate demarcation of boundaries will, of course, have to be settled between the parties directly affected. All of us understand the importance of guaranteeing the borders of Israel in any such negotiated settlement. Boundaries cannot be imposed by the United Nations or by other governments. As in any negotiations, both sides will have to recognize the need for concessions.

Eighth. Although the international community cannot impose its will in the setting of boundaries, it can help to guarantee the security of those boundaries. A new United Nations peace force could be stationed along the borders. Because the maintenance of security and peace there would be in the interest of all nations, this force could be financed through the United Nations. Because it was a truly international force, serving the needs of the world community, its withdrawal could be made contingent on decisions by the appropriate organs of the United Nations. It should be recalled that the sudden withdrawal of the U.N. forces in 1967 at the request of Eygpt alone, led directly to the outbreak of those disastrous hostilities.

Finally, in the spirit of mutual concessions, to bring about a peaceful settlement, Israel, as well as the Arab States, should be willing to accept the presence of the U.N. forces of their territories. In the past, Israel has not welcomed U.N. troops.

These steps would, I believe, contribute to a substantial reduction of tensions in the Middle East. They would remove many of the causes for the present arms race. They would enable the United States to begin the restoration of friendly relations with the Arab nations. They would help demonstrate that, while the United States is not a contestant in any popularity contest for the affection of the peoples of the Middle East, it can exercise its influence there in ways designed to meet the real and legitimate needs of all countries there. If American moves are sincerely directed to this end, American influence cannot help but increase.

These steps would reduce those very tensions which have created a situation ripe for Soviet intervention. If they are taken soon, they would reduce the opportunity for further Soviet penetration.

The chances for a mediatory role shared by the United States and the Soviet Union in the Middle East are not very good to say the least, because of the differing objectives of the two major powers.

The Soviet Union seeks to take advantage of political and military instability in the area; the United States seeks to lessen that instability and defuse a potential time bomb that could lead to a conflict beyond the confines of the Middle East.

The United States has traditionally sought to maintain friendly relations with all nations of the Middle East. It need not await the approval and cooperation of the Soviet Union to play the role of peacemaker. It can now extend the hand of conciliation to those elements in the Middle East that support the steps I have outlined, or similar steps. And it must move to a vigorous pursuit of its own national interests—a Middle East peace which can be sustained without direct American military intervention.

For if we do not now employ all of our best diplomatic efforts in support of a settlement based on these eight steps, we run the risk of eventual involvement in a new war, one which could be far more disastrous than even the Indochina conflict.

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

Mr. McGOVERN. I yield to the Senator from Oregon.

Mr. HATFIELD. Mr. President, I ask unanimous consent that there be an extension of 5 minutes beyond the Senator's time allotment.

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

Mr. HATFIELD. Mr. President, I com-

mend the Senator from South Dakota (Mr. McGOVERN) for bringing this very important subject before the Senate and for discussing it with relevance and, certainly, with great skill. I would hope all Senators would make a special effort to read these comments, without asking that they agree with the comments, because there are many points of view held on this subject. I think it behooves Members of the Senate to undertake a better understanding of the problems of the Middle East then we have thus far exhibited in floor debate and public discussion. I believe that if we do not, we will be sucked into a situation where we will be dealing with the matter after the fact rather than at a time when we could deploy our consitutional and senatorial responsibilities only to not be completely familiar but also to be ready to take a stand and attempt to influence public opinion—not in any one direction, perhaps, as much as it would be to influence public opinion to a better understanding.

That is why I commend the Senator from South Dakota, for taking the time this morning for it is very significant in assisting in the undertanding we must have, both in this body and in the general public.

It is not a simple matter. It is not an easy "yes" or "no" or one of black or white, but it is filled with complexities. I think the Senator, in outlining the number of points he has, has illustrated its complexities. We are dealing not only with variations in the so-called Arab world, which is not a monolithic structure, but, also we are dealing with problems in the Israel world, which is a democracy as well as a Jewish State, wherein people who are not Jews are not going to have the full rights of citizenship. They do not have now, and this creates internal problems for the people of Israel; it also creates problems for those of us who want to support Israel, because of our desire to see equal rights for the people in this country, whether black or white, Catholic, Jew, or Protestant, or whatever their background or origin.

We therefore want to help a country which is a democracy in the general governmental structure, but which still withholds from certain of its people who live within the borders of Israel the full rights the Jews hold because they are Jews.

So we are dealing with that particular problem, which is a different problem.

We also are dealing with the complexities of the Palestinian force. We are dealing with the question of the Palestinian force because those people owned that land and occupied the land for generations before Israel came into being as a state. There were generations of people there, and in numbers which outnumbered the Jews who live in the mandated country of Palestine. Many were driven from their homes. Others left because of fear or because they felt their cause was lost. Whatever the case, we are dealing with human problems of a sense of injustice, human problems of a sense of fear, and they are not easy to resolve.

But I think the Senator from South Dakota (Mr. McGOVERN) has certainly added to our understanding this morning by his very thoughtful presentation, and I certainly urge upon Senators, especially those who have not been privileged to hear his presentation, to study carefully the Senator's points, and to carefully evaluate his presentation.

We should undertake a more careful scrutiny of the conditions that are evolving, including the growing presence of the Russians and the filling of the vacuum or void that we have permitted to exist there because of our unwise commitment to Southeast Asia. I think it adds much to the complexity as well—that is, our own inaction has added to the complications in the Middle East.

I feel, as does the Senator from South Dakota, that we are committed to Israel, and I will do all I can to support that commitment. By the same token, we must be careful to understand the injustices others feel in the Mideastern area. I think we can move toward trying to solve some of these injustices at least through some of the points the Senator from South Dakota has outlined this morning.

I hope all people, including the general public, will have access to the full text of the speech. I welcome the Senator's suggestions. I have attempted to make a presentation of my own. The suggestions do not completely coincide with those of the Senator from South Dakota, but basically they are the same.

I certainly thank the Senator from South Dakota for the great contribution he has made this morning.

Mr. McGOVERN. I thank the Senator for his encouraging comments. As he knows, I have read his earlier statements on the Middle East crisis with great interest and profit. While there are some differing points of emphasis in our two positions, what we both seek is a policy of the United States that will contribute to peace in the Middle East rather than aggravate an already dangerous situation that exists there.

As he knows, it is impossible to look at the crisis in the Middle East in a vacuum. I have not the slightest doubt that Soviet penetration in that area is an indirect outgrowth of their recognition that we are so heavily involved in a very costly and damaging war in Southeast Asia that it is very difficult for either our Government or the people of the United States to focus objectively on the crisis in the Middle East, and this has given the Soviets an opportunity to cause great difficulty in the Middle East. It is another reason why I am very hopeful that we can move to an early resolution of the problem in Southeast Asia.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. McGOVERN. Mr. President, I ask unanimous consent to have 2 additional minutes on another matter.

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

ARMY NEUROSURGEON RESIGNS AFTER TREATING AMERICAN WOUNDED

Mr. McGOVERN. Mr. President, the current issue of Look magazine contains a lengthy open letter to the President of the United States, written by a distinguished surgeon of the Army Medical Corps, who has resigned his commission after several years of service, treating critically wounded patients from the Vietnam war. Maj. Murray H. Helfant, of the U.S. Army Medical Corps, who signed this letter, worked for some 2 years as a neurosurgeon treating patients at the 249th General Hospital, located in Osaka, Japan, north of Tokyo, a 1,000-bed hospital which received on the average of 1,000 new patients every month coming in from the conflict in Indochina—Vietnam, Cambodia, Laos, and elsewhere—who are the most critically wounded of our patients from that war.

This lengthy letter to the President of the United States is accompanied by photographs that are designed to bring home, both to American policymakers from the President on down, and also to the American people the enormous sacrifice that young Americans are making in the war. The major concludes the letter with these words:

> Caring for the wounded is indeed a privilege; but I was never able to convince myself that they had been wounded for any good end. They were, after wounding, and I'm certain before wounding also, the finest men I've seen. But I cannot help but point out my feeling that this war was unworthy of them. They gave too much in that far-off place—and we should not have sent them there.

It was that conviction on the part of this distinguished surgeon in the Army Medical Corps that led him to resign and led to his disapproval of American policies in this unique way.

In the hope that Members of Congress will not only read the article but will look at accompanying photographs of the terribly injured, blasted, and broken young men, I ask unanimous consent that the article be reprinted in the RECORD. I understand that photographs cannot be reproduced, so I hope Members of Congress will look at the July 28th issue of Look magazine and see the wreckage of this war in terms of what it is doing to these young men who have been so horribly crippled and maimed—men without faces, some without legs, some with the loss of both arms and legs, some with brain damage that has left them without their mental facilities for the rest of their lives. Perhaps as we think on matters of that kind it will introduce a new note of urgency in bringing the war to an end.

If we could save one of these young men from that kind of a state—a state which, in many respects, is worse than death—it would justify every additional sense of urgency we could bring to bear upon putting an end to this war.

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

A LETTER TO THE PRESIDENT

BOSTON, MASS.
July 1970.

DEAR MR. PRESIDENT: I apologize for not writing sooner, but it was the difficulty I had in resuming the care of civilian patients that delayed this letter. I had never completed an assignment before without stopping by the boss's office to check out and say good-bye. However, I hope this note will in some way make up for what may seem to you the discourtesy of relinquishing a commission be-

fore completing the job. I know that you've been busy, and even though I once found myself in Washington this past winter, I didn't try to see you. Instead, I'm hoping that these notes and pictures will get my thoughts straight through to you better than I could if we had talked at the White House.

I've tried several times now to explain or describe my past few years to others, but I must admit that I've never felt satisfied with the results. Whether it was the distance in miles between there and here, or just the passage of months that blunted my sensibilities. I do not know. But I've inevitably been chagrined and depressed after trying to make my points. I still awaken at night, confronting scenes that cannot be obliterated. But maybe someday they will be gone. I'm beginning to forget some of my recent patients' names by now, and I'm hoping that in a few years, all my reminiscences will be fainter. Nevertheless, I think I owe it to you, and certainly to the boys and men who were once my patients, to see that this letter somehow reaches you. I want to provide you with the most straightforward view of what it was like by letting some pictures speak for themselves.

I had been practicing neurosurgery before my commissioning, and naturally enough assumed I'd soon be in Vietnam. The Army does move in strange ways at times, and I found myself outside Tokyo for somewhat less than two years. C–141 transport planes would pick up our patients at various staging facilities in South Vietnam, wherever large enough airfields were secure, and would fly them to the next hospital in the evacuation chain. This meant the Philippines, Japan, occasionally Okinawa or the United States. It was never clear how the evacuation system worked. We had been told that a computer in Saigon controlled the disposition of those who were evacuated, but at times it seemed that the Vietcong were feeding data into the computer. Yet we were privileged at the 249th General Hospital in Japan to see the majority of seriously injured patients with wounds of the central nervous system, and thus had a fair overview of how things were in military neurosurgery during this time.

I'm certain that many of our patients would not have survived long after initial wounding in previous wars. It was not unusual for us to receive gravely brain-injured men who had their initial brain surgery within one to two hours of wounding. Needless to say, because of the tactical situation, it was sometimes impossible for a helicopter to reach a man for twenty-four hours or more, but these isolated delays were more the exception than the rule. I do not know much about how the North Vietnamese handle the problem of their wounded, but I do not think their medical-evacuation system or the early care of their seriously ill is as sophisticated or efficient as ours.

I assume you've never seen the 249th General Hospital, where I worked. It's located in Osaka, just northwest of Tokyo, and it's a one-thousand-bed general hospital. We received about one thousand wounded each month and either evacuated or returned to duty slightly less than that number. The hospital gates were manned by local Japanese security guards, and the hospital complex was protected by a high wire fence. I may be mistaken, but to the best of my knowledge, during none of the demonstrations while I was there did any of the local Japanese succeed in breaking into the camp or the hospital itself. Security was indeed excellent, not only that provided by the guards but also that by the riot-trained police who came into the camp during the more violent demonstrations. I couldn't help thinking that we could have used some of their know-how during the riots at home that we were hearing about.

Each ward in the hospital had its own medical flavor, and one could tell at a glance which subspecialty was represented. We had a full service hospital of course and did just about anything you could think of, except for heart transplants. Things were sort of topsy-turvey over there, contrasted with our transplant centers back home; we had lots of potential donors but no recipients.

The two neurosurgical wards had between sixty and eighty beds, and the evacuation system kept our census fairly high. We had two fully trained neurosurgeons, myself and an awfully nice fellow from the southwest of Worcester, Mass. All our patients had something wrong with one part or another of their nervous system—usually something was missing after injury. Although we usually kept patients between five days and several weeks, the turnover could be quite brisk. During times of stress—for instance, during Tet when the enemy was acquiring its psychological victory—we continued our patient's evacuations to the United States as briskly as possible. I would usually write out the patient's discharge and transfer summary at the same time that I did his admission history and physical.

May I suggest that if another "Tet-like" period occurs in this non-war, it would save a lot of time and effort if patients were sent directly back to the United States from Southeast Asia rather than to Japan. Undeniably, Japan is a wonderful land, and its culture is fascinating, but so few of our patients really enjoyed the time they spent there. Mostly, they wanted to know why they had come to Japan, and what were they doing in that part of the world. I never really did find the answer to that question in my one year, eleven months and twenty-eight days of active duty, and must further confess that I never heard a very reasonable explanation of what any American was doing over there.

I wonder if you ever got that report from the costs analyst who visited with us in Japan. He evidently came from the Department of Defense and was an awfully pleasant fellow. I tabulated a list of patients on our ward about that time, and tried to determine from a medical point of view what percentage actually benefited in their treatment by coming to Japan instead of taking an extra five or six hours to go directly home. We had somewhat more than sixty patients on the two wards then, and I could honestly say that two or perhaps three of them might have benefited by not taking the more direct route. I'm not quite certain of the final figure the Pentagon was given, but I was told that the costs analyst received from our medical command in Japan the statement that fifty to fifty-five percent of our men benefited from their time with us. It is interesting to see how the assessment of the situation varies depending on what level in the chain of command you are watching from.

This young fellow has a fairly typical wound. What he's lost are his maxillary sinus, both eyes, and both frontal parts of the brain. We saw a lot of this type of injury, and it was handled very well in Vietnam. It involved the combined services of ear, nose and throat, ophthalmology and neurosurgery. Fortunately, the loss of both frontal lobes of the brain dulls one's emotions somewhat, and these patients were not as distressed at their plight as would be a similar patient without associated brain injury.

Many of our patients with this degree of brain injury showed very little resentment against the circumstances that found them in Vietnam. It was, of course, not feasible to consider the question of the possible effects of lobotomies on large numbers of patients who were also wounded but were more resentful and angry. In one sense, the more severely brain-injured were fortunate in that they were less aware of their deficits and certainly experienced less anguish. I doubt the same would hold true of their families.

I was never entirely satisfied with treating a slightly more severe type of problem. Briefly, the difficulty arises because such a large amount of nose, middle face and base of skull are destroyed, along with brain substance. Infection and continued leaking of spinal fluid were most difficult to manage. I do not think we have found an ideal way yet of treating this type of injury.

The loss of tissue in land-mine injuries is rather common. Such wounds are extensively debrided in Vietnam, and after five to seven days of care, they are either further debrided of dead and necrotic tissue or sutured. Many of our men had multiple-fragment wounds from rockets, land mines, booby traps or mortars. When the brain or spinal cord was also damaged, they'd be assigned to our neurosurgical service and we'd have an opportunity to extend and broaden our general surgical experience with caring for their associated injuries.

Injuries such as the ones I photographed in my operating room are really what prompted me to write you the letter. The burden of what's on my mind these days is really about patients such as these. I admit I'm not terribly interested in dominoes, or in Laos, or in who's threatening whom in Cambodia or Thailand. My background is not in power politics, or in Southeast Asian culture; it's in caring for patients and in trying to make sick people well. I must admit I've had a terribly difficult time trying to understand why these young kids were being mashed in Vietnam when I thought they should be back home growing up a little or with their wives and children, or with parents and friends.

This particular patient has had a penetrating wound of the brain. Many of our patients had such wounds. Their course after injury covered a fairly wide spectrum. Some men died in hospitals in Vietnam, some died in the Philippines or in Japan, and some died back in the States. Some survived to reach veterans' hospitals, and some returned to civilian life. There are some brain-injured men who will one day resume the support of their families and eventually return to ways of living pretty much the same as before they went off to non-war. These are the luckier ones who'll bear only a few scars. Their less lucky comrades will have a paralyzed limb, or two or three or four. Some will be quite bright and alert again, but some will not be able to speak, reason, protest or assent. It's for these, a sort of silent majority, that I'm writing you.

If you had visited our ward, you might have seen young soldiers on their sides and facing down so that they will not aspirate or breathe into their lungs any excess secretions or vomit that would make their situation more precarious. Tubes carry moist air through small holes cut in their windpipes, and this makes it easier for the staff to aspirate secretions and prevent pneumonia. With a large number of unconscious patients, these measures greatly reduced the incidence of pulmonary complications. As you can appreciate, these patients are unable to cough if they are deeply comatose, and they're not aware of the need to empty their bladders or evacuate their bowels.

The Vice President's recent remarks that if we had shown a little more backbone in the Republic of Vietnam we would have won the war sooner reminded me of one young man I had treated. He had had a complete loss of spinalcord substance in his midback with resultant inability to feel or move his legs. A small amount of bone protruded through his surgical incision and this was obviously infected, as was the surrounding tissue. We discovered that the whole vertebral body, a fairly vital part of this boy's backbone, was infected. When I grasped the bone itself and pulled gently, the entire segment released from its surroundings. This is a fairly easy maneuver in the autopsy room on a cadaver, but I confess I had never be-

fore done this or heard of it being done to a living person.

The Red Cross and other girl workers were awfully helpful to our troops as they returned from the combat zones. In cases like this boy's, for instance, they would write home and let the Stateside family know how the young soldier, soon to be veteran, was getting along. Their aid was invaluable with the sightless, paralyzed, amputated and mentally subdued, of course. In our ward, these girls often helped with patients confined to CircOlectric beds. These beds were so useful that I often thought the Veterans Administration should see to it that each quadriplegic patient who reached home received one along with his discharge papers. These powered beds were most useful at our hospital in Japan, as the staff could adjust a patient's position not only for comfort but also for nursing wounds other than crippling spinal injuries. As you may realize, one of the biggest problems in these cases is that not only do the patients have no movement of their limbs, but they also have no sensation of their paralyzed parts, and these areas may break down, become necrotic and thus rather difficult to manage.

The wounds could be quite devastating to the brain. I was impressed by the amount of brain one could lose and still live, in a way. As I'm sure you know, in most people, the brain is a fairly important organ, and when mortar fragments, or dirt, or splinters of bone scatter through the head, it's pretty hard not to cause some fairly extensive injury. One boy with a very damaged head was so ill when he reached Japan that it was apparent he was not going to survive to make the trip home. His parents came over to spend his last days with him. I might just mention the local problem with the wound. You see, he had lost a great deal of skull and brain covering along with his scalp, and the wound and underlying brain were infected and under very increased tension.

Well, in any event, Christmas Eve arrived, and the children from one of the local schools were serenading the wards of the hospital while this boy's parents maintained their vigil. As the youngsters came onto the ward, you could have hoped for a little bit of a miracle, but instead, the patient passed on at that moment. We all celebrated Christmas in different ways that year.

I must sadly confess that from my vantage point, we weren't winning very much. Clearly, it was a long time ago that we were told we'd soon be done with it. We were assured and reassured that victory was almost in sight. Now, I wouldn't presume to contradict men who were my military superiors, and I wouldn't for a moment question the statements of either the elected representatives of the South Vietnamese people, or of our own field commanders and generals in the Republic of Vietnam, but I would in all humility submit that these boys and men who came under my care were not cheered by the thought that we were winning. These boys felt that they had lost; and, of course, in a simplistic sense, I guess that they had lost—an arm, a few legs, some brain, a little bone, a kidney, a lung or spleen, perhaps some liver. I must sadly observe that despite our cheery casualty figures and the statistic that we've killed fifteen times as many North Vietnamese and Vietcong as they've killed of us, the fact remains that many of my patients felt that they had lost.

Still, I have nothing but praise for your attempts to extricate us from that part of the world. If I could ever help in any way, short of reentering the military, please feel safe to call on me. But back to the main substance of why I wanted to write you.

I guess it's difficult to avoid giving you the impression that I'm sort of an anti-war kind of person. I admit that I didn't feel too strongly one way or the other before putting on my uniform. It really took very little time to realize that there were better ways of dying for one's country than the ways we devised for our younger brothers and neighbors. Not all my patients were draftees or short-termers who were anxious to serve their hitch and get out; we often had patients on the ward who were career soldiers, and at times we even had some officers.

My own ward was fairly characteristic. Comatose patients certainly can be seen wherever much neurosurgery is being done but we had a rather large volume of them. The Army cared for its paraplegic and quadriplegic patients with Stryker frames and CircOlectric beds that provided movements and changes of position the men could not provide themselves. In our ward, we had quite a bit of difficulty trying to decide who should continue evacuation back to the States and who should return to combat. I'm glad to hear that the burden of making this decision has been eased, and that all patients who reach Japan are now able to continue home. I must confess this seems quite reasonable; the other way seemed somewhat cruel—almost like sending men back to combat because they hadn't been hurt badly enough the first time.

Enlisted men or officers, the most common problem we had was the patient who had his skull and brain and overlying scalp debrided and repairs in Vietnam. After some days, if there was much tension on the wound margins, and sometimes even if there wasn't, the margins would begin to separate, and blood, pus or brain tissue would extrude through the original incision. We'd treat such problem by reopening, carefully cleaning and resuturing and leaving a few tubes and drains under the scalp through which the staff would insert antibiotics in the postoperative period. With the aid of these drugs and excellent nursing care, many of these potentially lethal wounds were healed.

I'd like just once more to reemphasize that I do not intend this letter as criticism or expression of disapproval. Why, you weren't even my Commander-in-Chief during most of this time, and the President who preceded you was being reassured that the enemy was on his last legs, that we had just to buckle down a little longer and the coonskin would be on our wall, etc.

I was happy to read not long ago that the Army Chief of Staff has stated that the Vietnam war has technologically been a great success. I assumed he must have in mind such developments as a MUST unit. This is a Medical Unit Self-contained Transportable and will certainly be useful in situations where a small hospital must be rapidly set up near a large disaster area. If I understand the concept correctly, the idea is to send the hospital to any area where large numbers of casualties are being generated. I must apologize at this point for a temporary diversion.

I had never before thought of sick or wounded people as being generated. It's a concept I learned during my indoctrination period at Fort Sam Houston in Texas. You will agree, surely, that it is a modern way of thinking about these problems. It's clearly much nicer to sit in conference and hear about five hundred or five thousand casualties being generated in a given situation. It's a much nicer way to think of large groups of people in this manner, somewhat like electricity being generated at some power plant or other. Well, in any event, I just could never get it into my own head, or discipline myself to think of my patients in this fashion—being generated here, stored there, transported, re-stored, etc. This probably accounts for my hesitancy in being more outspoken with that costs analyst from the Pentagon. I just couldn't convince him that we were dealing with patients, not packages.

I must confess that despite the nice commendation the country has given me, and despite your enthusiastic support during this conflict, I didn't ever come to feel that being part of the Army team was really my cup of tea. I just never managed to get into the spirit of it. Perhaps for future doctor-draftees, you might have someone in the Pentagon devise a drill somewhat like the one they use in the military chaplain's school—something to get the men in mood. If my sources are correct, and I believe they are, then the young chaplains at one stage in their training were expected to join in the ritual chanting of "kill, kill, kill."

This letter has far exceeded my original intention of just jotting down a quick note; but if it's provided you with any information or a viewpoint somewhat different from what has reached you through more standard and orthodox channels, then it has certainly been worth my time. I do hope I have not bored you, either, with my thoughts or these photographs.

When I left active duty and was being discharged through Oakland, I was gratified to see a welcoming sign in the corridor. I regretted only that my own patients who had been evacuated through medical channels were unable to see this concrete expression of their nation's gratitude.

I appreciated the opportunity of visiting Japan and of broadening my medical experience during that time. I regret that we lost so many men, not only in Vietnam, but also in our overseas hospitals. Some of the casualties were more difficult to retrieve or repair than others. Caring for the wounded is indeed a privilege; but I was never able to convince myself that they had been wounded for any good end. They were, after wounding, and I'm certain before wounding also, the finest men I've seen. But I cannot help but point out my feeling that this war was unworthy of them. They gave too much in that far-off place—and we should not have sent them there.

I know that you deplore this conflict as much and as intensely as I, perhaps for different reasons. I did hope that sharing these few pictures and thoughts with you would in some way explain why I felt compelled to submit my resignation as I did, rather than to extend my time in the Army. There are, happily enough, younger men now available to carry on the neurosurgical tradition in and after combat. I do hope that they are made of stronger stuff inside than I, and that their tours of duty will not remain in their minds quite so indelibly as has mine.

Knowing how the military operates, I'm certain that neither you nor your predecessors have had the opportunity to see these scenes. We who were fortunate enough to be brought into active service as two-year doctors have, of course. When we reported for duty, the threats that our orders would be changed for Vietnam if we didn't extend for a third year seemed somewhat hollow. None of our group being indoctrinated at San Antonio was cowed. Things evidently later changed, for we had several men appear in Japan this past year after having extended their tours of duty for that very reason. I must admit that I was never terribly impressed by the personnel procedures or procurement policies of the Army. But if the courts allow this practice to continue, then I suspect the military may have found a way to get one-and-one-half times as much wear out of this former group of two-year doctors. I congratulate your planners.

I really had hoped to send you this note while I was still on active duty, but we were somewhat busy most of the time, and my colleagues and superiors cautioned me that it might be more appropriate to allow a seemly interval to pass before trying to record my recollections for you. I'm afraid I'm leaving out a great deal that seemed important to me at the time, but I'm nevertheless able to recall a few glimpses of what

was occurring. I had been told that if I waited long enough, perhaps the war would go away. I did wait, but it didn't seem to go away at all.

Yours very truly,

MURRAY H. HELFANT,
Major (Resigned) U.S. Army Medical Corps.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Georgia (Mr. TALMADGE) is recognized for not to exceed 30 minutes

SUBMISSION OF AMENDMENT TO H.R. 16311, THE FAMILY ASSISTANCE ACT

AMENDMENT NO. 788

Mr. TALMADGE. Mr. President, on several previous occasions I have spoken out against certain aspects of H.R. 16311, the administration's Family Assistance Act.

I have expressed doubts about the cost figures given by the administration.

I have expressed grave reservations about the work incentive aspects of the bill.

I have shown the weaknesses of the evidence produced by the "New Jersey experiment," which is the only proof that this administration has presented to show that its family assistance plan will work.

On May 14, I introduced an amendment to change the name of H.R. 16311 from "The Family Assistance Act of 1970" to "The Welfare Expansion Act of 1970." This was done to clarify the true issues involved in the Finance Committee's consideration of this legislation.

Although the administration's bill has been widely touted as welfare reform, the chief characteristic of the bill which passed the House of Representatives is not welfare reform. It is welfare expansion. The most noticeable feature of this legislation is to extend welfare benefits to 15 million additional Americans.

I had hoped that the revised version of H.R. 16311, which the administration recently sent back to the Finance Committee, would make meaningful improvements which would add substance to administration rhetoric. Unfortunately, I have been disappointed.

The purpose of the amendment I offer today is to strengthen the work incentive, job training, and job placement features of the administration bill so that the administration slogan about "workfare rather than welfare" will have an element of truth.

When President Nixon first announced in August 1969 that he would seek major welfare legislation, he selected as his major theme his intention to "turn welfare into workfare." Listening to the kind of publicity given to the President's proposals, you would get the impression that Congress had never turned its attention to the problems involved in making welfare recipients independent.

As my colleagues in the Senate know, this is simply not the case. Eight years ago, Congress passed the Public Welfare Amendments of 1962, which were aimed at preventing or reducing dependency by offering rehabilitative and other social services to welfare recipients and other persons likely to become dependent.

This approach was not sufficient, however, and as the welfare rolls began increasing at an accelerated rate, the Committee on Finance in 1967 designed the work incentive program which subsequently became law. I supported the establishment of the work incentive program at that time, and I still feel that it is good basic legislation.

The Labor Department in administering it, however, has failed to meet the promise of the legislation to lead welfare recipients to useful productive lives.

All too often petty jealousy between the Labor Department and the Department of Health, Education, and Welfare, on the local as well as the national level, has undermined the program's sound intent, and both Departments have generously provided funds to the National Welfare Rights Organization, whose stated goal is to defeat the purposes of the work incentive program.

The result is understandable. Although there are about 10 million people who receive welfare in this country, only about 50,000 are currently enrolled in a work incentive program. Inept administration of the WIN program has made it a dismal failure.

Mr. President, in view of this record of dismal failure, one would think that the administration would have given highest priority to strengthening and reforming job training and job placement programs in any proposed welfare reform bill.

But what does the administration's welfare bill do? It repeals the present program, replacing it with vague provisions allowing the Secretary of Labor to provide any kind of training he may feel like providing to any person registered under the family assistance plan in whatever order of priority he deems appropriate.

Since the bill requires the registration of persons already working full time, the Secretary may decide not to train persons whose sole income is from welfare, but only to take people out of work who are now working and to train them for other jobs. Because the bill would extend what amounts to a military pay raise to 50,000 military families, the Secretary of Labor could decide to provide training only to privates on KP.

The examples I have named may sound ridiculous, Mr. President, but this could happen under the vague language of the President's welfare bill now pending in the Senate Committee on Finance.

The past record of the Department of Labor and the Department of Health, Education, and Welfare in administering the work incentive program convinces me that such ridiculous examples are not beyond the realm of possibility.

On April 29 and 30, and May 1, the Committee on Finance began its hearings on the President's welfare bill. We recessed them after 2½ days, after hearing from former Secretary of Health, Education, and Welfare Robert Finch, because it became clear that the administration knew very little about its bill and its impact.

In fact, today, 2½ months later, the Department is still working on the answers to questions we raised at the end of April about the bill. For example, present law has since July 1969 required States to disregard a portion of earnings in determining need for welfare as a work incentive.

I asked the Secretary on April 29 how many welfare recipients have benefited from these earned income disregard provisions, and to what extent earnings of welfare recipients have increased as a result of this provision. This seemed to me a very basic question in view of the fact the Department was recommending substantial changes in the earned income exemption. I found to my surprise that they had no idea of the answer of this question. To this date they have not submitted the answer to my question of 2½ months ago, and this is but one of many examples.

Mr. President, in a way I am sorry that the committee did not have a chance to interrogate the Secretary of Labor before the hearings were recessed in the beginning of May. For if we had questioned him, I am sure that the Department of Labor would have taken more seriously the committee's directive that the bill be rewritten to provide a meaningful work incentive program.

In looking through the administration's revised bill, I find that they have made no substantive change of note in the work incentive provisions.

Mr. President, the Labor Department last year contracted with the Auerbach Corp. to review and evaluate operations under the work incentive program. That firm conducted on-site visits in 23 cities and reviewed the programs there in depth. The report of the Auerbach Corp. states that:

> The basic idea of WIN is workable—though some aspects of the legislation require modification.

The Auerbach report details the administrative, and in some cases legislative changes which are needed in the light of experience to improve the sound legislation Congress enacted in 1967.

Unfortunately, the administration has largely ignored the conclusions of the Auerbach report and has gone off in another direction in the legislative proposals it has incorporated in both the original welfare bill and in the administration revision.

Today, Mr. President, I am submitting an amendment to the welfare bill designed to improve the present work incentive program along the lines that experience has shown are necessary. I would like to outline here what my amendment would do.

First, it would mandate coordination between the Departments of Labor and Health, Education, and Welfare on the national, regional and local levels. Today, certain regulations of the Department of Health, Education, and Welfare on the work incentive program conflict with regulations of the Department of Labor. My amendment would require that all regulations on the work incentive program be issued jointly by both agencies, and that they be issued within 6 months of enactment of the bill.

Second, it requires that a joint HEW-Labor committee be set up to assure that forms, reports, and other matters are handled consistently between the two departments. It is imperative that the work incentive program be operated under one set of guidelines, policies, and administrative procedures.

Third, under present law the welfare agency is supposed to prepare an employability plan for each appropriate case and make referrals to the Department of Labor. The Department of Labor is then to prepare an employability plan and place the individual in employment, on-the-job training, institutional training, or public service employment. Problems have arisen in this process.

In some cases, the welfare agency has not referred sufficient numbers of persons, while in other cases they have referred too many persons, without first arranging for the supportive services, such as day care, needed for the welfare recipient to participate in the work incentive program. Due to lack of coordination between the welfare agency and the Labor Department, persons have sometimes been referred who do not match the training or employment opportunities available in the area.

My amendment would solve this problem by requiring the welfare agency to set up a unit with the responsibility of arranging for supportive services so that the welfare recipients may participate in the work incentive program. Furthermore, it would require that the welfare agency and the Labor Department on the local level enter into a joint agreement on an operational plan—that is, the kinds of training they will arrange for, the kinds of job development the Labor Department will undertake, and the kinds of job opportunities both agencies will have to prepare persons for during the period covered by the plan. In addition, both agencies will jointly develop employability plans for individuals, consistent with the overall operational plan, which will assure that individuals will receive the necessary supportive services and preparation for employment without unnecessary waiting.

Fourth, on-the-job training and public service employment have been virtually nonexistent under the work incentive program as administered by the Department of Labor. Instead, that Department has spent most of the work incentive program appropriations on institutional training, which often did not lead to employment, particularly in today's rising unemployment. What is lacking is job development, through utilization of both on-the-job training with private employers, and public service employment.

My amendment would require that 40 percent of the funds spent under the work incentive program appropriation be for on-the-job training and public service employment. If at least this amount is not spent on programs which in effect guarantee placement, it seems to me that we are wasting money if we spend it on institutional training.

Fifth, as an incentive for employers in the private market to hire individuals who are placed in their employment through the work incentive program, my amendment would provide a tax credit equal to 20 percent of the wages and salaries of these individuals. The credit would apply to wages paid to these employees during their first 12 months of employment. The tax credit would be recaptured if the employer terminated the employment of the individual during the first 12 months of his employment or before the end of the following 12 months. This recapture provision would not apply if the employee became disabled or left work voluntarily.

This tax incentive approach is an adaptation of a bill I have introduced previously, S. 3156, the Employment Opportunity Act of 1969. That bill provides for a tax credit for job training and for employees who are hired from a work incentive program.

The tax incentive is a key provision of my amendment. No work incentive or job training program can ever be successful unless we have the full cooperation of private business interests. In many cases, welfare recipients will be very poor employment risks. They will need a great deal of costly training and special consideration before they can achieve full productivity. It is unfair and unrealistic to expect a profit-motivated businessman to undertake this responsibility without some compensation. My tax incentive provision is designed to bridge the gap between a government program and productive employment.

Sixth, my amendment would simplify funding arrangements for public service employment under the work incentive program by providing 100 percent Federal funding for the first year, and a 90-percent Federal sharing of the costs in subsequent years.

Seventh, my amendment would establish clear priority among persons registering for employment and training by requiring the Secretary of Labor to accord priority in the following order:

First. Unemployed fathers;

Second. Dependent children and relatives age 16 and over who are not in school, working, or in training;

Third. Mothers who volunteer for participation;

Fourth. Individuals working full-time who wish to participate; and

Fifth. All other persons.

My amendment would not require persons working full time to register for employment and training, although they could volunteer to upgrade their skills if they wished. Under my amendment, no mother would be required to undergo work and training until every single person who volunteered for work and training was first placed. The evidence shows that there are many more persons who wish to participate voluntarily than the program can reasonably handle in the foreseeable future.

Eighth, my amendment would require, on a State-by-State basis, that at least 15 percent of the registrants for the work incentive program be enrolled in the program each year. If the State falls below this level, Federal matching for State supplementary payments would be reduced.

Ninth, operations under the work incentive program have often failed to meet the objective of the program because too little attention was paid to the actual labor market conditions and requirements in the geographic area. My amendment would require the establishment of local labor-market advisory councils whose function it would be to identify present and future local labor-market needs. The findings of this council would serve as the basis for the work incentive program operational plans on the local level.

Finally, my amendment would specify that appropriations for the work incentive program be allocated among the States in proportion to the number of registrants for employment and training in the States.

Mr. President, my amendment would make basic and fundamental changes in the work incentive provisions of the President's family assistance plan. However, it would not solve all the problems that are inherent in H.R. 16311. I know that other members of the Finance Committee have their own ideas as to how to correct some of the deficiencies and inequities in the administration's revised bill. We will resume hearings on the family assistance plan tomorrow.

I would not care to predict whether the Family Assistance Act will receive the approval of the Finance Committee and the Senate during the current session. I do, however, want to emphasize that I consider my amendment vital, whether we have a family assistance plan this year or in the distant future.

No one is more aware than I that the Government has a responsibility to provide for individuals who are unable to care for themselves—the aged, blind, disabled, and the very young. My legislative record in this session and in past sessions of Congress will show that I have consistently supported and sometimes introduced measures to benefit this group.

However, I feel equally strong that we can never solve the social problems of this Nation by guaranteeing able-bodied individuals a minimum standard of living. The chief thrust of any reform effort must be directed at providing job training and job placement for those individuals who are able and willing to work.

Mr. President, I believe that this amendment will provide a constructive alternative to the very deficient provisions in the welfare bill before the Finance Committee.

I ask unanimous consent that the text of my amendment be printed at this point in the RECORD.

The ACTING PRESIDENT pro tempore (Mr. HOLLINGS). The amendment will be received and printed, appropriately referred; and, without objection, the amendment will be printed in the RECORD.

The amendment (No. 788) was referred to the Committee on Finance, as follows:

On page 19, line 7, strike out "or".

On page 19, line 10, strike out the period and insert in lieu thereof "; or".

On page 19, between lines 10 and 11, insert the following:

"(6) (A) working at least 40 hours per week, or (B) is working at least 35 hours per week and earning at least $64 per week."

On page 19, after the period on line 13, insert the following new sentence: "Any individual referred to in clause (2) or (3) of the first sentence of this subsection shall be advised of her option to register, if she so desires, pursuant to subsection (a), and shall be informed of the child care services (if any) which will be available to her in the event she should decide so to register."

On page 27, line 11, insert "(subject to paragraph (3))" immediately after "pay".

On page 28, between lines 6 and 7, insert the following:

"(3) Notwithstanding the provisions of paragraph (I), the 30 per centum referred to in such paragraph shall be reduced (but not to less than 15 per centum) with respect to any State for any fiscal year by one percentage point for each percentage point by which the number of individuals referred, under the program of such State established pursuant to section 402(a)(17), to the local employment office of the State as being ready for employment is less than 15 per centum of the average number of individuals in such State who, during such year, are registered pursuant to section 447."

On page 30, strike out lines 3 through 14.

On page 30, line 15, strike out "(b)" and insert in lieu thereof "SEC. 461.".

On page 30, line 15, strike out "also".

Beginning on page 34, line 8, strike out all through page 41, line 18, and insert in lieu thereof the following:

"AMENDMENTS TO WORK INCENTIVE PROGRAM ESTABLISHED BY PART C OF TITLE IV OF THE SOCIAL SECURITY ACT

"SEC. 102. (a) The heading to part C of title IV of the Social Security Act is amended by striking out "of Aid Under State Plan Approved Under Part A" and inserting in lieu thereof "or Family Assistance Benefits or Supplementary Payment".

(b) The first sentence of section 430 of such Act is amended—

(1) by striking out "Aid to Families with dependent children" and inserting in lieu thereof "family assistance benefits under part D or supplementary payments pursuant to part E"; and

(2) by striking out "special work projects" and inserting in lieu thereof "public service employment".

(c) Section 431 of such Act is amended (1) by inserting "(a)" immediately after "Sec. 431.", and (2) by adding at the end thereof the following new subsections:

"(b) Of the amounts expended from funds appropriated pursuant to subsection (a) for any fiscal year (commencing with the fiscal year ending June 30, 1972), not less than 40 per centum thereof shall be expended for carrying out the program of on-the-job training referred to in section 432(b)(1)(B) and for carrying out the program of public service employment referred to in section 432(b)(3).

"(c)(1) For the purpose of carrying out the provisions of this part in any State for any fiscal year (commencing with the fiscal year ending June 30, 1972), there shall be available (from the sums appropriated pursuant to subsection (a) for such fiscal year) for expenditure in such State an amount equal to the allotment of such State for such year (as determined pursuant to paragraph (2) of this subsection).

"(2) Sums appropriated pursuant to subsection (a) for the fiscal year ending June 30, 1972, or for any fiscal year thereafter, shall be allotted among the States as follows: Each State shall be allotted from such sums an amount which bears the same ratio to the total of such sums as—

"(A) in the case of the fiscal year ending June 30, 1972, the average number of recipients of aid to families with dependent children in such State during the month of January last preceding the commencement of such fiscal year bears to the average number of such recipients during such month in all the States; and

"(B) in the case of the fiscal year ending June 30, 1973, or in the case of any fiscal year thereafter, the average number of individuals in such State who, during the month of January last preceding the commencement of such fiscal year, are registered pursuant to section 447 bears to the average number of individuals in all States who, during such month, are so registered."

(d) (1) Section 432(a) of such Act is amended by striking out "aid to families with dependent children" and inserting in lieu thereof "family assistance benefits or supplementary payments".

(2) (A) Clause (1) of section 432(b) of such Act is amended—

(i) by inserting "(A)" immediately after "(1)"; and

(ii) by striking out "and utilizing and inserting in lieu thereof "and (B) a program utilizing".

(B) Clause (3) of section 432(b) of such Act is amended by striking out "special work projects" and inserting in lieu thereof "public service employment".

(3) Section 432(d) of such Act is amended to read as follows:

"(d) In providing the manpower training and employment services and opportunities required by this part, the Secretary of Labor shall, to the maximum extent feasible, assure that such services and opportunities are provided by using all authority available to him under this or any other Act. In order to assure that the services and opportunities so required are provided, the Secretary of Labor may use the funds appropriated to him under this part to provide programs required by this part through such other Act, to the same extent and under the same conditions as if appropriated under such other Act and, in making use of the programs of other Federal, State, or local agencies (public or private), the Secretary of Labor may reimburse such agencies for services rendered to persons under this part to the extent such services and opportunities are not otherwise available on a nonreimbursable basis."

(4) Section 432(e) of such Act is amended by striking out "aid to families with dependent children" and inserting in lieu thereof "family assistance benefits or supplementary benefits".

(5) Section 432 of such Act is further amended by adding at the end thereof the following new subsection:

"(f)(1) The Secretary of Labor shall establish in each State, municipality, or other appropriate geographic areas with a significant number of persons registered pursuant to section 447 a Labor Market Advisory Council the function of which will be to identify and advise the Secretary of the types of jobs available or likely to become available in the area served by the Council; except that if there is already located in any area an appropriate body to perform such function, the Secretary may designate such body as the Labor Market Advisory Council for such area.

"(2) Any such Council shall include representatives of industry, labor, and public service employers from the area to be served by the Council.

"(3) The Secretary shall not conduct, in any area, institutional training under any program established pursuant to subsection (b) of any type which is not related to jobs of the type which are or are likely to become available in such area as determined by the Secretary after taking into account information provided by the Labor Market Advisory Council for such area."

(e)(1) Section 433(a) of such Act is amended—

(A) by striking out "section 402" and inserting in lieu thereof "section 402(a)(17)"; and

(B) by adding at the end thereof the following new sentence: "The Secretary, in carrying out such program for individuals so referred to him by a State, shall accord priority to such individuals in the following order: first, unemployed fathers; second, dependent children and relatives who have attained age 16 and who are not in school, or engaged in work or manpower training; third, mothers, whether or not required to register pursuant to section 447, who volunteer for participation under a work incentive program; fourth, individuals who are employed at least 40 hours per week or at least 35 hours a week and have earnings of at least $64 per week, who are not required to register pursuant to section 447, and who volunteer so to register; and fifth, all other individuals so referred to him."

(2) Section 433(b) of such Act is amended to read as follows:

"(b)(1) For each State the Secretary shall develop jointly with the administrative unit of such State administering the special program referred to in section 402(a)(17) a State-wide operational plan.

"(2) The State-wide operational plan shall prescribe how the work incentive program established by this part will be operated at the local level, and shall indicate (i) for each area within the State the number and type of positions which will be provided for training, for on-the-job training, and for public service employment, (ii) the manner in which information provided by the Labor Market Advisory Council (established pursuant to section 432(f)) for any such area will be utilized in the operation of such program, and (iii) the particular State agency or administrative unit thereof which will be responsible for each of the various activities and functions to be performed under such program. Any such operational plan for any State must be approved by the Secretary, the administrative unit of such State administering the special program referred to in section 402(a)(17), and the regional joint committee (established pursuant to section 439) for the area in which such State is located.

"(3) In carrying out any such State-wide operational plan of any State, there shall be developed jointly by the Secretary and the administrative unit of the State administering the special program referred to in section 402(a)(17) in each area of the State an employability plan for each individual residing in such area who is participating in the work incentive program established by this part. Such employability plan for any such individual shall (i) conform with the State-wide operational plan of such State, (ii) provide that the separate administrative unit referred to in section 402(a)(17)(B) will provide the services referred to in section 402(a)(17)(B), and (iii) provide that the Secretary shall be responsible for providing the training, placement, and related services authorized under this part."

(3)(A) Section 433(e)(1) of such Act is amended by striking out special work projects and inserting in lieu thereof public service employment.

(B) Section 433(e)(2)(A) of such Act is amended by striking out "a portion" and inserting in lieu thereof "100 per centum (in the case of the first year that such agreement is in effect if such agreement is in effect at least 3 years) and 90 per centum (if such agreement is in effect less than three years; or, if such agreement is in effect at least 3 years, in the case of any year after the first year that such agreement is in effect)".

(C) Section 433(e)(2)(B) of such Act is amended by striking out "on special work projects of" and inserting in lieu thereof "in public service employment for."

(D) Section 433(e)(3) of such Act is hereby repealed.

(4) Section 433(f) of such Act is amended

by striking out "any of the programs established by this part" and inserting in lieu thereof "section 432(b) (3)".

(5) Section 433(g) of such Act is amended by striking out "section 402(a)(19)(A)(i) and (ii)" and inserting in lieu thereof "section 402(a)(17)".

(6) Section 433 (h) of such Act is amended by striking out "special work projects" and inserting in lieu thereof "public service employment".

(7) Section 434 of such Act is amended—

(A) by inserting "(a)" immediately after "SEC. 434."; and

(B) by adding at the end thereof the following new subsection:

"(b) The Secretary of Labor is also authorized to pay, to any member of a family participating in manpower training under this part, allowances for transportation and other costs incurred by such member, to the extent such costs are necessary to and directly related to the participation by such member in such training."

(f)(1) Section 435 (a) of such Act is amended by striking out "80 per centum and inserting in lieu thereof "90 per centum".

(2) Section 435 (b) of such is amended by striking out "; except that with respect to special work projects under the program established by section 432(b)(3), the costs of carrying out this part shall include only the costs of administration".

(g) Section 436(b) of such Act is amended—

(1) by striking out "by the Secretary after consultation with" and inserting in lieu thereof "jointly by him and", and

(2) by striking out "under a State plan approved under section 402" and inserting in lieu thereof "under part D of this title or under an agreement entered into pursuant to part E of this title".

(h) Section 437 of such Act is amended to read as follows:

"SEC. 437. The Secretary is authorized to provide to an individual who is registered pursuant to section 447 and who is unemployed relocation assistance (including grants, loans, and the furnishing of such services as will aid an involuntarily unemployed individual who desires to relocate to do so in an area where there is assurance of regular suitable employment, offered through the public employment offices of the State in such area, which will lead to the earning of income sufficient to make such individual and his family ineligible for benefits under part D and supplementary payments under part E)."

(i) Section 438 of such Act is amended by striking out "projects under".

(j) Section 439 of such Act is amended to read as follows:

"SEC. 439. The Secretary and the Secretary of Health, Education, and Welfare shall, not later than 6 months after the date of enactment of the Family Assistance Act of 1970, issue regulations to carry out the purposes of this part, as amended by the Family Assistance Act of 1970. Such regulations shall provide for the establishment, jointly by the Secretary and the Secretary of Health, Education, and Welfare, of (1) a national coordination committee the duty of which shall be uniform reporting and similar requirements for the administration of this part, and (2) a regional coordination committee for each region which shall be responsible for review and approval of State-wide operational plans developed pursuant to section 433(b)."

(k) Section 444 of such Act is hereby repealed and sections 441, 442, and 443 of such Act are hereby redesignated as sections 440a, 440b, and 440c, respectively.

(l) Section 440a of such Act (as redesignated by subsection (k) of this section) is amended—

(1) by inserting "(a)" immediately after "Sec. 440a.".

(2) by striking out "443" and inserting in lieu thereof "440c";

(3) by adding immediately after the last sentence thereof the following sentence: "Nothing in this section shall be construed as authorizing the Secretary to enter into any contract with any organization after June 1, 1970, for the dissemination by such organization of information about programs authorized to be carried on under this part."; and

(4) by adding after and below such section the following new subsection:

"(b) The Secretary shall collect and publish monthly, by State, by age group, and by sex, the following information with respect to individuals registered pursuant to section 447—

"(1) the number of individuals so registered, the number receiving family assistance benefits, the number receiving supplementary benefits, the number of individuals receiving each particular type of work training services, and the number of individuals receiving no such services;

"(2) the number of individuals placed in jobs by the Secretary under section 432(b)(1)(A), and the average wages of the individuals so placed;

"(3) the number of individuals who begin but fail to complete training, and the reasons for the failure of such individuals to complete training; and the number of individuals who register voluntarily but do not receive training or placement;

"(4) the number of individuals who obtain employment following the completion of training, and the number of such individuals whose employment is in fields related to the particular type of training received;

"(5) of the individuals who obtain employment following the completion of training, the average wages of such individuals, the number retaining such employment 3 months, 6 months, and 12 months, following the date of completion of such training;

"(6) the number of individuals in public service employment, by type of employment, and the average wages of such individuals, and

"(7) the amount of savings, under the family assistance and supplementary payments programs, realized by reason of the operation of each of the programs established pursuant to this part."

(m) Section 440b (as redesignated by subsection (k) of this section) is amended to read as follows:

"TECHNICAL ASSISTANCE FOR PROVIDERS OF EMPLOYMENT OR TRAINING

"SEC. 440b. The Secretary is authorized to provide technical assistance to providers of employment or training to enable them to participate in the establishment and operation of programs authorized to be established by section 432 (b)."

(n) Section 440c (as redesignated by subsection (k) of this section) is amended—

(1) by striking out "20 per centum" wherever it appears therein and inserting in lieu thereof "10 per centum.".

(2) by striking out "(as specified in section 402(a))" and inserting in lieu thereof "(as required by section 402(a)(13))";

(3) by striking out "sections 3(a), 403(a), 1003(a), 1403(a), 1603(a), and 1903(a)" and inserting in lieu thereof "sections 403(a), 453, 1604, and 1903(a)", and

(4) by striking out "section 402(a)(19)(C)" and inserting in lieu thereof "section 402(a)(13)".

On page 41, between lines 18 and 19, insert the following:

"SEC. 102a. Part A of title IV of the Social Security Act is amended by adding after the section thereof redesignated (by section 103 (m) of this Act) as section 407 the following new section:"

On page 41, line 20, strike out "436" and insert in lieu thereof "408".

On page 44, line 2, strike out "ability" and all that follows and insert in lieu thereof "ability.".

Beginning on page 44, line 3, strike out all through page 46, line 21, and insert in lieu thereof the following:

"SEC. 102b. Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by renumbering section 40 as section 41, and by inserting after section 39 the following new section:"

"'SEC. 40. EXPENSES OF EMPLOYEE TRAINING AND WORK INCENTIVE PROGRAMS

"'(a) GENERAL RULE.—There shall be allowed, as a credit against the tax imposed by this chapter, the amount determined under subpart C of this part.

"'(b) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section and subpart C.'"

"SEC. 102c. Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits against tax) is amended by adding at the end thereof the following new subpart:"

"SUBPART C—RULES FOR COMPUTING CREDIT FOR EXPENSES OF WORK INCENTIVE PROGRAMS

"Sec. 51. Amount of credit.

"Sec. 52. Definitions; special rules.

"SEC. 51. AMOUNT OF CREDIT.

"(a) DETERMINATION OF AMOUNT.—

"(1) GENERAL RULE.—The amount of the credit allowed by section 40 for the taxable year shall be equal to 20 percent of the work incentive program expenses (as defined in section 52 (a)).

"(2) LIMITATION BASED ON AMOUNT OF TAX.—Notwithstanding paragraph (1), the credit allowed by section 40 for the taxable year shall not exceed—

"(A) so much of the liability for the taxable year as does not exceed $25,000, plus

"(B) 50 percent of so much of the liability for tax for the taxable year as exceeds $25,000.

"(3) LIABILITY FOR TAX.—For purposes of paragraph (2), the liability for tax for the taxable year shall be the tax imposed by this chapter for such year, reduced by the sum of the credits allowable under—

"(A) section 33 (relating to foreign tax credit),

"(B) section 35 (relating to partially tax exempt interest),

"(C) section 37 (relating to retirement income), and

"(D) section 38 (relating to investment in certain depreciable property).

For purposes of this paragraph, any tax imposed for the taxable year by section 531 (relating to accumulated earnings tax), section 541 (relating to personal holding company tax), or section 1378 (relating to tax on certain capital gains of subchapter S corporations), and any additional tax imposed for the taxable year by section 1351(d)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by this chapter for such year.

"(4) MARRIED INDIVIDUALS.—In the case of a husband or wife who files a separate return, the amount specified under subparagraphs (A) and (B) of paragraph (2) shall be $12,500 in lieu of $25,000. This paragraph shall not apply if the spouse of the taxpayer has no work incentive program expenses for, and no unused credit carryback or carryover to, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

"(5) AFFILIATED GROUPS.—In the case of an affiliated group, the $25,000 amount specified under subparagraphs (A) and (B) of paragraph (2) shall be reduced for each member of the group by apportioning $25,000 among the members of such group in such manner as the Secretary or his delegate shall by regulation prescribe. For purposes of the preced-

ing sentence, the term 'affiliated group' has the meaning assigned to such term by section 1504(a), except that all corporations shall be treated as includible corporations (without any exclusion under section 1504 (b)).

"(b) CARRYBACK AND CARRYOVER OF UNUSED CREDIT.—

"(1) ALLOWANCE OF CREDIT.—If the amount of the credit determined under subsection (a)(1) for any taxable year exceeds the limitation provided by subsection (a)(2) for such taxable year (hereinafter in this subsection referred to as 'unused credit year'), such excess shall be—

"(A) a work incentive program credit carryback to each of the 3 taxable years preceding the unused credit year, and

"(B) a work incentive program credit carryover to each of the 7 taxable years following the unused credit year,

and shall be added to the amount allowable as a credit by section 40 for such years, except that such excess may be a carryback only to a taxable year beginning after December 31, 1968. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 10 taxable years to which (by reason of subparagraphs (A) and (B)) such credit may be carried, and then to each of the other 9 taxable years to the extent that, because of the limitation contained in paragraph (2), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

"(2) LIMITATION.—The amount of the unused credit which may be added under paragraph (1) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by subsection (a)(2) for such taxable year exceeds the sum of—

"(A) the credit allowable under subsection (a)(1) for such taxable year, and

"(B) the amounts which, by reason of this subsection, are added to the amount allowable for such taxable year and attributable to taxable years preceding the unused credit year.

"(c) EARLY TERMINATION OF EMPLOYMENT BY EMPLOYER, ETC.—

"(1) GENERAL RULE.—Under regulations prescribed by the Secretary or his delegate—

"(A) Work incentive program expenses.—If the taxpayer terminates the employment of any employee with respect to whom work incentive program expenses are taken into account under subsection (a) at any time during the first 12 months of such employment (whether or not consecutive) or before the close of the 12th calendar month after the calendar month in which such employee completes 12 months of employment with the taxpayer, the tax under this chapter for the taxable year in which such employment is terminated shall be increased by an amount (determined under such regulations) equal to the credits allowed under section 40 for such taxable year and all prior taxable years attributable to work incentive program expenses paid or incurred with respect to such employee.

"(B) CARRYBACKS AND CARRYOVERS ADJUSTED.—In the case of any termination of employment to which subparagraph (A) applies, the carrybacks and carryovers under subsection (b) shall be properly adjusted.

"(2) Subsection not to apply in certain cases.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to—

"(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer, or

"(ii) a termination of employment of an individual who, before the close of the 12-month period referred to in paragraph (1)(A)(i) or (B), becomes disabled to perform the services of such employment, unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual.

"(B) CHANGE IN FORM OF BUSINESS, ETC.—For purposes of paragraph (1), the employment relationship between the taxpayer and an emloyee shall not be treated as terminated—

"(i) by a transaction to which section 381 (a) applies, if the employee continues to be employed by the acquiring corporation, or

"(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

"(3) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart A.

"SEC. 52. DEFINITIONS; SPECIAL RULES.

"(a) WORK INCENTIVE PROGRAM EXPENSES.—For purposes of this subpart, the term 'work incentive program expenses' means the wages and salaries of employees who are placed in employment under a work incentive program established under section 432 (b)(1)(B) of the Social Security Act which are paid or incurred for services rendered by such employees during the first 12 months of such employment (whether or not consecutive).

"(b) LIMITATIONS.—

"(1) TRADE OR BUSINESS EXPENSES.—No item shall be taken into account under subsection (a) unless such item is allowable as a deduction under section 162 (relating to trade or business expenses).

"(2) REIMBURSED EXPENSES.—No item shall be taken into account under subsection (a) to the extent that the taxpayer is reimbursed for such item.

"(3) GEOGRAPHICAL LIMITATION.—No item shall be taken into account under subsection (a) with respect to any expense paid or incurred by the taxpayer for training conducted outside of the territory of the United States.

"(4) MAXIMUM PERIOD OF TRAINING OR INSTRUCTION.—No wages or salary of an employee shall be taken into account under subsection (a) after the end of the 24-month period beginning with the date of initial employment of such employee by the taxpayer.

"(5) INELIGIBLE INDIVIDUALS.—No item shall be taken into account under subsection (a) with respect to an individual who—

"(A) bears any of the relationships described in paragraphs (1) through (8) of section 152(a) to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation (determined with the application of section 267(c)), or

"(B) if the taxpayer is an estate or trust, is a grantor, beneficiary, or a fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of section 152(a) to a grantor, beneficiary, or fiduciary of the estate or trust.

"(c) SUBCHAPTER S CORPORATIONS.—In case of an electing small business corporation (as defined in section 1371)—

"(1) the work incentive program expenses for each taxable year shall be apportioned pro rata among the persons who are shareholders of such corporation on the last day of such taxable year, and

"(2) any person to whom any expenses have been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such expenses.

"(d) ESTATES AND TRUSTS.—In the case of an estate or trust—

"(1) the work incentive program expenses for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each,

"(2) any beneficiary to whom any expenses have been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such expenses, and

"(3) the $25,000 amount specified under subparagraphs (A) and (B) of section 51 (a)(2) applicable to such estate or trust shall be reduced to an amount which bears the same ratio to $25,000 as the amount of the expenses allocated to the trust under paragraph (1) bears to the entire amount of such expenses.

"(e) LIMITATIONS WITH RESPECT TO CERTAIN PERSONS.—In the case of—

"(1) an organization to which section 593 applies,

"(2) a regulated investment company or a real estate investment trust subject to taxation under subchapter M (section 851 and following), and

"(3) a cooperative organization described in section 1381 (a),

rules similar to the rules provided in section 46 (d) shall apply under regulations prescribed by the Secretary or his delegate.

"(f) CROSS REFERENCE.—

"For application of this subpart to certain acquiring corporations, see section 381 (c)(24)."

"SEC. 102d. (a) The table of subparts for part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following:

"SUBPART C. RULES FOR COMPUTING CREDIT FOR EXPENSES OF WORK INCENTIVE PROGRAMS."

(b) The table of sections of subpart A of part IV of subchapter A of chapter 1 of such Code is amended by striking out the last item and inserting in lieu thereof the following:

"SEC. 40. Expenses of work incentive programs.

"SEC. 41. Overpayments of tax."

(c) Part V of subchapter A of chapter 1 of such Code (relating to tax surcharge) is amended—

(1) by renumbering section 51 as 56, and

(2) by striking out "51" in the table of sections for such part and inserting in lieu thereof "56".

(d) Section 381 (c) of such Code (relating to items taken into account in certain corporated acquisitions) is amended by adding at the end thereof the following new paragraph:

"(24) CREDIT UNDER SECTION 40 FOR WORK INCENTIVE PROGRAM EXPENSES.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 40, and under such regulations as may be prescribed by the Secretary or his delegate) the items required to be taken into account for purposes of section 40 in respect of the distributor or transferor corporation."

"SEC. 102e. The amendments made by sections 102b, 102c, and 102d of this Act shall apply with respect to taxable years beginning after December 31 of the year in which this Act is enacted."

On page 52, between lines 12 and 13, insert the following:

"(3) Section 402 (a) of such Act (as amended by the preceding provisions of this subsection) is further amended by inserting immediately before the period at the end thereof the following: '; and (17) provide that the State agency will have in effect a special program which (A) will be administered by a separate administrative unit and the employees of which will, to the maximum extent feasible, perform services only in connection with the administration of

such program, (B) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to part D such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive manpower training provided under part C, and will, when such individuals are prepared to accept employment or receive manpower training, refer such individuals to the Secretary of Labor for employment or training under part C, and (C) will participate in the development of operational and employability plans under section 433 (b).'

On page 54, between lines 24 and 25, insert the following:

"(E) by striking out 'plus' at the end of clause (iii) of subparagraph (A) of such paragraph and inserting in lieu thereof 'or';

"(F) by inserting after clause (iii) of subparagraph (A) of such paragraph the following new clause:

"'(iv) administration of and services (other than child care services and medical and hospital services) provided under the program established pursuant to section 402 (a) (17); plus';

"(G) by inserting immediately after the first sentence of such paragraph (3) the following new sentence:

"'Notwithstanding the provisions of the preceding sentence, the per centum applicable with respect to expenditures referred to in subparagraph (A) shall, if such expenditures are for medical or hospital services provided under the program established pursuant to section 402(a)(17), be equal to the Federal medical assistance percentage (as defined in section 1905 (b)) of the State making such expenditures.'"

On page 54, line 25, strike out "(E)" and insert in lieu thereof "(H)".

On page 55, line 3, strike out "(F)" and insert in lieu thereof "(I)".

On page 55, line 6, strike out "(G)" and insert in lieu thereof "(J)".

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. YOUNG of Ohio). Under the previous order, the Senator from Virginia (Mr. SPONG) is now recognized for 30 minutes.

ORDER FOR THE RECOGNITION OF SENATOR THURMOND TOMORROW

Mr. SPONG. Mr. President, I ask unanimous consent that on tomorrow, the distinguished Senator from South Carolina (Mr. THURMOND) be allowed to speak for 20 minutes immediately following the remarks of the distinguished Senator from Ohio (Mr. YOUNG).

The PRESIDING OFFICER (Mr. YOUNG of Ohio). Is there objection? The Chair hears none, and it is so ordered.

SCHOOL DESEGREGATION—THE UNANSWERED QUESTIONS

Mr. SPONG. Mr. President, on last Friday I noted on the wire service that the school board of Little Rock, Ark., had requested a special summer convening of the Supreme Court of the United States to help resolve a dilemma brought about by conflicting judicial decisions regarding school desegregation. I am not familiar with either the situation in Little Rock or the decisions under which the school district is presently bound. I do believe that the hour is late for many questions to be answered, if not by the Supreme Court then certainly by Congress.

Sixteen years after Brown against Board of Education, parents, schoolchildren, school administrators, litigants, and our lower courts remain confused with respect to the constitutional requirements touching the desegregation or integration of public schools.

In March of this year in a special concurring opinion in *Northcross* v. *Board of Education of Memphis*, 397 U.S. 232, Chief Justice Burger stated:

> As soon as possible, however, we ought to resolve some of the basic practical problems when they are appropriately presented including whether, as a constitutional matter, any particular racial balance must be achieved in the schools; to what extent transportation may or must be provided to achieve the ends sought by prior holdings of the Court. Other related issues may emerge . . .

On last Monday, before the Select Committee on Equal Educational Opportunity, I examined Mr. Jerris Leonard, Assistant Attorney General of the United States. I believe it fair to summarize the thrust of my inquiry by saying that it related to the lack of a national policy on school desegregation. I advised Mr. Leonard that statistics for the past school year show only 2.8 percent black students attended predominantly white schools in the city of Chicago, 8.2 percent black students attended predominantly white schools in the city of Philadelphia, and 4 percent black students attended predominantly white schools in the city of Cleveland, and that these percentages were declining, while in the South, HEW and Justice Department officials were seeking at an early date to have 40 percent of black students attending predominantly white schools. I reminded Mr. Leonard that there were seven suits now pending in the State of Virginia, one more than the Department of Justice has filed in all the rest of the United States outside of the South.

Mr. Leonard's response was standard. He stated, first, that the Justice Department could not bring suits unless there was a complaint, and second, that I should examine Deal against Cincinnati, decided in the Sixth Circuit Court of Appeals in December of 1966. I have read this case reported in 369 F. 2d 55. On page 61, the court stated:

> We hold that there is no constitutional duty on the part of the Board to bus Negro and white children out of their neighborhoods or to transfer classes for the sole purpose of alleviating racial imbalance that it did not cause, nor is there a like duty to select new school sites solely in furtherance of such a purpose.
>
> The busing of pupils away from the neighborhoods of their residences may create many special problems for boards of education. These include the providing of adequate transportation and proper facilities and personnel for the supervision, education and well-being of *all* pupils. All of this must be accomplished within the Board's budget.

The Deal case in large measure relied upon *Bell* v. *School, City of Gary, Indiana*, 324 F. 2d 309, decided in October of 1963, where the court declined to approve a plan involving the busing of 6,000 pupils on each schoolday, having considered the costs and safety of the children and the city's residential patterns.

Another case which relied upon Bell is *Downs* v. *Board of Education of Kansas City*, 336 F. 2d 988, decided in September of 1964.

Mr. Leonard's reliance upon Deal is that this is de facto segregation, coming about solely and completely as a result of racial isolation in housing patterns. He advised me that until the law is changed, either by the Congress or by the courts, nothing will be done. The Supreme Court denied certiorari in the Bell case on May 1, 1964, denied certiorari in the Downs case on March 1, 1965, and denied certiorari in the Deal case on October 9, 1967. This means that in those years the Court declined to hear appeals of these cases, probably because it did not deem them of sufficient national importance.

When I questioned Mr. Leonard about the New York freedom of choice plan or a recent statute enacted by the Michigan Legislature, which by allowing freedom of choice had the effect of upsetting a Detroit plan to achieve racial balance, he advised me that racial balance is not a legal requirement. I told him I believed freedom of choice should mean the same in Michigan that it means in Virginia. Mr. Leonard referred me to *Green* v. *County School Board*, 391 U.S. 430 (1968). I am, of course, familiar with the Green case, a Virginia case, and I am in agreement with an article in Harvard Law Review, volume 82:63, page 111, which says on page 114:

> In more difficult cases, where not all the factors point the same way, the Court will have to refine its analysis of the concepts "dual system," "unitary system," "segregated," "integrated," and "racially unidentifiable." And it will have to begin facing some of the hard questions involved in implementing *Brown:* in formulating desegregation plans, what weight is to be given to sound policies of education and school administration; what weight to wishes of southern black nationalists for separation, even where by the lights of the larger community the result will be "inferior" education; what weight to such evidence exists that once the ratio of Negro pupils to whites passes beyond a critical point the educational benefits from integration are reduced or lost altogether? Since *Brown*, the lower courts have been grappling with these issues largely without guidance from the Supreme Court. In *Green* the Court missed an important opportunity to provide guidance by re-articulating the reasons for and the very meaning of "desegregation."

Perhaps it is oversimplification to say that Mr. Leonard professed no double standard toward desegregation in the United States because of the distinction between de jure and de facto situations—that enforced busing and racial balance may be for Charlotte and Norfolk, but not for Chicago and Philadelphia, because the former were once de jure situations, the latter de facto—that, for the same reason, freedom of choice language may have different applications in different parts of our country.

Just 10 days ago former Attorney General Ramsey Clark testified before the same committee that there is no differ-

ence between de jure and de facto segregation. Former Secretary Finch has been quoted as saying:

(The Courts) still cling to the distinction between *de jure* (by law or former regulation) and *de facto* segregation, which I happen to believe as a lawyer is no longer valid . . . I think segregation or racial isolation wherever it appears is one and the same.

In *Beckett* v. *School Board of City of Norfolk*, 308 Fed. Sup. 1274, the memorandum of the able trial judge, Walter E. Hoffman, includes, beginning at page 1302, a section entitled "De Facto Versus De Jure Segregation."

After observing it had been argued "that de jure segregation exists in Virginia by operation of law solely because Virginia, among many other States, had statutes on its books which required segregation of public schools prior to Brown I," Judge Hoffman wrote:

In sum, the proponents of racial balancing insist that *de jure* segregation continues to exist throughout Virginia, regardless of good faith efforts on the part of any school board to eradicate it, until a totally "unitary system" is attained. That Norfolk is now completely free of discriminatory practices in housing and schools is best evidenced by the rapidly changing housing patterns which, in turn, are leading to resegregated schools.

As mentioned in footnote (5), we entertain grave doubts that there can be an avoidance of any constitutional mandate merely because *de facto* and not *de jure*, segregation existed in 1954. The Supreme Court has not spoken on the subject. We believe that an analysis of the entire matter will demonstrate rather effectively that there were many discriminatory acts by state officials and/or discriminatory state laws prior to 1954 which prompted segregated housing patterns and, in turn, brought about a neighborhood school which was segregated.

If the Constitution requires complete disestablishment in the sense that racial balancing is required in each individual school and classroom wherever the state at any time required segregation of public schools, then there is no need to go further; there is no necessity for complex plans; and much of the elapsed time since the 1954 decision in *Brown I* has been wasted.

Later Judge Hoffman said:

Assuming arguendo that *de jure* segregation is the result of either discriminatory public laws or actions by public officials, we have great difficulty in determining how any segregation can actually be *de facto*. Research discloses that practically every State, outside the so-called "Deep South," at some point in history had either (1) mandatory segregation of public schools, (2) permissive segregation, (3) anti-Negro voting laws, (4) miscegenation statutes, or (5) local practices, as revealed by judicial decisions or articles, regardless of state laws. Whether such state action required or merely permitted school segregation should be irrelevant if the result was segregation of the races. Even where such statutes were repealed prior to 1954, the pattern of segregation may have been so well established that its continued existence could only be *de jure*.

Judge Hoffman said later:

We cannot believe that the Constitution may be interpreted one way for a group of states, and still another way for the remaining states. While we do not believe that the mandate of the Constitution goes beyond the *affirmative* mandate mentioned in the earlier portion of this opinion, we think it obvious that, whatever may be correct interpretation of the Constitution, the same construction must apply to all 50 states. Certainly it must be applied to any state where any discriminatory statute, judicial decision, or official act existed for many years prior to 1954.

Attached hereto as Appendix C will be found, on a state-by-state basis, the extensiveness of state statutes and/or judicial decisions. The list is not intended to be inclusive: for example, where there was mandatory segregation in public schools, other segregation or discriminatory laws were not included. It does not refer to housing ordinances and deed restrictions legalized in many states. Furthermore, it is impossible, through research of the cases and statutes alone, to uncover all examples of discriminatory action by public officials regardless of what the state laws required.

We conclude that the *de facto-de jure* issue is not a determinative factor in arriving at what is required under *Brown I* and the subsequent cases. We believe that the *affirmative* mandate mentioned herein applies to all states, but that it must be reasonably and feasibly construed consistent with the circumstances confronting the local school board in each area.

We are attaching Judge Hoffman's "appendix C" to these remarks, and I ask unanimous consent that it be printed in the RECORD at the end of my statement.

The PRESIDING OFFICER (Mr. YOUNG of Ohio). Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPONG. Mr. President, this attachment shows every State of the Union except five to, at some time, have had discriminatory statutes or judicial decisions sustaining segregation.

The Fourth Circuit reversed Judge Hoffman's holding that good-faith implementation of constitutional principles did not require racial balancing in each individual school throughout a school system comprised of many different schools where it was freely conceded that massive compulsory busing would be required to accomplish such racial balancing.

Just before leaving for its summer recess, the Supreme Court denied certiorari. This is regrettable because, in my judgment, the learned memorandum by Judge Hoffman posed the very questions Chief Justice Burger said should be resolved "as soon as possible."

Allow me to return to Mr. Leonard's testimony of last Monday. He referred me to the Deal case concerning the city of Cincinnati. In 1933, according to Judge Hoffman's appendix, separation of races on an educational level under the separate but equal theory was upheld by the highest court in Ohio. As I have said, the Deal opinion cited by precedent, the Bell case, involving the city of Gary, Ind. Judge Hoffman's appendix shows that the State of Indiana had a separate school law that was not repealed until 1949. Statistics for the 1968–69 school year show only 3.1 percent of black students in Gary attended predominantly white schools that year.

On the day after the Norfolk case was reversed and remanded, Mayor Roy B. Martin of that city wrote and asked where the money was coming from to transport the additional 16,000 Norfolk schoolchildren, should that be required. It had been estimated in the testimony that this would require $4 million in capital outlay and $800 thousand additional annual expenditure.

While some Federal money may be available, a large portion of the added transportation costs must be borne by the taxpayers of the city of Norfolk and Virginia. Is it equal treatment under the law for the citizens of Virginia to be taxed to pay for enforced busing to achieve racial balance because Virginia had a segregation statute in 1955, while the citizens of Indiana are subject to no such burden because that State repealed its statute in 1949? I do not believe any fairminded person will appreciate that distinction. I do not believe one can easily explain that you are formerly de jure if you had a law in 1955, but not formerly de jure if you had one in 1949. I do not believe that parents, black and white, of Charlotte and Norfolk will understand why 6- and 7-year-old children must be bused out of their neighborhoods long distances while no such requirement is imposed upon elementary children in cities outside the South where there is more racial isolation today than there was at the time the Brown case was decided.

One of our colleagues, Senator ABRAHAM RIBICOFF, has described the present double standard of desegregation as monumental hypocrisy. I view it as morally indefensible.

I believe in an equal educational opportunity for every child. I believe it is wrong to classify men by race. But I also believe in the educational soundness of the neighborhood school, and I have seen the resegregation that has already taken place in the larger cities of Virginia. I know that massive enforced busing in those cities, particularly of elementary school children, can only result in accelerating the mass exodus into the suburbs from the core cities of Virginia, leaving behind the low-income and alienated blacks and whites.

In April of this year, Dr. James S. Coleman of Johns Hopkins University, the principal author of Equality of Educational Opportunity, an extensive study of the effects of segregation and desegregation on the educational experiences of schoolchildren, testified before the Senate Select Committee on Equal Educational Opportunity to the effect that a child's achievement in school, especially in the cognitive skills, is determined more by the cultural background of his classmates than by the educational resources of the school.

Dr. Coleman, on page 22 of his study, wrote:

If a white pupil from a home that is strongly and effectively supportive of education is put in a school where most pupils do not come from such homes, his achievement will be little different than if he were in a school composed of others like himself. But, if a minority pupil from a home without much educational strength is put with schoolmates with strong educational backgrounds, his achievement is likely to increase.

Under questioning, Dr. Coleman noted that the same findings applied to deprived and alienated white children as applied to minority children. He and Dr. Thomas Pettigrew of Harvard Univer-

sity, who testified later, told the committee that there was a tipping point at which the number of minority group or deprived children in a classroom could negate the positive educational effects which having middle- and upper-class children in the classroom would have. While estimates vary to some extent, this tipping point is usually considered to be in the 35 to 50 percent range; that is, when the number of children from deprived homes exceeds this percentage, the positive effects of having other children present are nullified.

If we are to accept the findings of these two men and others who are expert in their fields, we can only view the resegregation which is occurring with concern. In the first place, these findings mean that the deprived child in Chicago, in Gary, in Cleveland is just as educationally deprived, or perhaps more so in terms of percentages, than the deprived child in certain southern cities. Second, it means that unless the resegregation of southern and other urban areas throughout our Nation can be halted or at least slowed, then the difficulties of providing a sound education—from both the cognitive and more social aspects—will be almost impossible in our cities.

There has been the charge that the busing being required now is no greater than the busing used to maintain some dual school systems. In some cases, this may be true. In numerous cases currently before the courts, it is not. And, in such situations, I believe that we must be reasonable—insofar as the educational system is concerned and insofar as the financial resources of the community are concerned. The massive busing which has been proposed in some of our southern cities, particularly Charlotte, Richmond, and Norfolk will, I believe, rather than contribute to achievement of sound education, within the guidelines of the Coleman report, Equality of Educational Opportunity, move many school systems in the opposite direction. In other words, enforced massive busing will set in motion events which will make it almost impossible to provide sound public education.

It is not difficult to appreciate the dilemma of the Little Rock School Board. I know something of the problems presently faced by school boards in every major city in Virginia. There have been occasions when court proceedings and HEW directives seemed in conflict. There have been occasions when it was difficult to determine if the Department of Justice and HEW were part of the same Government. Almost anything would be better than the present state of tension, uncertainty and doubt.

In observing that there remain many unanswered questions by the Supreme Court I do not wish to absolve Congress of any responsibility. I believe we must address ourselves to a national policy of desegregation which will be applicable throughout the United States. I shall speak to this in the near future. Meanwhile, I believe it is necessary that the Supreme Court give more direction in school cases—and soon. The Court has insisted upon speed, but it has not said how desegregation is to be accomplished. It has said we must have only unitary school systems, but it has not defined a unitary school system. The Court has not indicated whether racial balance of any dimension must be achieved in each school. The Court has not said whether the continuation of wholly black or white schools is unconstitutional. The Court has not ruled whether massive compulsory busing is required to achieve racial balance. And lastly, the Court has not faced up to the question of de facto and de jure segregation and the need for an interpretation of the law that will have equal application throughout the United States.

EXHIBIT 1

JUDGE HOFFMAN'S APPENDIX

A list of states with discriminatory laws or judicial decisions, excluding Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana, in which mandatory school segregation laws existed on May 17, 1954.

ALASKA

In *Davis* v. *Sitka School Board*, 3 Alas. 481 (1908), it was held that semi-civilized Indians did not have to be admitted to public schools. It went on to find that the stepchildren of "an industrious, law-abiding, intelligent native" Indian, who operated a store "according to civilized methods," and had adopted the white man's style of dress; spoke, read and wrote the English language; and was a member of the Presbyterian Church; were not civilized enough to attend white schools because they still lived with other members of their tribe.

Sing v. *Sitka* School Board, 7 Alas. 616 (1927), upheld separate but equal schools for Indians.

ARIZONA

Arizona Code Ann. (1939), section 54–416, provided for mandatory segregation in *elementary* schools. Under section 54–918, there was permissive segregation in *high* schools, where there were more than 25 blacks in the high school district and if approved by a majority vote of the electorate. By an amendment in 1951, section 54–416 was made permissive and section 54–918 was repealed.

ARKANSAS

Ark. Stat. Ann. (1947), section 80–509(c), required the establishment of separate schools for white and colored.

CALIFORNIA

While laws enacted in 1869–70 and 1880–81 provided (1) mandatory separate schools for Negro and Indian children, and (2) permissive separate schools for children of Mongolian or Chinese descent, a statute enacted in 1943 but repealed in 1947 reenacted the permissive separate school provision and provided that, if separate schools were established for Indian children or children of Chinese, Japanese or Mongolian parentage, they could not be admitted to any other school. *Cal. Educational Code*, section 8003 (Deering's 1944.) *See* also: *Cal. Laws* 1869–70, p. 838; *Cal. Political Code*, section 1662 (Deering's 1885.)

COLORADO

Miscegenation statute, *Col. Stats. Ann.* c. 107, sections 2, 3 (1935.) Jackson v. Denver, 109 Col. 196, 124 P. (2d) 240 (1909) holds that an otherwise valid common law marriage between a black and a white was declared to be "immoral" and justified a conviction under a vagrancy statute defining same to include leading an "immoral course of life."

CONNECTICUT

Conn. Const., Art. VI, section 2 (1818), limited the electorate to white male citizens owning property. In 1845 the property qualification was deleted. In 1876 the Constitution was amended by removing the requirement that electors be white.

DELAWARE

Del. Const., Art. X, section 2 (1915) provided for separate schools. By the Del. Rev. Code, Ch. 71, section 9 (1935), two kinds of separate schools were authorized; "those for white children and those for colored children."

DISTRICT OF COLUMBIA

D.C. Code, title 7, sections 249, 252 (1939 Supp.), authorizes separate schools for white and colored in the District.

IDAHO

Idaho Const., Art. 6, section 3 (1890), prohibits Chinese or Mongolians, not born in the United States, from voting, serving as jurors, or holding civil offices.

Miscegenation statute: 1867, p. 71, section 3; R. S. section 2425, reenacted Rev. Code section 2616; amended 1921, Ch. 115, section 1, p. 291.

ILLINOIS

Ill. Const., Art. II, section 27 (1919), limited the electorate to white males.

Although no statute respecting school segregation has been located, history is replete with evidence of discriminatory practices in operating separate schools for many years. *See* Ming, *The Elimination of Segregation in the Public Schools of the North and West*, 21 J. Negro Ed. 265, 268 (1952); B. H. Valien, *Racial Desegregation of the Public Schools in Southern Illinois*, 23 J. Negro Ed. 303 (1954); Shagoloff, *A Study of Community Acceptance of Desegregation in Two Selected Areas*, 23 J. Negro Ed. 330 (1954). *See* also: *United States v. School District 151 of Cook County, Ill.*, 301 F. Supp. 201, 217 (1969).

Thus, Illinois, without a specific statute, practiced segregation in public schools prior to 1954, almost as much as in the "Deep South."

INDIANA

Ind. Stat. Ann., section 28–5104 (Burns 1933), provided for the establishment of separate schools for Negroes if the school authorities believed it to be necessary or proper but, if no separate schools were established, Negroes could attend white schools. In 1949, the separate school law was repealed, *Laws*, 1949, Ch. 186, section 11.

IOWA

Iowa Laws, Ch. 99, section 6 (1846), provided that schools were to be open to all white persons.

Iowa Laws, Ch. 52, section 30 (1858), called for the education of colored children in separate schools except where there was unanimous consent of all attending the school to allow Negroes to attend the white school. This act was declared unconstitutional in *District v. City of Dubuque*, 7 Iowa 262 (1858), on the ground that the Constitution gave the power to legislate with regard to education to the Board of Education and not to the General Assembly. Thereafter, the Board of Education provided education for all "youth" and in *Clark v. The Board of Directors*, 24 Iowa 266 (1868), this was construed as requiring admission of Negroes into white schools.

The *Iowa Const.*, Art. II, section 1 (1858), provided that only white males could be electors. Iowa Code, Ch. 130, section 2388 ff. (1859). stated that no colored person could be a witness.

KANSAS

Kan. Gen. Stat., Section 72–1724 (1949), gave authority to establish and maintain separate primary schools for whites and Negroes throughout the state, and separate high schools in Kansas City. See: *Brown v. Board of Education*, 347 U.S. 483 (1954).

KENTUCKY

Ky. Const., Section 187, *Ky. Rev. Stat.*, Section 158.020 (1946), required separate schools for white and colored children.

MARYLAND

Md. Code Ann., Art. 77, Sections 124, 207 (1951) required the county boards of education to establish one or more separate schools for Negroes, provided that the colored population of any such district warranted, in the board's judgment, an establishment of separate colored educational facilities.

MASSACHUSETTS

In *Roberts v. City of Boston*, 59 Mass. 198 (1849), the court stated that separate schools had been maintained for colored children "for half a century."

The court upheld the school committee in denying admission to a white school by a Negro child. However, six years later Massachusetts by statute abolished the practice of excluding on account of race, color or religion.

MICHIGAN

A dissenting opinion in *The People v. The Board of Education of Detroit*, 18 Mich. 400 (1869), states that in 1841 separate schools for colored were established in Detroit. The court was construing an amendment to the general school law which provided that all residents had an equal right to attend schools and the statute was held to apply to Detroit.

In *Day v. Owen*, 5 Mich. 520 (1858), the court upheld a regulation excluding a Negro from the cabin of a steamer solely for the reason of his race.

People v. Dean, 14 Mich. 406 (1866), held that only whites, or those at least three-fourths white, could vote.

Miscegenation statute, C. L. 1857, 3209, C. L. 1871, 4724, prohibited marriages between whites and Negroes until the statute was amended in 1883.

MINNESOTA

Minn. Rev. Stat., Ch. 5, section 1 (1851), and Minn. Const., Art. VII, section 1 (1858), excluded Negroes from voting until amendment of November 3, 1868.

MISSOURI

Mo. Const., Art. XI, sections 1, 3 (1875), and *Mo. Rev. Stat.*, section 163.130 (1949), required separate schools and "it shall be unlawful for any colored child to attend any white school or for any white child to attend a colored school." These provisions were repealed in 1957, three years *after Brown I.*

MONTANA

Mont. Ter. Laws, 1872, p. 627, provided for separate schools of children of African descent when requested by at least ten such children. This statute was repealed in 1895.

Miscegenation statute, *Mont. Rev. Code*, section 5700, (1935).

NEBRASKA

Neb Rev. Stat., Ch. 48, section 8 (1866), imposed upon the local school directors the duty of taking an annuel census of unmarried *white* youth between the ages of five and twenty-one for the purpose of school assignments. *Neb. Rev. Stat.*, Ch. 48, section (1866), establishing the school system states that it is "for the purpose of affording the advantage of a free education to all *white* youth of this territory," and further provides that all colored persons shall be "exempted from taxation for school purposes." These laws were repealed in 1869.

Miscegenation statute. *Neb. Rev. Stat.*, section 42–103 (1943).

NEW JERSEY

N. J. Com. Stat., pp. 4791–92, Schools sections 201–204, pp. 4814–16, Schools sections 262–267 (1911), established as industrial school for blacks.

In M. T. Wright, *Racial Integration in the Public Schools in New Jersey*, 23 J. Negro Ed. 282 (1954), there is reference to an 1850 statute permitting a township in Morris County to establish separate schools for colored children.

In Williams and Ryan, *Schools in Transition*, p. 122 (1954), it is said: "A survey of 62 school districts, initiated in the spring of 1948, revealed that two-thirds had segregated schools sanctioned by local custom and practice."

N.J. Const., Art. II, section 1 (1844), limited suffrage to white males.

NEW MEXICO

N.M. Stat., section 55–1201 (1941 Annot.) allowed school boards to place children of African descent in separate schools if the facilities were equal.

NEW YORK

N.Y. Consol, Laws, c. 15, section 921 (Cahill 1930), provided that trustees of any union school district organized under a special act "may establish separate schools for colored children provided that the facilities are equal." On March 25, 1938, this law was repealed.

NORTH DAKOTA

Miscegenation states, N.D. Rev. Code, section 14–0304 (1943)

OHIO

Under *Ohio Stat.*, Ch. 101, section 31 (1854), separate schools for colored children were authorized and required when there were more than thirty school-aged colored children in a township. This statute was repealed in 1887. It was held in *Garnes* v. *McCann*, 21 Ohio St. Rep. 198 (1871) that the existing statute deprived the Negroes of the right to admission at white schools.

Separation of races on an educational level under the separate but equal theory was upheld in *State ex rel. Weaver* v. *Trustees*, 126 Ohio St. Rep. 290 (1933).

OKLAHOMA

Mandatory separate but equal schools required for black and white children. *Okla. Const.*, Art. I, section 5, Art. XIII, section 3; *Okla. Stat.*, Title 70, Section 5–1 (1949 Supp.).

OREGON

Miscegenation statute. *Ore. Comp. Laws Ann.*, section 63–102 (1940). Statute repealed 1951.

PENNSYLVANIA

In *Hobbs* v. *Fogg*, 6 Watts 553 (Pa. 1837), the Court held that a free male Negro was not a freeman entitled to vote under the Pennsylvania Constitution providing that all freemen could vote. In 1838, the *Pennsylvania Constitution*, Art. I, restricted voters to white freemen. In 1874 this restriction was removed.

While unable to locate the statute, H. M. Bond, *The Education of the Negro in the American Social Order*, p. 378 (1934), states that in 1854 Pennsylvania enacted an optional separate school law where there were more than twenty Negroes in a district. This law was reportedly repealed in 1881.

RHODE ISLAND

Ammons v. *Charlestown School District*, 7 R.I. 596 (1964), held that Indian tribes were not entitled to send their children to local public schools since the state had provided schools for Indians through a special state appropriation.

SOUTH DAKOTA

Indians were required to attend federal schools established for them whenever such schools were available. S.D. Laws Ch. 138, sections 290–293 (1931): S.D. Code, Section 15.3501 (1939).

TENNESSEE

Mandatory separate schools for colored children. *Tenn. Const.*, Art. XI, Section 12; *Tenn. Code*, Section 2377, 2393–9 (1932).

TEXAS

Mandatory separate schools for colored children. *Tex. Const.*, Art. VII, section 7; *Tex. Ann. Rev. Civ. Stat.*, Articles 2719, 2900 (1925).

UTAH

Utah Laws and Ordinances, 1851, An Ordinance to Incorporate Great Salt Lake City, section 6, provided "all free white male inhabitants are entitled to vote. . ."

Miscegenation statute. *Utah Code Ann.*, Section 40–1–2 (1943).

WEST VIRGINIA

Mandatory separate schools for colored children. *W.Va. Code*, ch. 18, Art. 5, Section 14 (1931)

WISCONSIN

Indians required to attend separate schools where such schools were available. *Wisc. Stat.*, section 40. 71, (1949). Repealed in 1951.

Under *Wisc. Stat.*, section 75. 14(4), restrictions surviving the issuance of tax deeds (after tax sales) which were valid and enforceable included those regarding the "character, race, and nationality of the owners." Statute repealed in 1951.

WYOMING

Wyo. Comp. Stat. Ann., section 67–624 (1945, but originally enacted in 1876), provided that the school boards could establish separate but equal schools for Negroes.

SUMMARY

Only as to the states of Maine, New Hampshire, Vermont, Washington, Nevada, and Hawaii does it appear from this nonexhaustive research that no discriminatory laws apeared on the books at one time or another. No consideration has been given to Puerto Rico, Virgin Islands, Canal Zone or Guam.

Mr. HOLLAND. Mr. President, I congratulate my distinguished friend from Virginia (Mr. SPONG) upon an exceedingly clear, informative, and I thought well stated and accurate picture of what confronts us in our Nation.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. YOUNG of Ohio). Pursuant to the previous order, there will be a period for the transaction of routine morning business with a 3-minute limitation on statements.

TITLES OF ROYALTY—VISIT TO WASHINGTON BY PRINCE CHARLES AND PRINCESS ANNE

Mr. HOLLAND. Mr. President, I took particular pride yesterday in seeing on the front page of the editorial section of the Washington Post an article from the pen of Dr. Thomas V. DiBacco entitled "Keeping Our Presidents Humble." Aside from the historical interest of the article my own interest grew from the fact that Thomas DiBacco is a Florida boy who, after going to grade school and high school in Sarasota, took his bachelor's degree at Rollins College, then came here to Washington and served, on my nomination, as a Capitol policeman or as an elevator operator for the several years that were necessary to enable him to complete his master's degree and his doctorate at American University. He is now associate professor of history at American University. I have followed his

career with a great deal of interest and pride.

I might add that his wife is a native of Winter Haven in my own county, a daughter of my longtime friends. When they came here to Washington they had one youngster and they were enriched by another while he was completing his graduate work at American University as an employee of the Senate.

Mr. President, I ask unanimous consent to have printed in the RECORD the article entitled "Keeping Our Presidents Humble."

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

KEEPING OUR PRESIDENTS HUMBLE

(By Thomas V. DiBacco)

The American people are really monarchists at heart. Their history is spotted with references to the servile deference they have accorded their President since 1789. And even the most recent examples—highlighted by the almost obsequious treatment of President Nixon in his interview by three television commentators—are so flagrant as to justify the celebration of William Maclay's birthday (July 20, 1737) by Americans who sincerely believe that the Chief Executive should not be immune to "hard" explanations of his conduct of the nation's domestic and foreign policies.

Maclay's name is not a household word—even in the homes of historians. He was born in New Garden, Pa., and spent his early adulthood studying law, surveying and fighting in the French and Indian War. After holding military and political positions in his state during the Revolution, Maclay began his most notable public service March 4, 1789, when the first Congress under the Constitution met.

Serving in the Senate for the next two years, Maclay kept a detailed journal in which he recorded his view of the debates in the upper house. Often caustic, witty and secret (publication was not permitted until 1880), Maclay's journal has a refreshing "tell-it-like-it-is" approach that the often fawning official documents of his time (and ours) lacked.

TRUANT HANDS

For example, President Washington was not first in everything—at least not in his inaugural address, according to Maclay:

"This great man was agitated and embarrassed more than ever he was by the leveled cannon or pointed musket. He trembled, and several times could scarce make out to read, though it must be supposed he had often read it before. He put part of the fingers of his left hand into the side of what I think the tailors call the fall of the breeches [side pocket], changing the paper into his left [right] hand. After some time, he then did the same with some of the fingers of his right hand. When he came to the words 'all the world,' he made a flourish with his right hand which left rather an ungainly impression."

Maclay disdained the attempts of contemporaries to establish a deferential cloak of references, immunities and titles around the President. When Vice President John Adams, presiding over the Senate, called Washington's inaugural address "his most gracious speech," Maclay blew his cool:

". . . I looked all around the Senate. Every countenance seemed to wear a blank. The Secretary was going on; I must speak or nobody would:

" 'Mr. President [of the Senate, Vice President Adams], we have lately had a hard struggle for our liberty against kingly authority. The minds of men are still heated; everything related to that species of government is odious to the people. The words prefixed to the President's speech are the same that are usually placed before the speech of his Brittannic majesty. I know they will give offense. I consider them as improper. I therefore move that they be struck out and that it stand simply address or speech, as may be judged most suitable.'

"Mr. Adams rose in his chair and expressed the greatest surprise that anything should be objected to on account of its being taken from the practice of that government under which we had lived so long and happily formerly; that he was for a dignified and respectable government, and as far as he knew the sentiments of people, they thought as he did; that for his part, he was one of the first in the late contest [the Revolution], and, if he could have thought of this, he never would have drawn his sword."

Maclay locked horns with Adams over this issue, and when other senators used such words as "excellency," "highness" and "elective highness" in speaking of the President, Maclay writhed again, attributing all the "fooleries, fopperies, fineries and pomp of royal etiquette" to the Vice President.

A DESPICABLE TITLE

Maclay's finest moment came in debate over the title "His Highness the President of the United States of America and Protector of the Rights of the Same." Although agreed upon by a Senate committee, the title has generally been ascribed to Adams' genius. Maclay first recorded Adams' defense and then his own position:

"Gentlemen [said Adams], I must tell you that it is you and the President that have been making of titles. Suppose the President to have the appointment of Mr. Jefferson at the court of France. Mr. Jefferson is, in virtue of that appointment, the most illustrious, the most powerful and what not. But the President must be himself something that includes all the dignities of the diplomatic corps and something greater still. What will the common people of foreign countries, what will the sailors and soldiers say, 'George Washington, President of the United States'? They will despise him *to all eternity*. This is all nonsense to the philosopher, but so is all government whatever."

"The above," wrote Maclay, "I recollect with great precision, but he said 50 more things, equally injudicious, which I do not think worth minuting. . . . Having experienced relief by the interference of sundry members, I had determined not to say another word, but this new leaf appeared so absurd I could not help some animadversions on it. I rose:

" 'Mr. President, the Constitution of the United States has designated our Chief Magistrate by the appellation of the *President of the United States of America*. This is his title of office, nor can we alter, add to or diminish it without infringing the Constitution. . . . As to what the common people, soldiers and sailors of foreign countries may think of us, I do not think it imports us much. Perhaps the less they think, or have occasion to think of us, the better.' "

Happy birthday, Bill!

Mr. HOLLAND. Mr. President, the article that I speak of is particularly interesting because it relates some difficulties that arose just after the Constitution of our country was adopted and during the first session of the First Congress of the United States. The article refers to the position of one of the two first Senators from Pennsylvania, whose name was William Maclay. He found fault with the fact that the Senate, and particularly the then Vice President, who later became a President—and he was a distinguished American, the elder Adams—wanted to retain many of the terms, titles, and lordly words that applied in the old days of recognition of royalty by the Colonies.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. HOLLAND. Mr. President, I ask unanimous consent that I may have 5 additional minutes.

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

Mr. HOLLAND. Particularly Senator Maclay objected to such words as "excellency" and "highness" and "elective highness." Mr. President, I think it is historically interesting to note that when a committee of the Senate reported that this, in their opinion, should be the title of the President, "His Highness the President of the United States of America and Protector of the Rights of the Same," old Senator Maclay arose and protested so vigorously that his ideas finally prevailed and the formal title of the President of the United States became what the Constitution had called him, the President of the United States of America, and it has been such ever since.

The article is a very interesting historical one, but I thought it appeared at a particularly interesting time because of the presence here, at the very time of its publication, of two young persons from the royal family of England, Prince Charles and Princess Anne, whose activities are very liberally reported in the same issue of the Washington Post of yesterday.

I may say, Mr. President, that I followed their activities with much interest, because it seemed to me that these two young people showed themselves to be very fine examples of what we in America regard as splendid modern youth.

Various activities of these two fine, handsome young people were reported. Reported were social activities at the White House, where they were the unofficial guests of President and Mrs. Nixon and their family; also their other activities, such as the visit to the Capitol, where Princess Anne, exactly as was the case with one of my dearly loved cousins, expressed wonderment that the bald eagle, the American eagle, should have been recognized as the American emblem. She did not know it but she had a marvelous precedent in the attitude of Benjamin Franklin. Of course, we almost venerate the bald eagle, but I thought it was interesting that this youngster spoke frankly of her own wonderment and her own ideas about the American bald eagle.

I noted that later, when she went about her sightseeing she wanted to see the rack and ruin along 14th Street, about which we all know, and which followed the riot of a couple of years ago. But she also wanted to see the beautiful edifices along Massachusetts Avenue and to drive along the George Washington Parkway and, from the heights of the palisades of the Potomac, to look upon our beautiful city and area from that vantage point.

I noted that the young Prince, in addition to his other activities, wanted to

go to the Patuxent Wildlife Reserve, and he was particularly interested in the vanishing species which are being safeguarded there—especially the whooping cranes.

Then they went together with some of the White House young people to see a baseball game Saturday afternoon, one of the rare occasions when the Washington Senators came out victoriously in a game with the California Angels. I thought the whole report of their attitude toward that game, which was foreign to them, and the questions they asked and the comments they made were very fine indeed and showed these two young people to be typical modern youngsters of the type of whom we can all be very proud.

I think probably the closing sentence in the news article about the game might be interesting to record, and I read it for the RECORD. The article, by the way, is entitled "Charles, Anne Watch Game; Fans, Players Watch Them"—and that was the case. And here is this final comment:

Reaction to the royal party was unanimously favorable in the stands.

"Real cool," said 8-year-old Mark Malone of Falls Church. "Out of sight," said hot dog vendor Charles Johnson. "Very suave," said Mrs. Charles Hunt, of Fairfax, a fan.

The Senators' Epstein summarized it for the players. "Very British," he said.

I think the two articles I mentioned and the two occasions which happened to coincide here at the Capitol show very clearly that as we have become more democratic and have come away from the colonial days and ways here in America, so have the British become distinctly more democratic, as exemplified by the conduct of these two very fine representatives of the British royal family.

I think this shows again what all of us know, that Britain is our oldest, closest, and dearest friend, just as I am sure the United States is the closest and dearest friend of Britain and the British people.

Mr. President, I yield the floor.

AMERICAN PRISONERS STILL BRUTALLY TREATED

Mr. HATFIELD. Mr. President, among the grimmest aspects of an altogether grim war in Vietnam is the treatment of those Americans who have been captured and are being held by the North Vietnamese. These prisoners of war face untold hardships; they are beaten and tortured; they are deprived of food and sleep; they are displayed as public spectacles; their wounds go untended; and they are denied the basic rights of war prisoners, including the right to communicate with their families.

This gross brutality and unconcern on the part of the Communists has been going on for over 5 years now. There appears little to indicate the Communists have changed one whit in their approach to the prisoner problem.

As Members of this body, we cannot allow this brutality and callousness to go unnoted. We must as Americans do all within our power at every possible level to bring to an end this evil chapter of history. We cannot rest until those men are reunited with their families.

The PRESIDING OFFICER. Is there further morning business?

Mr. HATFIELD. Mr. President, I suggest the absent of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MESSAGE FROM THE HOUSE— ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

S. 759. An act to declare that the United States holds in trust for the Washoe Tribe of Indians certain lands in Alpine County, California;

S. 1046. An act to protect consumers by providing a civil remedy for misrepresentation of the quality of articles composed in whole or part of gold or silver and for other purposes;

S. 1456. An act to amend section 8c(I) of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 and subsequent legislation, so as to permit marketing orders applicable to apples to provide for paid advertising;

S. 3274. An act to implement the Convention on the Recognition and Enforcement of Foreign Arbitral Awards;

H.R. 14452. An act to provide for the designation of special policemen at the Government Printing Office, and for other purposes; and

H.R. 14453. An act to authorize the Public Printer to grant time off as compensation for overtime worked by certain employees of the Government Printing Office, and for other purposes.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

Resolutions of the House of Representatives of the Commonwealth of Massachusetts; to the Committee on Finance:

"THE COMMONWEALTH OF MASSACHUSETTS, OFFICE OF THE SECRETARY,
State House, Boston, July 14, 1970

"RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ADOPT LEGISLATION REIMPOSING THE EXCESS PROFITS TAX

"Whereas, Emergency wartime measures for raising revenues were enacted during World War II and the Korean War; and

"Whereas, In view of the tremendous financial burden imposed by the Vietnam Conflict on the taxpayers of the Commonwealth and of the United States, and for the purpose of alleviating this burden, the emergency wartime measures for raising revenue by imposing the Excess Profits Tax on manufacturers of war materiel should be reenacted for the duration of the Vietnam Conflict; therefore be it

"Resolved, That the Massachusetts House of Representatives respectfully urges the Congress of the United States to enact legislation imposing the Excess Profits Tax on manufacturers of war materiel; and be it further

"Resolved, That copies of these resolutions be transmitted forthwith by the Secretary of the Commonwealth to the President of the United States, the presiding officer of each branch of Congress and to the members thereof from this Commonwealth.

"House of Representative, adopted, July 7, 1970.

"WALLACE C. MILLS, *Clerk.*

"A true copy.

"Attest:

"JOHN F. X. DAVOREN,
"Secretary of the Commonwealth."

Resolutions of House of Representatives of the Commonwealth of Massachusetts; to the Committee on Foreign Relations:

"THE COMMONWEALTH OF MASSACHUSETTS, OFFICE OF THE SECRETARY,
"State House, Boston, July 14, 1970.

"RESOLUTION MEMORALIZING CONGRESS TO REQUEST THE PRESIDENT OF THE UNITED STATES TO TAKE THE NECESSARY STEPS TO CONVENE AN INTERNATIONAL CONFERENCE TO DISCUSS THE UNRESTRAINED EXPLOITATION OF THE FISHERY RESOURCES IN INTERNATIONAL WATERS ADJACENT TO OUR ATLANTIC SHORELINE

"Whereas, The New England fishing banks have been seriously depleted by the unrestrained exploitation of this resource by the European mobile fishing fleet; and

Whereas, The International Commission for the Northwest Atlantic Fisheries has been unable to contain this exploitation; and

"Whereas, The traditional employment of the Massachusettts fisherman is threatened with extinction because of this exploitation; therefore, be it

"Resolved, That the Massachusetts House of Representatives urges the Congress of the United States to request the President of the United States to take the necessary steps to convene an international conference to establish the rights of its nationals to the fishery resources of the super-adjacent waters of the continental shelf adjacent to our shores and to establish such rules and procedures as are necessary to conserve, protect and perpetuate these fishery resources for the benefit of the citizens of the United States; and be it further

"Resolved, That a copy of these resolutions be sent by the Secretary of the Commonwealth to the President of the United States, to the presiding officer of each branch of Congress and to each member thereof from this Commonwealth.

"House of Representatives, adopted, July 6, 1970.

"WALLACE C. MILLS,
"Clerk.

"Attest:

"JOHN F. X. DAVOREN,
"Secretary of the Commonwealth."

BILLS INTRODUCED

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

By Mr. CURTIS:

S. 4100. A bill for the relief of Theodoros Paniotis Hiliotis; to the Committee on the Judiciary.

By Mr. LONG:

S. 4101. A bill to add a new title XX to the Social Security Act to establish a Federal Child Care Corporation which will have the responsibility and authority to meet the Nation's needs for adequate child care services; to the Committee on Finance.

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

ADDITIONAL COSPONSOR OF A BILL

S. 4002

Mr. MATHIAS. Mr. President, on behalf of the Senator from Kansas (Mr. DOLE), I ask unanimous consent that, at the next printing, the name of the Senator from Iowa (Mr. MILLER) be added as a cosponsor of S. 4002, to establish a National Information and Resource Center for the Handicapped.

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

FAMILY ASSISTANCE ACT OF 1970—AMENDMENTS

AMENDMENT NO. 788

Mr. TALMADGE submitted amendments, intended to be proposed by him, to the bill (H.R. 16311) to authorize a family assistance plan providing basic benefits to low-income families with children, to provide incentives for employment and training to improve the capacity for employment of members of such families, to achieve greater uniformity of treatment of recipients under the Federal-State public assistance programs and to otherwise improve such programs, and for other purposes, which were referred to the Committee on Finance and ordered to be printed.

(The remarks of Mr. TALMADGE when he submitted the amendments appear earlier in the RECORD under the appropriate heading.)

NOTICE OF HEARINGS BEFORE THE SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES ON AMENDMENTS TO THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

Mr. McCLELLAN. Mr. President, I wish to announce that the Special Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary will resume hearings on bills to amend the Omnibus Crime Control and Safe Streets Act of 1968 and related measures on Thursday, July 30, 1970.

The hearings will begin at 10 a.m. in room 2228, New Senate Office Building. Persons wishing to testify or submit a statement for the record should contact the staff of the subcommittee in room 2204, telephone extension 3281.

ADDITIONAL STATEMENTS OF SENATORS

FIRST ANNIVERSARY OF LUNAR LANDING

Mr. ANDERSON. Mr. President, 1 year ago today two men first stepped onto the surface of the moon while another kept a lonely vigil in lunar orbit. That first lunar landing is one of the great events in the history of mankind. It was the result of the close cooperation and dedicated efforts of hundreds of thousands of people working together mostly in this country but some located in many other parts of the world. I salute all these people and especially Astronauts Armstrong, Aldrin, and Collins. Theirs was the job of carrying out to a successful conclusion the final task. They did it admirably. I doubt that any of us who were listening that night can forget the words:

Tranquillity base here—the Eagle has landed.

And then a short time later:

That's one small step for a man, one giant leap for mankind.

Those words, Mr. President, and the brave men who accomplished this unbelievable task, will be remembered as long as there is a recorded history. That is something of which we should all be proud.

PRESIDENT NIXON URGES RESTRAINT ON SPENDING

Mr. GRIFFIN. Mr. President, in a statement issued by the White House last Saturday, July 18, President Nixon called upon Congress to practice restraint with respect to Government spending and to impose a firm ceiling on Federal expenditures in order to avoid a large deficit in the current fiscal year.

I ask unanimous consent that the President's statement be printed in the RECORD.

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

STATEMENT BY THE PRESIDENT ON CONGRESSIONAL ACTION AND GOVERNMENT SPENDING

I am issuing this statement today because I view with deepening concern the course of events in the Congress affecting the expenditure of the taxpayers' money. There is a persistent and growing tendency on Capitol Hill to approve increases in expenditures without providing the revenue to pay the costs. For just one example, the Congress seems on the verge of approving an education appropriation bill that provides nearly half a billion dollars more than I requested.

Given this situation, it is time to face some hard figures and some troublesome possibilities and to strive for solutions.

Our Federal budget totals over $200 billion. If we allow these outlays to overshoot the basic revenue-producing capacity of our tax system—as happened particularly in 1967 and 1968—we will produce the same result; inflation of a magnitude that will take difficult and painful measures to eliminate.

In Fiscal Year 1970, which ended June 30, we worked very hard and effectively—in the midst of continuing controversy—to hold the expenditure line. As a result, any deficit will largely reflect a short-fall of revenues from the adjustment of the economy to policies designed to combat inflation.

For Fiscal Year 1971, which began July 1, this Administration transmitted to the Congress a budget calling for expenditures of $200 billion, and estimating revenues at $202 billion. If the Congress continues in its present pattern of proposed increases in expenditures, the total for this fiscal year will actually reach a substantially larger figure.

Some $3.5 billion of increases are caused by mandatory and virtually uncontrollable rises in costs—such as increases in the interest on the national debt ($1.8 billion) and in public assistance (over $500 million). The major pay increase for Federal employees added $1.4 billion over the amount originally budgeted. Some increases are the result of necessary new programs. But much of the total increase is due to threatened Congressional action or inaction.

On the receipts side of the ledger, the Congress has failed to provide necessary revenue. By its action on the tax bill last year, the Congress had already reduced projected revenue for Fiscal Year 1971 by $3 billion and for Fiscal Year 1972 by $5 billion below my request. Beyond this, the Congress has as yet failed to take action on my proposals for a tax on lead used in gasoline, an advance in the time of collection of estate and gift taxes and an increase in postal rates. The Congress must produce action on these measures, or we can expect to collect much less than the $202 billion estimated in February.

And that is not all. The 1971 expenditures are an inevitable springboard for the budget of 1972. Unless the present trend is corrected by the Congress, the resulting 1972 spending could produce a massive deficit.

It has become almost a cliche to say that all we need do to resolve this dilemma with regard to our Federal budget is to cut space and defense outlays and "change our national priorities." Let's set the record straight. We *have* changed our national priorities.

In the budget that I proposed for fiscal 1971, spending for defense is exceeded by spending for human resources for the first time in 20 years. In all of the last three administrations, military spending ran far above spending for other purposes. In 1962 under President Kennedy the Federal government spent 48 percent of its budget for defense and only 29 percent for human resources. By 1968, the comparison was 45 percent to 32 percent. My budget for 1971 sharply reversed these priorities. It calls for spending 37 percent for defense and 41 percent for human resources programs. To accomplish this massive change in emphasis, military and space expenditures were cut by some $6 billion.

As a former member of the House and the Senate, I fully understand that the members consider appropriations and spending bills one at a time. The trouble is that the total of the parts, each in itself attractive and even meritorious, is too large a figure. Unless the Congress makes a very special effort to look at the total picture, the members may not fully appreciate the overall effect of their fiscal actions.

In raising the issue of budget deficits, I am not suggesting that the Federal government should necessarily adhere to a strict pattern of a balanced budget every year. At times the economic situation permits—even calls for—a budget deficit. There is one basic guideline for the budget, however, which we should never violate: except in emergency conditions, expenditures must never be allowed to outrun the revenues that the tax system would produce at reasonably full employment. When the Federal government's spending actions over an extended period push outlays sharply higher, increased tax rates or inflation inevitably follow. We had such a period in the 1960s. We have been paying the high price—and higher prices—for that recently.

We must not let that happen again. It need not happen. Responsible government cannot let it happen. This is a time when the taxpayers of the United States will not tolerate irresponsible spending. The Congress should ask itself in every case: Will this new expenditure, when tied to all the others, require increased taxes or cause a deficit which would bring about an increase in prices. The Congress must examine with special care those spending programs which benefit some of the people but which really raise taxes and prices for all the people.

Recently I signed into law a bill fixing a "ceiling" on Federal spending for the current fiscal year. I accept that ceiling and intend to live under it. But the Congress, by making exceptions and approving measures with mandatory spending provisions, has made a travesty of this legislation.

I now ask the Congress to establish a *firm* ceiling on total expenditures—a ceiling from

which only specific and genuine "uncontrollables" such as interest on the public debt would be exempt—a ceiling within which the President can determine priorities—a ceiling that would apply to *the Congress* as well as to the Executive. This will require of the Congress—as well as the President—the hard task of adjusting and pruning individual program outlays to hold their total within this ceiling. With this we can reassure citizens generally that Washington will not take spending actions that will impose on their future incomes the burdens of ever increasing tax rates. With this we can pursue vigorous policies of expansion to achieve full employment, rapid improvements in our material levels of living, and a more stable dollar.

PROPOSED SCHOOL LUNCH GUIDELINES OF CONFERENCE SPONSORED BY CHILDREN'S FOUNDATION

Mr. McGOVERN. Mr. President, on May 14, 1970, the recently enacted school lunch legislation was signed into law. The new act makes vast changes in both the structure and content of child nutrition legislation, basically through many administrative changes.

In order to assist the Department in the development of appropriate regulations, the Children's Foundation of Washington held a workshop on June 15 and 16, 1970. At the workshop were members of congressional staffs, representatives of the Department of Agriculture, and the Bureau of the Budget, State and city school lunch directors, representatives of national groups concerned with the problem of hunger, and lawyers specializing in this area of the law. The recommendations which were developed in this workshop offer lucid explanation of the intent of Congress in enacting this legislation, and they provide a reasonable guidepost upon which the regulations for the National School Lunch Act may be based.

If we are soon to reach our goal of feeding every needy child, then we would be wise to heed the counsel of such truly representative groups as this one.

I ask unanimous consent that these recommendations, a list of participants in the workshop, and the text of a copy of a letter from me to Secretary Hardin transmitting these recommendations be printed in the RECORD.

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

RECOMMENDATIONS

New child nutrition legislation will require basic changes in administration management procedures if the congressional mandate is to be obeyed. The legislation (P.L. 91–248) is intended to provide free and reduced price lunches for all needy school children.

The need for strengthened operation procedures was the subject of a workshop convened on June 15 by The Children's Foundation of Washington, D.C. The workshop had been proposed by U.S. Senator George McGovern, Chairman of the Select Senate Committee on Nutrition and Human Needs.

Participants (list attached) included members of various congressional staffs, state and community school lunch directors, representatives of national groups concerned with hunger in the United States and lawyers specializing in this area of the law. The U.S. Department of Agriculture (USDA), which has the responsibility for writing the new regulations, and the Bureau of the Budget, which reviews the allocation of funds to Federal programs, were represented.

The significant conclusions which developed in the workshop were:

National standards based on family size and income should be established to determine the eligibility for free or reduced price lunches. These standards should be the same as those used by OEO to determine *poverty* levels.

The national standards should be considered as a floor. States and school districts should be allowed to set other standards based on geographical, social and economic characteristics of the area or community only if such changes enlarge participation.

Determination of a child's eligibility should be made by an adult member of the household, or by an official in the school system. The method of determining eligibility should be a signed statement declaring the child is qualified under the household standards published for the particular community. The child should begin receiving free or reduced price lunches immediately upon certification.

An eligibility affidavit should be accepted when filed at any time during the school year, or during registration prior to the start of a school year.

The affidavit form should state the income eligibility level in annual terms, according to household size. The applicant should not be required to state his own exact household's income level. The only information required should be an affirmative statement that the household meets the eligibility standards. The only blanks to be filled out on the form should be the name of the child, or children, the name of the adult member of the household, the address and telephone number of the household.

An impartial appeals board should be established locally to hear complaints from school officials or other persons who submit charges that a child does not qualify for the free or reduced price lunch he or she is receiving. The appeals mechanism should be considered a procedure to protect school administrators.

Appeals boards should be established on a larger than school district basis. The committees should be publicly announced, have some knowledge of the program, and be easily accessable to any school district; i.e., they should be within commuting distance by public conveyance.

Regulations on the appeals mechanism should spell out procedural safeguards, including the right to:

1. Call witnesses.
2. Cross-examine other witnesses.
3. Counsel, either a lawyer or friend.
4. A hearing at a convenient time.
5. An adequate notice.

Decisions by the appeals board should be made on the record alone, and should deal with the single question of eligibility. The decisions should be written and transcripts of the hearing should be made available to the parties involved.

The cost of the appeals boards should be considered a normal administrative expense of the Federal agency responsible for the program operation.

School districts and states should be allowed to claim up to 100 percent of the cost of school food and food service, less the payment received from children, rather than 100 percent of food costs as current regulations provide. In effect, State directors should be able to fund poor schools on districts up to 100 percent of the cost of the complete lunch program. The maximum reimbursement rate from Section 11 or Section 32 should be increased to 40 cents per lunch, except where 100 percent funding is required in the judgment of the State director.

Schools which allow candy, soft drinks and other snacks to be sold when regular food service programs are in operation should be required to put the full income from these enterprises into school food service programs.

Standards for a Type A lunch, which determine the availability of Federal funding, should be based on nutritional characteristics rather than on arbitrary food groups. School districts with the professional competence to devise menu patterns of adequate nutritional quality should be permitted maximum flexibility in developing food programs for the community.

THE CHILDREN'S FOUNDATION—CONFIDENCE PARTICIPANTS

Barbara Bode, Community Coordinator, The Children's Foundation.

Gerald Cassidy, Senate Select Committee on Nutrition and Human Needs, Senate Office Building, Washington, D.C.

George Dalley, Staff Attorney, The Children's Foundation.

Charles U. Daly, President, The Children's Foundation.

Donald DeFoe, Executive Director, Council of Chief State School Officers, 1201 Sixteenth Street N.W., Washington, D.C.

Thomas J. Farley, Director, School Food Services Division, Milwaukee Public Schools, 5225 West Vliet Street, P.O. Drawer 10–K, Milwaukee, Wisconsin.

Pat Fitzpatrick, Washington Research Project, 1826 Jefferson Place N.W., Washington, D.C.

Thelma Flanagan, Assistant Director, National School Lunch Survey, 216 South Duval, Tallahassee, Florida.

Louise A. K. Frolich, Field Coordinator, American School Food Service Association, 4101 East Illiff Avenue, Denver, Colorado.

Sister Dolores Girault, Division for the Spanish Speaking, National Catholic Conference, 401 International Building, San Antonio, Texas.

Bernard Gladieux, Bureau of the Budget, Executive Office Building, Washington, D.C.

Dr. Richard Granger, Child Study Center, Yale University, 333 Cedar Street, New Haven, Connecticut.

Mary Harris, Director, School Lunch Program, Independent School District #1, Tulsa, Oklahoma.

Betty Hight, United States Department of Agriculture, Washington, D.C.

Julius Jacobs, Director, Department of Food Services, Presidential Building, Room 806, 415 Twelfth Street N.W., Washington, D.C.

Hulbert James, National Council of Churches, 475 Riverside Drive, New York, New York.

John R. Kramer, Executive Director, National Council on Hunger and Malnutrition in the United States, 1000 Wisconsin Avenue N.W., Washington, D.C.

Earl M. Langkop, Director, School Lunch Section, State Department of Education, Jefferson Building, P.O. Box 480, Jefferson City, Missouri.

Rodney E. Leonard, Consultant, The Children's Foundation.

Jay Lipner, Attorney, VISTA, 1520 Broadway, Little Rock, Arkansas.

Josephine Martin, Chief Consultant, School Food Service Program, State Department of Education, Room 21, State Annex Building, 156 Trinity Avenue, S.W., Atlanta, Georgia.

Barbara McGarry, Executive Director, American Parents Committee, 20 E Street N.W., Washington, D.C.

Clarence McKee, Assistant to Senator Jacob K. Javits (R. New York), Room 320, Old Senate Office Building, Washington, D.C.

Michael McLeod, Assistant to Senator Herman E. Talmadge (D. Georgia), Senate Office Building, Washington, D.C.

Thomas O'Shaughnessy, Food Consultant,

Philadelphia School District, 735 Schuylkill Avenue, Philadelphia, Pennsylvania.

Ronald Pollack, Columbia University Center on Social Welfare Policy and Law, 401 West 117th Street, New York, New York.

Jack Quinn, Senate Select Committee on Nutrition and Human Needs, Senate Office Building, Washington, D.C.

Vee Tinnin, National Council of Negro Women, 1342 Connecticut Avenue, Suite 832, Washington, D.C.

Sam Vanneman, House Committee on Education and Labor, 316 Riley Street, Falls Church, Virginia.

Pohle H. Wolfe, Consultant, School Food Services, State Department of Education, 520 State Office Building, Denver, Colorado.

JUNE 29, 1970.

Hon. CLIFFORD HARDIN,
Secretary, U.S. Department of Agriculture, Washington, D.C.

DEAR MR. SECRETARY: As you know, on June 15 and 16, 1970, the Children's Foundation of Washington sponsored a workshop on the school lunch legislation which was recently signed into law. At the workshop were members of Congressional staffs, representatives of your Department and of the Bureau of the Budget, state and community school lunch directors, and representatives of national groups concerned with hunger in the United States and lawyers specializing in this area of the law.

Enclosed you will find the recommendations for the Department regulations developed in the workshop. It is my opinion that these recommendations fully represent the intent of Congress in the passage of the school lunch legislation. I trust they will be of great use to you in the development of the new regulations.

Sincerely yours,

GEORGE MCGOVERN,
Chairman.

PROF. BRUCE RUSSETT ON NATIONAL DEFENSE SPENDING

Mr. HATFIELD. Mr. President, Prof. Bruce Russett, of Yale University has recently published a book entitled "What Price Vigilance: The Burden of National Defense," which discusses, in an objective manner, the causes and consequences of military spending in this country.

In addressing the question of who pays for defense, Professor Russett presents the results of a statistical analysis that shows that "guns do come partly at the expense of butter." In the first place, he shows that over the period 1939 to 1968, a dollar increase in defense spending resulted in a 42-cent decrease in personal consumption, most of this in consumer durables and services. Second, he says:

> Proportionately, investment is much harder hit by an expansion of the military establishment than is consumption.

And among investment categories—

> Residential structures (housing) . . . takes the greatest proportionate damage.

Third, he shows that expenditures for education, health, and welfare are quite sensitive to defense spending. He says:

> Education suffered immediately when the military needed to expand sharply for World War II and Korea . . . it recovered its share only slowly after defense spending had peaked.

The greatest effect was on State and local spending for primary and secondary education. Fourth, he shows that—

> Public expenditures for health and hospitals are only a little less sensitive to the pressures of defense than are dollars for education.

Finally, Mr. President, Professor Russett concludes with—

> It is too soon to know how damaging the Vietnam War will be, but in view of past regularities one would anticipate significant costs. The inability to make investments will leave the nation poorer, more ignorant, and less healthy than would otherwise be the case.

COMMENCEMENT ADDRESS BY DR. JOSEPH C. ROBERT

Mr. BYRD of Virginia. Mr. President, at the commencement ceremonies of Christchurch School, Christchurch, Va., an eloquent commencement address was delivered by Dr. Joseph C. Robert, professor of history at the University of Richmond.

Dr. Robert made many sage observations, both about the role of youth in our Nation and the proper function of our educational institutions.

Mr. President, I ask unanimous consent that the text of Dr. Robert's address be included in the RECORD.

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

ADDRESS BY DR. JOSEPH C. ROBERT

Thank you, Mr. Yarbrough . . . Ladies and gentlemen of the Christchurch family: In my lifetime I, too, have had to suffer through commencement addresses, a lot of them! Virtually all begin with the same sentence, "I am indeed happy to be with you today." Incidentally, nobody ever asks the audience if *it* is happy to have to listen to the speaker; it's safer not to put that question to a vote.

I now say to you, "I am indeed happy to be with you today." It happens that I really am, this for several reasons. Your announcement of several weeks ago in THE SEAHORSE indicated that I am a former patron. The word may be technically correct, but in truth I am a former beneficiary. I underscore my admiration for your administrators and faculty, my interest in and affection for this community which is the home of my wife's ancestors, and my joy in seeing old and new friends among the parents here today.

So much for my feelings, but how about yours? Your health will improve, I know, when I tell you that Mr. Yarbrough, in his straightforward way which you graduates know so well, told me to take just as much time as I wanted, *provided* I didn't talk over fifteen minutes. He also said that I could make the same address I made here several years ago. I'm not quite sure whether he meant that nobody paid any attention to it anyway and thus wouldn't remember it, or whether he meant I had a new audience which hadn't heard it. But the situation in education is quite different today from what it was even four or five years ago, and thus the old manuscript wouldn't do (even if it ever had done!). However, it is available for the curious in Mr. Yarbrough's files, if it hasn't disintegrated from the dry rot.

Young gentlemen, for I speak to you, I acknowledge that you are in full charge of your mental television sets, and that you can turn me off—or switch channels to delightful visions of convertibles, electric guitars, outboard motors and such, without batting an eye, all the time looking me straight in the face. This is part of the normal protective armor of an audience, and the only device which permits us to survive the relentless oratory of school assemblies.

But just before you switch stations I would like to work in a public service message: If you are at all interested in money, a little hard-thinking just now might increase your future earning power by several hundred thousand dollars, and indeed it might keep you out of trouble. And there are more idealistic reasons for pausing and reflecting.

Today I especially wish to be useful rather than humorous, functional rather than facetious. My dual theme is the importance of *planning*, and of a proper definition of *freedom*. These are the two main items in your survival kit.

I understand that all of you graduates intend going to college. I say parenthetically that I am not certain all secondary school graduates in the nation should go to college. Some of the very best educated, most successful men I know never finished high school; they educated themselves. There are many avenues to education, and college is only one of them. Occasionally I find a secondary school senior who thinks he wants to go to college, when really he wants to have *been* to college in order that this fact can be put on his job application, in the announcement of his marriage, or—if he is that foresighted—in his obituary. A rough test of a man's readiness for college is an honest answer to the one-sentence questionnaire: Are you trying to get *to* something, or to get *away* from something?

Let's assume that you pass the test, then I congratulate you. College *can be* the most glorious episode in a man's life. In college you may claim a share in a great tradition; you are bidding for membership in a worldwide fraternity of peculiar splendor.

If you want to predict your success or failure in the great enterprise on which you are embarking beginning next September, you can privately read your academic horoscope by facing a couple of preliminary questions: (1) What is your attitude? and (2) Do you have enough intellect to plan, and enough character to adhere to your plan?

Your *attitude* is to your academic operation what your engine is to your automobile. It is the thing which powers you. The first phase of attitude testing is your reaction to the shocking statement which sooner or later will be made by a professor, a dean, or a president. "My young friend," he will say, "did you know that you are a charity patient in this institution?" In fact you will *not* be paying your own way, even if you are assessed so-called full fees. You will be the beneficiary of taxes painfully surrendered by citizens, or more likely, of endowments sacrificially accumulated because of many ordinary folks: some lean and some hungry old preachers, some widows who dreamed of a better world, or some philanthropist who wanted you to have a better chance than he did as a boy. In this life your head ought to be held high, but your spirit daily must bow before this fact of *beneficiary*, parental and philanthropic, and if you miss that gratitude you are on the wrong track.

The next suggestion, still under the topic of attitude, sounds commonplace to me, and no doubt to you, but strangely enough, it is a novel thought to some students. (I must pause here long enough to remind you that I am, all along, talking about colleges and universities in general—not any particular one. Please keep that fact in mind.) The key point is that presumably a person comes to college to learn something from people who are doing their level best to summarize the experiences of the ages, the lessons of past generations.

However, today, in academic villages over the land, there is a new romanticism which is built on the thesis that a nineteen-year-old boy by inspiration of the moment—instant wisdom as it were—knows more than

those trying to present the hard-earned fruits of the past to him. I repeat: I am confident that the new romanticism is not characteristic of those of you who have benefited from Christchurch.

Now as to judicious planning and timely execution of plans: Young gentlemen I beg that you substitute these words of mine for time-losing and perhaps disastrous experimentation. If you could have heard the agonizing wails over my desk for several decades, you would consistently plan, plan, plan, and not get behind. The boy who is failing will characteristically say to me with that wonderful honesty which I have always seen in my own students, "Professor, I just got behind and never could catch up." Time is not available for me to elaborate the point, but if you develop the habit of *creative listening* in class (keep that private TV tuned to the proper channel!)—if you force yourself to keep a relevant question in your mind *ahead of* the lecture or the discussion—and if you cultivate the habit of single-minded study with pre-reading of the subject matter (none of this nonsense about having to listen to a radio while "studying" in quotation marks)—if you have these efficient study habits you will have enough time left for either goofing off a bit (as I believe the saying still is) or time for that extra exploration which is the heart of advanced scholarship.

In a sense I suppose I have been avoiding my main concern up to now. It is my desire to be honest with you about your new *liberty*. College has always been a place of relative freedom, but within the last several years there has evolved a new intensity in the clamor for options. Herein, my young friends, lies both your grandest opportunity and your greatest risks. First, your options in the way of the curriculum are vastly greater than they were even five years ago—this in the typical college. The old rule-of-thumb of about two years of *designated* and then about two years of optional courses is pretty well gone under the deluge of electives, which often leave the oldtimers with heads aching and shaking. My point is that, earlier than ever before, you must exercise wisdom in choosing your courses. There is an ancient wiscrack to the effect that the elective system means no class earlier than ten a.m., none higher than the second floor (unless there is an elevator), and none demanding more written work than a two-page essay! To be sure, there is an advisory system, but the emphasis is an *advice*, not compulsion. From the bottom of my heart I hope that I am not wasting my breath when I urge that you enroll—insofar as you have the choice—in courses which you *need*, even if (and sometimes solely because) they are difficult for you.

Your options nowadays are more than in the courses you take. For better or for worse, there are social options, freedom of the person, far removed from the old concept of *in loco parentis*. To be sure you have had tastes of freedom up to now, maybe even a few swallows. But today there is a breadth to collegiate freedom without precedent in America. And there is a concurrent disappearance of the *sanctuary* concept. Now this is not of your doing, but you inherit the whirlwind, in a sense. I mean that once upon a time a college boy was protected in his foolishness by the phrase, "Oh, he's just a college boy, and this is a college-boy prank. Forget it." Not now. The day of the escapade is over. As the college boy is demanding the privileges of the adult world (and I am afraid prematurely), he is (often without realizing it) at the same time automatically surrendering a protective concept which he once enjoyed. When he goes to a civil court demanding what he considers due process, as an offender he must appear before those same courts to answer for his deeds. Litigation is a two-edged sword. Frankly, with mass demonstrations there is the hazard of the common-law concept of conspiracy and the guilt of all when affairs get out of hand. I have seen very few people who gracefully wear police court records. Please forgive me for my bluntness in these matters of college life, but I have in my time wept with both parents and students.

I have referred to a sense of the past, to a sense of history which is the main ingredient of a sound education. And truly it is extravagant for mankind to have to relearn by painful experience what his ancestors learned for him. Imperfect as we may be today in society, there has been tremendous progress under our systems of representative democracy and of individual initiative in economic matters. Surely we must improve, and you must be critical, critical in the best sense of the word. There *is* unfinished business, but on the hard anvil of experience the body politic has hammered out a system whereby basic decisions can best be made by counting votes under a representative government, and not by counting the decibels which come from the chanting on the streets.

Social services must be given but all vitality will be drained from our economy when rewards for risk and effort disappear. What I am trying to say is that when in your academic world you are given freedom to think and to debate (as you *should* be), you will be foolish to assume that you are back in the Garden of Eden again, that you are primitive man devoid of the experiences of the centuries. Values and procedures are passed down to you and are yours for the asking. You will soon be in the academic Tower of Babel with confused tongues; listen to the voice of mankind's total history: you can't get something for nothing and have a sane society; heroes have lived and have died that you might enjoy your present liberties. And in that Tower of Babel, listen to the still small voice of conscience.

You have read of our dwindling natural resources. And I too am apprehensive. The natural resource which, as it dwindles, concerns me the most is our national character. Boldness, courage, patriotism, imagination, sacrifice, hard work, a willingness to think of generations to come, these have brought us to where we are.

Before I left Richmond a wise-looking dean reminded me that newspaper reports of the colleges don't always present the correct picture of academic life. If two percent of the students misbehave, this is news; the fact that ninety-eight percent don't and are going about their business doesn't normally get into the papers. And he is right.

And I must add a sort of personal postscript. If colleges seem to be changing, you are getting there in time to help see to it that the changes are in new techniques, and not in surrendering the ancient values. Your voice can be heard and legitimately. There is a you-power, "YOU" not to be ignored. Exercise your option wisely.

To you graduates I say, bless the men of Christchurch who in academic acrobatics at the same time held your feet to the fire and your nose to the grindstone. They have given you what Seymour St. John of Choate School years ago called the Fifth Freedom, the freedom to be one's best. They have made the way easier for you in that wonderful, mysterious, exciting season just ahead of you. My congratulations to students and parents, teachers and administrators of this noble institution, Christchurch School.

NIXONOMICS

Mr. CURTIS. Mr. President, I am sure that every Senator here has seen the good news on the economic front—the stabilization of the gross national product, the continued rally of the stock market, and the fact that housing starts in June were 11 percent over those in May.

The thought occurs to me, however, that many who had predicted and even hoped for the worst in order to see the President embarassed and his party defeated will not, now that we have an economic upturn, be coming forth to give credit where credit is due.

For that reason I would like to take just a minute to point out that when he took office, one of the President's avowed intentions and chief goals was to stop inflation without a major recession.

There is every indication that he has done this. At the start of the month we saw a decline in the jobless rate. Now these other economic indicators have come along to add optimism and confidence.

It looks like the second half of 1970 is going to be a pretty good year, economically speaking, for all Americans.

Mr. President, just one more comment. The Chairman of the Democratic National Committee recently coined a new word—Nixonomics—and tried to make it synonomous with recession, inflation, unemployment, and deficit spending.

I suspect that he will find that Nixonomics really is the art of ending a Democrat inflation without a major recession or economic disruption. Nixonomics—a word for a sound and sensible economic policy that leads to stable prices and high employment.

Mr. President, I buy that word and that definition. I think the Nation will, too, come November.

END THE WAR CAMPAIGN

Mr. McGOVERN. Mr. President, the distinguished Senator from Oregon (Mr. HATFIELD) and I would like to clarify matters concerning the funds raised by a television broadcast by five Senators on NBC on May 12 in favor of the so-called amendment to end the war.

On July 16, a Member of the House asked some questions about those funds. Answers to some of these questions involve differing opinions about the Indochina war and the merits of the amendment to end the war. We shall not enter into debate on those questions at this time. But some of the questions call for factual answers and we are pleased to be able to provide them at this time. Had Representative WILLIAMS addressed these questions directly to us, we should have been glad at any time to have provided him the information he seeks.

He asks:

Are these gentlemen arranging for a full accounting of the funds which, by public solicitation, they are raising?

A full accounting is available to any person on request. In the interests of making this accounting widely available, it was placed in the CONGRESSIONAL RECORD on June 29, 1970 on page 21917. Additional reports will be made until all funds are expended.

We believe this response also answers the question:

If they are, to whom, and how, will they make such an accounting?"

We are asked:

Are contributions tax deductible for the contributor?"

This is, of course, a matter to be determined between the contributor and the Internal Revenue Service. We have never claimed nor do we believe that such contributions are tax deductible.

Are these contributions taxable items for the recipient? Exactly who, or what, is the actual recipient of these funds?

The funds received are channeled through the Amendment to End the War Committee, which, in many ways is similar to political campaign committees, which are not taxed on their receipts. The funds pass through this committee mainly to the media for the purchase of time and space. As such these funds become earned income of the ultimate recipients for which taxes are paid.

Have these gentlemen formed a nonprofit nontaxable organization to effect and protect this action?

The answer is that we have not formed any such organization, as was explained in the answer to the earlier question.

What is the view of the Internal Revenue Service?

The Representative should address his inquiry to that agency.

According to legal counsel we have consulted, the handling of funds contributed to support the amendment to end the war is in conformity with IRS regulations. No specific action has been taken to clear the handling of these funds with the IRS, because sufficient precedents appear to exist on the matter.

Senator HATFIELD and I would add that the use of short television announcements and newspaper advertising to solicit public support for the amendment is in the nature of an experiment, based on previous experience in the use of such techniques in the support of political candidates. In many ways, the record of a candidate is a good deal more complex than the presentation of a choice whether or not we should fix a deadline for withdrawal from Indochina. Since the candidate uses short television announcements with considerable effect, we and our colleagues considered it worthwhile to use the same technique on an issue.

We believe that no short announcement can, however, be a substitute for a longer, rational discussion for which we have sought to purchase time on the three major networks. Thus far, their refusal to sell or give us such time has, in fact, limited our activities to the campaign now underway.

RESPONSE TO CBS PRACTICES

Mr. DOLE. Mr. President, shortly after the President's decision to invade the Cambodian hideouts of the North Vietnamese, Mr. Gary Sheppard of CBS did an interview with some American soldiers just before they went into battle.

I said then, and repeat now, that that interview was intended to sow fear, uncertainty, and discord among our troops.

In response to a newspaper article concerning my statement, I received a letter from Mrs. Bruce R. Wilson who indicates she is a former CBS press representative, an advocate of a free press and the wife of a Navy officer.

I ask unanimous consent that Mrs. Wilson's letter, in part, be printed in the RECORD, because it is pertinent to the broad subject of responsibility and reliability in the press.

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

NEW YORK, *June 17, 1970.*

Senator ROBERT DOLE,
Senate Office Building
Washington, D.C.

DEAR SENATOR DOLE: I would like to thank you for bringing to my attention via *Human Events the Gary Sheppard interview with U.S.* troops about to enter Cambodia. My husband (a Lt. (jg) in the Navy) and I have been stationed in Greece since February and consequently were not aware of this televised report until your statement.

As a former CBS press representative, I am well aware of political bias in the television news area. I have grown accustomed to non-objective reporting and occasionally dishonest reporting. In spite of this, I remain firmly committed to the principle of freedom of the press and would object to any limitation on their rights to speak freely. Jefferson's dictum about toleration of error is applicable here and will serve to protect everyone's right to speak freely, limited only by libel laws and other laws prohibiting incitement to riot or panic. I welcome the opportunity for the free interplay of ideas as long as all sides have an equal chance to obtain the rights to televise, broadcast, or publish.

I do object with a very deep and angry conviction to efforts by a reporter to inspire fear and doubt in our troops when they are about to enter battle. This transcends freedom of the press, it transcends the boundaries of decency, and indeed, transcends the limits of treason. CBS, by televising this interview, demonstrated their approval of his actions and is consequently equally to blame. The network should have immediately recalled Sheppard and fired him for his blatantly inhumane, treasonous, and scurrilous report.

My oldest brother flew bombers at the age of 17 in World War II and another brother was at Inchon in Korea. I thank God that Mr. Sheppard was not spinning his webs of doubt beside them. I don't fear that my brothers or other courageous men like them would have heeded his message. However, hearing Tokyo Rose on the radio was bad enough. Sharing a trench with her or having her in the co-pilot seat would have been intolerable.

I intend to write to CBS, some of her sponsors, and anyone else that can prevent this type of activity from happening again. I encourage you to keep up your efforts to expose and criticise such fifth column activities.

Cordially,

Mrs. BRUCE R. WILSON.

DISTRICT OF COLUMBIA CRIME

Mr. MATHIAS. Mr. President, I wish to remind Congress of our responsibility in facing and dealing with the serious crime problem in the District of Columbia, since Congress has chosen to retain virtually exclusive governmental authority within the District.

To this end, I ask unanimous consent to have printed in the RECORD a list of crimes committed within the District yesterday as reported by the Washington Post. Whether the list grows longer or shorter depends on Congress.

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

INTRUDER RAPES SOUTHEAST WOMAN

A 44-year-old woman was raped and robbed at knife-point early Saturday by a man wearing a stocking mask who forced his way into her Southeast Washington home, police said.

The woman told police that when she was awakened at 5 a.m. by her alarm clock, she saw a man standing in her bedroom doorway. Holding a knife at his victim's throat, the intruder warned, "If you scream, I will kill you." Then he raped her, police said.

After the assault, the women said she freed herself, ran to the front door and called for help. Her assailant chased the woman, grabbed her by the neck and dragged her back upstairs.

Cursing and threatening her, the man took bills and $3 in dimes from his victim's pocketbook and ran out of the rear door.

The woman was examined at D.C. General Hospital and released.

In other serious crimes reported by area police up to 6 p.m. yesterday:

ROBBED

Carl's Sunoco Station, 2510 Pennsylvania Ave. SE, was held up about 6:50 p.m. Saturday by a young man displaying a revolver who approached the attendant, William Patrick Hamilton, and demanded money. After Hamilton handed the gunman his change carrier, the man said, "Give me the bills," and took a roll of bills from the attendant's shirt pocket. "Where do you keep the other bills?" he then asked and Hamilton explained that the rest of the money was locked in a safe inside the station which he could not open. "Is there a gun kept around here?" the gunman demanded and when Hamilton said there was not, the man ordered him to walk to the rear of the station and fled.

Frederico Canuto, of Washington, was beaten and robbed about 2:35 a.m. by two young men who attacked him at 18th and Church Streets NW, knocked him to the ground and escaped with the money from his wallet.

Ruth Fowler, of Washington, was treated at Freedmen's Hospital for injuries she suffered during a robbery in the 1200 block of O Street NW. Three youths and two girls attacked her about 9:30 a.m., Saturday, knocked her to the ground and forced her to give them her money.

Cecil H. Brathwaite, of Washington, was held up about 10:30 p.m. Saturday by three men, one brandishing a sawed-off shotgun, who approached him near his home in the 7700 block of Eastern Avenue NW. "Give me your money," the gunman ordered, and removed Brathwaite's wallet from his pocket. After taking the cash, the trio returned the wallet, entered a black and white car and drove east.

Georgia Carey, of Washington, was beaten and robbed shortly after midnight Saturday by an unseen assailant who struck her from behind in the 2700 block of 14th Street NW, knocking her to the ground, and fled with her pocketbook containing cash and personal papers.

Ray W. Dent, of 1620 C St. SE, and Eleanor Andrews, of Washington, were held up about 4:35 p.m. Saturday by two men who knocked on Dent's front door. When he answered their knock, one of them pointed an automatic at him and warned, "Just keep quiet and no one will get hurt. All we want is money." While the gunmen held the victims at bay, the other man took a large amount of money from the bedroom dresser, Dent's wallet and a purse belonging to Miss Andrews which was on a kitchen table. The pair then fled.

Elizabeth Benton, of Washington, was

treated at Freedmen's hospital for injuries she suffered shortly after 8 p.m. Saturday during a robbery in the 2300 block of 18th Street NW. Three men dragged Miss Benton into an alley where they hit her on the head and body and forced her to release her pocketbook.

Madline Hill, of New York, was robbed about 11:50 p.m. Saturday by a youth who approached her while she was making a telephone call in the basement of the Greyhound Bus Terminal, grabbed her pocketbook and ran out of the building.

Sterling Carl Marsh, of Arlington, was beaten and robbed about 10:50 p.m. Saturday while he was walking with two companions, James Francis Fisher and Jon Harry Heiden, both of Washington, at East Capitol Street and Kentucky Avenue SE. About 12 men surrounded them and asked for a cigarette. When the victims said they had none, the men attacked them, knocking them to the ground. After taking Marsh's wallet containing a large amount of money, the group dispersed.

Christopher Casmir Cicoski, of Trenton, N.J., and Judith Ann O'Donovich, of Laurel, were beaten and robbed about 11:50 p.m. Saturday by two youths who approached them in the 2100 block of Bancroft Place NW and asked what time it was. When Cicoski told them, the pair attacked both victims and threw them to the ground. After removing Cicoski's wallet and grabbing Miss O'Donovich's purse, the youths fled on foot.

Joseph Q. Lewis, Jr., of Washington, was held up about 5:45 a.m. Saturday by two young men who approached him in the doorway of a building in the 1100 block of 7th Street NW. "You got any money," they asked and one of them drew a pistol. While the gunman held him at bay, the other man searched Lewis and took a large amount of cash from his pocket. "Face the wall and don't turn around or I'll kill you," the gunman threatened and ran out of the front door with his accomplice.

James Edward Clayton, of Washington, was treated at Rogers Memorial Hospital for facial injuries he suffered about 9:30 p.m. Saturday. Three men approached him in the rear of 9th Street NE, hit him in the face and forced him to surrender his money. He was treated for lip and jaw wounds and released.

Enrique Martinez, of Washington, was beaten and robbed about 1:45 p.m. Saturday by two men who attacked him in the 1500 block of O Street NW and knocked him to the ground. After taking the money from Martinez' pockets, the pair fled on foot.

Gregory Lewis, of Washington, was held up about 1:45 a.m. by two men with handguns who confronted him in the 1300 block of Morris Road SE and struck him in the head and face with their weapons. Following the attack, the gunmen took Lewis' money and fled on foot.

James Jones, of Washington, was beaten and robbed about 4:45 p.m. Saturday by two men who attacked him from behind at 5th and Morse Streets NE. The assailants hit Jones over the head until he lost consciousness. When he recovered, he found his money had been stolen.

Larry Kelly, of Fairmont Heights, was held up about 11:45 p.m. Saturday by a young man who approached him from behind in the 4200 block of Grant Street NE. "Don't move. Give me your money," the man told Kelly, pointing a handgun at him. After grabbing his wallet, the gunman, fled on foot.

Jose Esquibel, of Kensington, and Micheal Ferri, of 1801 16th St. NW., were held up about 3:30 a.m. by two teen-agers who approached them in the elevator at the 16th Street address. One of them placed a knife at Esquibel's side and demanded, "Give us your money." The pair took his wallet and money from Ferri and ran out of the building.

Charles A. Tillman, of Washington, was held up about 8:30 p.m. Saturday by two youths who confronted him at Naylor Road and Gainesville Street NE. One of the youths ordered, "Give me the money," and pointed a gun at Tillman. The other youth frisked him and took his money and papers.

Levi Harris Jr., of Washington, an ice cream vendor, was held up about 10:15 p.m. while he was at 16th Street and Morris Road SE. Two men, one displaying a revolver, approached Harris from behind and one ordered, "Give me the money." The men then climbed into the truck, took a large amount of money and escaped in a car.

Harry Courtney, a painter from Sumter, S.C., was treated at D.C. General Hospital for facial wounds he suffered shortly after midnight during a robbery. Two men attacked Courtney at 12th Street and Constitution Avenue NW and hit him in the face and jaw while a third man took his wallet.

Ivan Randolph Elmore, of Washington, was held up Saturday in front of his home in the 2400 block of 17th Place SE by three youths, one of them brandishing a handgun. "Give me your money," demanded the gunman, who held Elmore at bay while his companions took the cash from his pockets.

Percy Gibson, of Washington, a driver for Capitol Cab Co., was held up about 12:45 a.m. Saturday by a youth who confronted him in the 300 block of 54th Street SE. "Give me your money," the youth ordered, displaying a revolver. He took Gibson's change carrier and wallet and fled.

Bell May Isaac, of Washington, was robbed about noon Saturday as she was alighting from a bus at 3d Street and Rhode Island Avenue NW. A youth blocked the bus door while another youth reached into her pocketbook and removed her change purse. The pair then fled.

Dewey L. Mims, of Washington, was held up by three young men in a car who stopped him at the curb in the 900 block of Ingraham Street NW and asked for a match. When Mims told them he didn't have one, the driver asked, "Where can we get some drugs?" After Mims replied he did not know, the driver drew a revolver and a man in the rear seat pointed a shotgun at him. The gunmen ordered Mims to get into their car, took his wallet and told him to get back on the street.

STABBED

Earl Marshaw, of Washington, was admitted to George Washington University Hospital in undetermined condition after he was stabbed in the back when he resisted a holdup attempt. A young man wielding a knife approached Marshaw at 19th Street and Wyoming Avenue NW and demanded money. When Marshaw refused, the man stabbed him and fled.

Joe L. Boulware, of Washington, was treated at Washington Hospital Center for stab wounds he suffered during a fight with a man armed with a knife about 3 a.m. at 3d and F Streets NE.

ASSAULTED

Pat Weavglis, of Washington, was treated at George Washington University Hospital for injuries she suffered during an attempted robbery in the 1100 block of M Street NW. A man approached her about 10:10 p.m. Saturday and asked for a cigarette. When she refused, the man tried to grab her pocketbook and knocked her to the ground during the struggle.

Steve Small, of 1825 13th St. NW, was shot in the left leg during a fight about 2:45 p.m. Saturday with a woman armed with a gun who fired at him inside his apartment.

Charles Edward Tucker, of 1423 Harvard St. NW, was treated at George Washington University Hospital for head and facial injuries he suffered about 4:05 p.m. Saturday when a man struck him with a lead pipe during a quarrel in his home.

Robert Latimore, of Washington, was treated at D.C. General Hospital after he was shot in the right hand about 2:35 a.m. during a fight with a man wielding a gun at 9th and U Streets NW.

Edward Eugene Palmer, 30, of Washington, was treated at Washington Hospital Center for a gunshot wound in the shoulder he received during a fight at 10:25 a.m. with a man wielding a gun in the 1300 block of Monroe Street NW.

SENATOR JAVITS ANSWERS MAJOR OBJECTIONS TO RATIFICATION OF THE GENOCIDE CONVENTION III

Mr. PROXMIRE. Mr. President, in recent days I have reprinted a number of replies made by the Senator from New York (Mr. JAVITS) to major objections to the ratification of the Genocide Convention. Today I would like to continue this examination of the remaining objections to ratification of the convention.

One of the most persistent fears of those who have opposed ratification of the treaty is that under article III (c) which makes direct and public incitement to commit genocide punishable, public officials might be deprived of free speech. Senator JAVITS' reply is illuminating:

> Under current law, while mere advocacy of illegal activities may well be protected by the first amendment, direct and public incitement to commit illegal activity is surely not protected. See, for example, *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Incitement crosses the bounds between protected and unprotected speech. The provision of the Genocide Convention therefore does not violate the Constitution. Moreover, were there any conflict, the first amendment clearly would control.

Second, it has been argued that the Genocide Convention would make American soldiers fighting abroad triable in the courts of our enemies for killing or seriously wounding members of the enemies' military forces. In reply Senator JAVITS points out:

> First, it should be made clear that combat actions of American troops against enemies do not constitute genocide. For example, it is difficult to conceive that acts committed by U.S. troops in Vietnam could fall within the definition of genocide in Article II. The article requires an "intent to destroy, in whole or in part, national, ethnical, racial, or religious groups, as such." Our soldiers are fighting to help the South Vietnamese defend themselves and therefore acts committed against other Vietnamese would not constitute genocide.
>
> Of course, American soldiers who are captive in the country of an enemy of the United States could be subjected to prosecution by the enemy country regardless of whether the United States has ratified the Genocide convention. Although we would feel such treatment entirely unjustified, we would be powerless to do anything about it other than to protest to the country or to the U.N. The action of the Senate, in giving its advice and consent to ratification, would therefore have no relevance to this question."

Mr. President, I think Senator JAVITS has shown clearly that most of the objections to ratification of the Genocide Convention are groundless. They are simply not supported by the facts. The time has come to look at the realities of the treaty, not the myths which have

grown up over 20 years of controversy. The time for action on this treaty is now.

THE CASE AGAINST CBS

Mr. DOLE. Mr. President, the Columbia Broadcasting System has initiated a policy of furnishing free time in prime hours on its television and radio networks to those who wish to make partisan political attacks against the President of the United States.

The Republican National Committee, believing this CBS policy to be unfair and illegal, has initiated proceedings against CBS before the Federal Communications Commission.

While the raw partisanship and common bias of the attacks on the President aired courtesy of CBS are evident, the quasi-judicial nature of the FCC proceedings involves a substantial body of statutory and precedental authority, as well as significant considerations of public policy.

It is important that the position of the Republican National Committee in these matters and the full range of issues which have been raised be fully understood. Therefore, I ask unanimous consent that a statement of the Honorable ROGERS C. B. MORTON, Chairman of the Republican National Committee, and the RNC petition to the Federal Communications Commission with attached exhibits and appendix, be printed in the RECORD.

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

THE CASE AGAINST CBS

(Rogers C. B. Morton, Chairman, Republican National Committee)

Last Tuesday night, in an action unprecedented in television history, the Columbia Broadcasting System gave the Democrat National Committee, free of charge, one half hour of prime time for a partisan political attack upon the President of the United States.

CBS has further announced that this half hour is only the first in a series of four annual grants to be made to the Democrat National Committee each year of the Nixon Presidency to be used as the DNC sees fit.

Our two telegrams of protest to CBS have to date gone unanswered. It appears, therefore, that no comparable time is to be provided for the Republican National Committee.

CBS' arbitrary and arrogant action amounts to open collaboration between a major network and one of the major political parties. CBS' action is grossly unfair under our two party system and, in our Counsel's view, illegal under Federal law. The Republican National Committee is thus forced to file suit with the FCC against CBS. The Committee has retained as Special Counsel, W. Theodore Pierson of Pierson, Ball and Dowd.

When a President speaks through radio and television to the nation, as President of all the people, as FDR did in the Fireside Chats, as President Kennedy and Johnson did in frequent use of TV, the opposition party's national committee has no legitimate claim to equal time. *No such political grant was made during the Administrations of President Kennedy, a Democrat and President Johnson, a Democrat—and no such time should be granted free by CBS under President Nixon.* Because the President of the United States is a Republican, should the ground rules be changed?

This issue transcends partisan politics. A President is, of course, the leader of his party. But he is much more than that. Above all, he is the Chief of State of the United States, the head of Government, the Commander in Chief of the Armed Forces, the only nationally elected leader of the American people.

CBS' decision, if allowed to stand, will result in the continuous politicizing of an office that must at all times remain above politics. With this decision, CBS has put the Presidency permanently on the political firing line. There is a time for Presidential campaigns every four years; if allowed to stand, however, this precedent would convert every President's full term into one continuous four-year-long political campaign.

Dr. Stanton of CBS attempts to justify his action on the grounds that President Nixon has made extensive use of prime time. While it is true that the President has on several occasions used prime time to address the nation on issues of great moment, the fact is that *in the first eighteen months of his Presidency, John F. Kennedy was on network television twice the number of hours as Richard Nixon.*

The networks have an editorial responsibility to provide time for the presentation of different views on all sides of controversial issues. That is the heart of the "Fairness Doctrine" which is established law. The Republican National Committee has always supported this guiding principle of broadcasting.

But to dole out free time to one of the two major political parties in the guise of a public service to be used for whatever partisan political purpose that committee wishes should be clearly offensive to the American public's sense of fairness.

In making this free gift, CBS—

Completely abdicated its editorial judgment and responsibility regarding what material would be allowed on the program.

Allowed the Democrat Party to run an advertisement for funds at the end of what CBS had supposedly pledged would be a "public service" program—possibly a violation of law, certainly a violation of journalistic ethics and clearly misleading to the veiwing public.

Placed the appointed partisan spokesman of a political committee on a par with the President of the United States, ignoring the Congress, an equal coordinate branch of the Government, presently controlled by the Democrat Party.

Violated the "Fairness Doctrine" for networks by allowing a personal assault on the President and by allowing his past record to be considered as an "issue" response to current Presidential statements on issues of importance to the nation.

This arbitrary decision by CBS management is part of a recent pattern of this network's irresponsibility that has been condemned by many members of the Congress and brought under scrutiny by the FCC. Even Senator Mansfield, Democrat Leader in the Senate, has expressed doubts about the wisdom of the CBS policy.

With this statement I am calling on all fair-minded Americans to personally protest the gross unfairness of this CBS decision; we intend to fight it and to see to it that CBS meets its responsibilities to the American public.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D.C.

PETITION OF THE REPUBLICAN NATIONAL COMMITTEE FOR RELIEF AGAINST CBS

This Petition is filed on behalf of the Republican National Committee (RNC) to obtain relief from the failure of the Columbia Broadcasting System (CBS) to grant the request[1] of RNC for time over the network to respond to the CBS network appearance on July 7, 1970 of Lawrence F. O'Brien on behalf of the Democratic National Committee (DNC).

We have received no reply to our requests for time, but public statements by the President of CBS imply a negative response will be forthcoming if, indeed, any reply is forthcoming.

As a preliminary matter we first wish to emphasize the need for expeditious action on this matter. If the RNC is to be given a meaningful opportunity to respond to the broad issues raised by the DNC program of July 7, it must be proximate in time else the issues will dim in the minds of the public.

We will briefly state the background of events which gave rise to this controversy and then explicate our position with respect to the issues presented.

BACKGROUND

On May 19, 1970 the Democratic National Committee filed a Request for Declaratory Ruling requesting the Federal Communications Commission to rule that "A broadcaster may not, as a general policy, refuse to sell time to responsible entitles, such as DNC, for the solicitation of funds and for comment on public issues." The DNC Request, which is still pending before the Commission, was opposed by CBS in Comments filed on June 22, 1970, on grounds, among others, that it would violate the Communications Act and repudiate the Fairness Doctrine.

Simultaneously, on June 22, 1970, CBS by telegram[2] offered DNC 25 minutes of free time on the CBS television and radio networks to be used at 10 p.m., EDT, on July 7, 1970, for "presentation of the Committee's views" coupled with notice that it would accept paid announcements from DNC for fund-raising purposes. CBS further notified DNC that it would from time to time during the course of the year make available additional free time. Thus the offer was not specifically directed to balancing the discussion of controversial public issues which might have been raised by President Nixon during his broadcast appearances, as the CBS-message-to-O'Brien seemed to imply. Rather, the offer permitted DNC to use the time for any purpose, including mere partisan advocacy and party propaganda.

On July 7, 1970 Democratic Party Chairman Lawrence F. O'Brien broadcast a 25-minute program in response to the CBS offer of free time. Mr. O'Brien's speech was not devoted to giving the other side of issues discussed by President Nixon in his recent broadcasts.[3] On the whole, it was a political attack on the President and his party, coupled with a closing commercial that funds be contributed to support DNC's goal of ousting Republicans from office. It directly raised the fresh issue not specifically treated by any Presidential speech: *which political party should hold power.*

The six presidential addresses carried by CBS between 11/3/69 and 6/30/70 did not address themselves to the issue of "which party?". They did not attack the Democratic Party or the Democratically-controlled Congress. Rather, they dealt with the State of the Union, viz: the President's analysis of the problems, the programs he had adopted to meet the problems and his explanation of actions he had taken or would take. He did not mention the Democratic Party. Rather, in the April 30th speech the President made clear that the Presidential actions were taken in spite of the possible adverse effects upon his political fortunes or those of his party. In none of these did he deal with the purely partisan issue as to which party should hold power. His purpose, confirmed by the per-

Footnotes at end of article.

formance, was to report, as Chief Executive, on the state of things in the nation, not to boast of the virtues of the Grand Old Party.

DISCUSSION

Since CBS has exercised its journalistic freedom to permit DNC to propagandize on the broad issue as to which major party should hold power, CBS has the ensuing duty under the Fairness Doctrine to seek out an appropriate spokesman to respond. We assume that CBS could not hold in good faith that RNC is an inappropriate counter-spokesman or that someone else is a more appropriate spokesman on the broad issue as to whether Republicans or Democrats should hold power. In any event CBS needs to search no further. RNC is eager and ready. This is the rather unique case where the appropriate respondent is so conclusively and exclusively elected that for CBS to search further for another would constitute behavior so outrageous and biased as to utterly negate its qualifications as a "public trustee". It is beyond doubt that the Commission has the power "to conclude that the objective of adequate presentation of all sides may be best served by allowing those most closely affected to make the response." *Red Lion Broadcasting Co., Inc.* v. *FCC*, 395 U.S. 367, 379.

While the national committees of the Democratic and Republican parties are undoubtedly appropriate spokesmen to argue the issue of which of the major parties should be in power and to "sell" prospective contributors, they are not necessarily appropriate spokesmen to discuss specific political, economic and social issues—the "gut issues". National Committees are not policy spokesmen or policy-setting organizations. Their primary functions are to hold conventions, raise money and to get the candidates of their party elected regardless of the candidate's position on particular issues. The Democratic party, qua party, is not monolithic on policy. Its members vary widely regarding practically any given issue.[4] It is also well known that disagreement with any President on particular issues is not the peculiar province of the opposition party—such disagreement oftentimes comes from Congressional members of the President's own party.[5]

We refer to these circumstances for several reasons. There are always appropriate spokesmen available from either within or without the President's party to express views contrary to those expressed by the President. Indeed, a serious question is raised whether CBS can assign to DNC the role of "appropriate spokesman" of the "loyal opposition" under all circumstances. See *Golden West Broadcasters*, 8 FCC 2d 987, 10 RR 2d 523 (1967). Where a national committee is permitted to express views, these views will be inherently partisan in nature and, out of practical necessity, issue-dodging to a high degree since the national committee itself does not establish, control or represent the views of its members on the issues of the day. It is solely interested in getting back in power—a goal it must promote no matter how much its members and candidates are divided on the "gut issues" facing the nation.

We do not question the right of any national party to broadcast its partisan propaganda. We merely contend that, since all views expressed by DNC were, and out of practical necessity must almost always be, directed primarily to the "which party?" issue, it is an event that should only be countered by national committees seeking a contrary result.

We make no claim here that the Commission should interfere with the CBS's journalistic decision to grant time to the DNC to be used as that party sees fit for propaganda and fund-raising purposes. It deserves notice, however, that on the same day that CBS announced the grant of time, it self-righteously condemned the very type of action it took as being contrary to the standards of journalism it so frequently vaunts.

In a lengthy document filed at the FCC on June 22, 1970,[6] the day it notified DNC of the grant of time and in response to a request of the DNC for a declaratory ruling concerning access to time on broadcast stations, CBS declared as follows:

"CBS has long maintained policies which in general provide that broadcasts dealing with current controversial issues be produced under the supervision and control of CBS News or a CBS Owned Station. Only by lodging these responsibilities with our own personnel can we effectively insure that objectively and fairness will actually be achieved. . . . CBS has concluded that as a licensee in a medium with a finite amount of time to provide news, information and entertainment, we best serve the public by presenting issues and viewpoints with a balanced program schedule utilizing newsworthiness as the sole criterion." *Id.* at 3, 4. footnote omitted.

Then, after stating that the appearances of outsiders on its programs "are not permitted to become the instrument of partisan advocacy" (*Id.* at 7), CBS endorsed the following quotation from *The Report of the Twentieth Century Commission on Campaign Costs in the Electronic Era* as aptly describing "the dangers in the political sphere of substituting partisan program control for professional news responsibility" and as applicable to a political party as well as to a political candidate:

"Advances in broadcasting technology have made it possible to present a candidate in the best possible light, with all inept answers to hard questions edited out of the tape, with false starts and all uncertainties and human failings eliminated, all warts and blemishes removed, a single smooth image alone remaining. It is no criticism of television or radio to say that some day it may be possible to offer a wholly plausible and wholly false impression of a candidate. Broadcasting would become an impenetrable shield for a candidate, would not open a window on him through which the public could see him clearly." *Id.* at 7, footnote omitted.

In the O'Brien appearance on July 7, 1970, CBS allowed "partisan program control" which permitted the program "to become the instrument of partisan advocacy" with the consequent closing of the window on DNC through which the public otherwise could see it clearly.[7]

One could regard it as merely farcical that CBS was thus hoist with its own petard were it not for the fact that such caprice was practiced by persons whose responsible performance is so vital to our democratic system. We agree with what CBS told the Commission on June 22, 1970 and not with what it offered to Mr. O'Brien on that day. Because we believe in journalistic freedom, we do not ask the Commission to recall CBS's gratuity to DNC. Let CBS sit where it is hoist. We do insist that, having opened its programs for "partisan control" to become instruments of partisan advocacy, we, as DNC's major partisan antagonist must equally share this privileged exception to CBS's professed articles of journalistic faith. This is elemental fairness. Only a CBS bias against the Republican Party could explain a rejection of our request.[8]

We have no quarrel with the principle that presidential discussions of controversial issues fall within the Fairness Doctrine since we believe that, if there is another side, to know it is the public's right. As the *Red Lion* case emphasized, the underlying justification for the Fairness Doctrine "is the First Amendment goal of producing an informed public".[9] In this regard the Commission has recognized the extraordinary value of presidential reports to the public.[10] However, it is readily apparent that, if every broadcast report to his constituents by an incumbent president, governor, mayor, senator or congressman is to be subjected to "partisan" rather than to an "issue" oriented response by the opposite party without granting the incumbent's own party a right to reply, this will tend to have an inhibiting effect upon the making of such reports by public officeholders.

Knowing that a sincere serious report [11] on the state of things in the city, district, state or nation will evoke almost as a matter of right, a purely partisan response from the incumbent's opposition party to "throw the rascal out", without more, leaves the incumbent with two practical options: (1) to convert his report from an effort to inform and explain the state of things in his policy to a purely partisan propagandizing effort, or (2) to give no report at all. In either case the profound and critical importance of an officeholder communicating, in a serious and non-propagandizing mode, with his constituents will be a thing of the past, which, by comparison, will dwarf to virtual nothingness the "credibility gaps" of which much has been made in the recent past. If, on the other hand, the officeholder is assured that the partisan and propagandizing efforts of the opposing party can be met in kind by his own party, then he can devote his reports to the vital purpose of informing on the state of things.

It is simply not in the public interest for a broadcaster to deliberately pursue a course which will tend inevitably either to block an elected leader from communicating via broadcasting with his constituents or to turn those communications into unadulterated partisan propagandizing pieces.

CONCLUSION

As we have heretofore indicated, CBS has allowed DNC an opportunity, as a party-advocate-and-propagandist, to directly raise the broad issue as to which of the two major political parties should be in power, irrespective of the internal divisions on each of the "gut-issues". Elementary fairness demands that the RNC be permitted to express a contrary view. We therefore respectfully request that the Commission at its earliest convenience make its views known to CBS that their failure to afford forthwith RNC such an opportunity would constitute a violation of the Fairness Doctrine and CBS's obligations as a licensee of broadcast stations.

Respectfully submitted,

W. THEODORE PIERSON,
PIERSON, BALL & DOWD,
Attorneys for Republican National Committee.

FOOTNOTES

[1] Attached are two telegraphic messages by RNC to CBS dated July 3, 1970 and July 8, 1970, to which CBS has not responded.

[2] Attached is a CBS press release dated June 22, 1970, which contains the telegraphic message. (Exhibit 2).

[3] Script attached as Appendix A. It is pertinent in this regard that President Nixon's most recent broadcast appearance had been his news conference the week before with network anchormen limited by agreement solely to foreign affairs, including the Viet Nam-Cambodia situation. Mr. O'Brien's speech devoted approximately 2 of his 25 minutes to this issue.

[4] For instance, on the Cooper-Church Amendment (Amendment to Foreign Military Sales Act HR 15628), 42 Democratic Senators voted in favor and 11 against the Amendment. (*Congressional Quarterly*, July 3, 1970, at 1713). In the House of Representatives on the same subject (motion to tally,

roll call—208) 99 Democrats voted one way and 121 Democrats voted the other way. (Washington Post, July 10, 1970, at A–11). A study by *Congressional Quarterly* indicates that in 1969 Democrats in Congress divided along North-South lines on 36% of all roll call votes. Such split, *Congressional Quarterly* tabulated, occurred most frequently in the very sensitive areas of government spending and taxes. (*Congressional Quarterly Almanac*, 1969, at 1071.) Similarly, on the Voting Rights Act (HR 4249) the vote on one crucial acceptance of the Senate amendments (H. Res. 914) saw the Democrats in one House split 172–56. (*Congressional Quarterly*, June 26, 1970, at 1666.) We are citing these statistics, not as a criticism of the Democratic party, not in any partisan sense, since similar splits have occurred on these and other issues within the Republican party. These facts, however, strongly indicate that a party qua party is not the vehicle for the discussion of issues.

[5] Thus, for instance, one co-sponsor of the Cooper-Church Amendment is Senator Sherman Cooper, Republican of Kentucky. The co-sponsor of the McGovern-Hatfield Amendment is Senator Mark Hatfield, Republican of Oregon.

[6] Commission Reference 8330, C5–1344.

[7] In contrast, the June 30, 1970 appearance of the President was live and unedited, the first of such in history.

[8] To suspect CBS of such conduct would put down as sheer sophistry the following moving paragraph taken from the testimony of Dr. Frank Stanton, President of CBS in testimony before a Congressional Subcommittee:

"As for the possible biases of broadcasters, I have no doubt that, like all citizens, they have their loyalties and preferences as individuals. But to indulge these personal attitudes in the conduct of the public service function of their stations would be a very risky business. A broadcasting franchise is a very precious thing. Nobody knows this better than a broadcaster. That the general devotion of the American people to the principles of fair play apply to the way broadcasters exercise their franchise has been made amply clear. No broadcaster worth his salt would risk amassing a record of biased treatment of candidates or parties." Hearings Before The Special Subcommittee On Investigations Of the House Committee on Interstate and Foreign Commerce, 90th Cong., 2d Sess., Panel Discussion On The Fairness Doctrine and Related Subjects, ser. 90–33 (1968).

[9] Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 393 (1969).

[10] For example, the Commission has held that under such circumstances, such presidential reports are so important to the public as to even over-ride so-called "equal time" considerations. Columbia Broadcasting System — FCC —, 14 RR 720 (1956); Republican National Committee, — FCC —, 3 RR2d 647 (1964), *review denied by equally divided Court of Appeals, cert. denied sub nom.* Goldwater v. Federal Communications Commission 379 US 893.

"It is open to anyone to doubt the sincerity and purpose of the non-partisan reports of officeholders to constituents, just as it is rather hard to square the CBS contradictions of June 22, 1970 with its vaunted responsibility and sincerity as another type of public servant. But these perplexities do not justify, and cannot justify, the conclusion that all acts of either class of fiduciary are devious and insincere. Such despair is wholly unwarranted.

CERTIFICATE OF SERVICE

I, Joseph F. Miller, do hereby certify that I have this 13th day of July, 1970, delivered by hand copies of the foregoing "Petition of the Republican National Committee for Relief Against CBS" to:

Joseph DeFranco, Esq., 2020 M Street, NW., Washington, D.C., Counsel for the Columbia Broadcasting System, Inc.

Roger J. Wollenberg, Esq., Wilmer, Cutler & Pickering, 900 17th Street, NW., Washington, D.C., Counsel for the Columbia Broadcasting System, Inc.

Joseph A. Califano, Jr., Esq., Arnold & Porter, 1229 19th Street, NW., Washington, D.C., Counsel for the Democratic National Committee.

JOSEPH F. MILLER.

EXHIBIT 1

JULY 3, 1970.

DR. FRANK STANTON,
President, CBS,
New York, N.Y.

Your decision to grant the Democratic National Committee time "to express its views" on CBS television and radio networks raises a number of far-reaching policy questions. The Republican National Committee would very much appreciate your clarification of the following points:

When will these programs be aired and how many such programs are envisioned? How will such programming be determined?

Is this an unrestricted grant of time to the Democratic National Committee? If so, does it constitute a delegation to the Democratic National Committee of your "journalistic judgment" under the Fairness Doctrine? You have vigorously argued in many briefs before the FCC that the Fairness Doctrine should be determined by the journalistic judgment of the network involved.

Has CBS changed its position since the Dewey, *Paul E. Fitzpatric*, 6 RR 543(1950), Stevenson, *California Democratic State Central Committee*, 20 RR 687(1960), and Goldwater, *RNC*, 3 RR2d 767(1964) cases? The contention of CBS in *Paul E. Fitzpatric*, supra, in substance, was "that it was necessary to distinguish between the reports made by holders of office to the people whom they represented and the partisan political activities of the individuals holding office" (29 Fed. Reg. 10417). Do you feel that this policy is no longer valid?

In your brief of June 22, 1970 pertaining to *In Re Licenses of Columbia Broadcasting Systems, Inc. and Broadcast-Plaza, Inc.*, it was stated that "The very complexity of the problem commends the feasibility of an *ad hoc* approach." p. 12. The predetermined time periods set aside for the Democratic National Committee would appear to be contrary to this position.

Further, it would appear that this is an unrestricted grant of time for whatever purpose the Democratic National Committee desires. If the Democratic National Committee does have this time to address any subject it wishes, whether or not under the restriction of the Fairness Doctrine, should not the Republican National Committee have equal time? We do not seek to deny the access of any person to time to discuss any issue. If in fact, the Democratic Committee is entitled to time for *any purpose*, I am sure you would agree that the other major, duly constituted political party is similarly entitled to equal time. This also raises the question of possible third parties.

If the Democratic National Committee does not have this time to address any subject it wishes, what content and format guidelines have been formulated? Who, for example, determines which issues will be presented during the time provided and what assurance have you that the spokesman for the Democratic National Committee will address specific issues to which he may be entitled time under the Fairness Doctrine? Are Democrat candidates for Senate to appear while Republicans are excluded? This raises serious section 315 A problems.

Are we to assume that other groups will also be provided with a regular opportunity to present their views on controversial public issues? Why should such a policy be limited to political committees?

According to press reports which may or may not represent your point of view, it has been asserted that this time will be used to answer the President of the United States. Surely you do not believe that a political committee with no official governmental responsibility should be the appropriate political counterpart to the Chief Executive Officer of the United States Government. The Congress, of course, is a coordinate and equal branch of the government. Under the Fairness Doctrine, one might argue that the leadership of the Congress could be entitled, depending again on journalistic judgment, to offer a reply. If so, it would be logical also to assume that both parties in Congress should be given appropriate time to discuss any issues on which the President offered controversial views. Disagreement with the President is not the peculiar province of one party.

All of these unanswered questions should be clarified before any blanket decision is made to grant time either to the Democrat and Republican committees. Your telegram of June 22, 1970 seems to represent a very major departure from what we believe to be well established decisional law under the Federal Communications Act.

We are studying what our position should be in light of your new policy. We, therefore, hope to receive your reply to these questions at the earliest possible time.

ROGERS C. B. MORTON,
Chairman, Republican National Committee.

EXHIBIT 2

DR. FRANK STANTON,
President, Columbia Broadcasting System, Inc., New York, N.Y.

DEAR DR. STANTON: The Democratic National Committee Chairman's partisan attack on the Nixon Administration last evening answers many of the questions posed in my telegram of July 2 to which I have still received no reply.

Judging from the format and the content of last night's half-hour, CBS has abandoned journalistic judgment and responsibility and has made no attempt to establish guidelines as to the format and content of this type of program. Is there any precedent for any program which is allowed on the air with this lack of responsible restriction?

This show amounted to an unprecedented, inaccurate, personal attack on the President of the United States; yet your network promoted it as a "public service".

Rather than airing constructive differing views concerning controversial issues about which the President had addressed the nation, the program was a mere display of old-line partisan politics.

Not only were were excerpts used of the President's addresses to the nation on issues which one might argue fall within the Fairness Doctrine, but excerpts of his acceptance speech, inaugural speech, and press conferences were also shown, which clearly do not come within the Fairness Doctrine, or as to which rebuttal or equal time had already been donated by the networks.

Ethical questions have been raised by CBS's granting access to past tapes of the President, tapes that were questionably cut for partisan purposes. Ethical, as well as legal, questions also arise concerning the placement of a paid political appeal for donations immediately following what was promoted by CBS as a public service program. The appeal for funds at the close of that 30-minute segment made this "supposed" public service broadcast a half-hour free advertisement and was clearly misleading to the public.

These same ethical and legal questions arise concerning the right of a political party to invite requests for party propaganda and

material during the coures of a supposedly public service broadcast.

CBS in May refused to accept paid spot advertising from a responsible private group on a current issue of great national significance. Is it now saying it will do so? How does CBS decide which group may purchase spot advertising to appeal for funds?

Further, both CBS and the Democratic National Committee seem to be confused concerning the application of the equal time rule. The President is not a candidate. He is Chief Executive of the United States Government. Roger Mudd's commentary after the program shows a clear misunderstanding of the equal time provisions. So, too, does the Democratic National Committee's appeal to prevent the re-election of President Nixon in a paid political advertisement led up to by a partisan half-hour program.

While CBS works hand-in-glove with the Democratic National Committee on this unprecedented attack, it refuses to answer the legal and ethical questions posed in my earlier telegram. We insist upon comparable free time on the grounds of the Fairness Doctrine. If we do not receive your reply in 48 hours, appropriate legal action will be taken to require your compliance with the law—and to prevent future abuse of your responsibility to the public.

ROGERS C. B. MORTON,
Chairman, Republican National Committee.

EXHIBIT 3

JUNE 22, 1970.

CBS OFFERS 25 MINUTES OF FREE TIME TO DEMOCRATIC NATIONAL COMMITTEE

WILL ALSO ACCEPT PAID SPOT ANNOUNCEMENTS FROM POLITICAL PARTIES FOR FUND RAISING IN NON-CAMPAIGN PERIODS

Following is the text of a telegram from CBS President Frank Stanton to Lawrence F. O'Brien of the Democratic National Committee, offering the Committee 25 minutes of free time on the CBS Television and Radio Networks and informing the Committee that CBS will now accept paid spot announcements from political parties for fund raising purposes without confining these announcements to campaign periods. A copy of the telegram was sent to Senator Mike Mansfield (D., Mont.), Senate Majority Leader. The text of Dr. Stanton's letter to Senator Mansfield also follows.

JUNE 22, 1970.

The Honorable LAWRENCE F. O'BRIEN,
Executive Motor Inn,
Louisville, Ky.

DEAR MR. CHAIRMAN: The purpose of this telegram is twofold: (one) to offer the Democratic National Committee 25 minutes of free time on the CBS television and radio networks, at 10 p.m. e.d.t. July 7, for presentation of the committee's views: And (two) to inform the committee that we will accept paid announcements from political parties for fund raising purposes without confining these announcements to campaign periods.

The offer of the 25 minute free time period (followed by a 5 minute CBS news analysis) is in keeping with longstanding CBS policy to achieve fairness and balance in the treatment of public issues, including the disparity between Presidential appearances and the opportunities available to the principal opposition party. Our offer to accept announcements (up to 1 minute in length) to raise funds during *non-campaign* periods broadens CBS policy which already provides for solicitation of funds for candidates during *campaign* periods.

These steps are intended to stimulate a free flow of ideas on the one hand, and to encourage greater participation by the body politic on the other. They are not advanced in response to the committee's petition for a declaratory ruling by the FCC that "a broadcaster may not as a general policy refuse to sell time to responsible entities such as the Democratic National Committee for the solicitation of funds and for comment on public issues." In fact, CBS will urge the FCC to deny the committee's petition on grounds, among others, that it would violate the communications act and repudiate the fairness doctrine.

While we reject your proposal to compel the sale of time, we are fully aware of the cumulative impact of broadcast appearances of representatives of the party in office because of their inherent newsworthiness. This is particularly true of the President. Historically, the major party not occupying the Presidency has complained about what it has considered an inequity in terms of accessibility to television (and radio). At the same time, as we all recognize, the President has certain constitutional duties whose performance is enhanced by his ability to communicate directly with the people.

For these reasons we employ a variety of journalistic techniques: First, we endeavor in our regularly scheduled news broadcasts, for example, to provide appropriate opportunity not only for the views of the administration whose actions make news but also for those who have different views. Second, we present additional coverage of points at issue—either in the regularly scheduled Tuesday evening CBS news hour, the Sunday Face the Nation or specially scheduled preemptive broadcasts such as those within recent weeks on the Cambodian controversy. Third, from time to time during the course of the year we will make available free time to the principal opposition party—as we did with respect to the President's State of the Union address earlier this year—under the overall title "The Loyal Opposition."

Central to our policy is the concept that no single procedure can afford a complete answer to the problem of assuring fairness and balance in the treatment of public issues. With all good wishes.

FRANK STANTON,
President, CBS.

JUNE 22, 1970.

The Honorable MIKE MANSFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MANSFIELD: This letter is in reply to your June 18 telegram in which you request, as leader of the majority party in the Senate, time on the CBS Television Network to comment on the nation's economic outlook in response to the President's June 17 address.

CBS has today offered the Democratic National Committee 25 minutes of free time on the CBS Television and Radio Networks, at 10 PM EDT July 7, for presentation of the Committee's views. We also reviewed our policies and procedures for insuring the major opposition party's accessibility to television and radio, citing our three main approaches: "First, we endeavor in our regularly scheduled news broadcasts, for example, to provide appropriate opportunity not only for the views of the administration whose actions make news but also for those who have different views. Second, we present additional coverage of points at issue—either in the regularly scheduled Tuesday evening CBS News Hour, the Sunday Face the Nation or specially scheduled preemptive broadcasts such as those within recent weeks on the Cambodian controversy. Third, from time to time during the course of the year we will make available free time to the principal opposition party—as we did with respect to the President's State of the Union address earlier this year—under the overall title, 'The Loyal Opposition.'"

A copy of my telegram to Lawrence F. O'Brien, Chairman of the Democratic National Committee, in regard to these matters is enclosed. I trust that the measures we have taken and the policies we intend to pursue in the future will satisfy the purpose of your request for time. Moreover, I hope you will find that our policies provide a sound framework for the presentation of the views of the major opposition party.

With all good wishes.

Sincerely,

/s/ FRANK STANTON.

APPENDIX A

THE DEMOCRATS RESPOND: PART 1

WASHINGTON, D.C., July 7.—Following is the transcript of "The Democrats Respond: Part One," a 25-minute broadcast-telecast presented by the Democratic National Committee over the Columbia Broadcasting System, which granted the time free to the Democratic Party:

President NIXON: "In these difficult years, America has suffered from a fever of words; from inflated rhetoric that promises more than it can deliver; from angry rhetoric that fans discontents into hatreds; from bombastic rhetoric that postures instead of persuading.

"We cannot learn from one another until we stop shouting at one another—until we speak quietly enough so that our words can be heard as well as our voices." (Inaugural Address, Jan. 20, 1969)

DEMOCRATIC NATIONAL CHAIRMAN LAWRENCE F. O'BRIEN

Like most of you, I applauded the appeal for lowered voices and national unity when Richard Nixon assumed the Presidency 18 months ago.

Good evening. I'm Larry O'Brien, national Chairman of the Democratic Party. I managed the Democratic campaign for President in 1968. And I recognized after the election that we all had to turn away from the narrow confines of partisanship and work in the active pursuits of national reconciliation.

But today the divisions within our society are far greater than they were 18 months ago.

I don't have any easy answers. But the American people are not afraid to face problems squarely, and I know you want facts.

In this spirit, then, the loyal opposition has the responsibility to ask: How, in fact, are we being governed? What progress are we making as a nation? How can we do better? How can the nation and our two-party system meet the challenge of the '70's? How can we achieve the goals the new President set forth in his Inaugural Address 18 months ago?

NIXON: In pursuing our goals of full employment, better housing, excellence in education; in rebuilding our cities and improving our rural areas; in protecting our environment and enhancing the quality of life—in all these and more, we will and must press urgently forward. (Inaugural Address, Jan. 20, 1969).

O'BRIEN: Those were the promises, no less urgent today than when the President spoke them on the Capitol steps 18 months ago. In a few areas—such as reform of the outdated welfare system and the antiquated postal system—the Nixon Administration has come forward with proposals that could make a lasting contribution to the fabric of American life.

But unfortunately, in most areas we see little or no progress; we share the concern of all Americans with the decline in our economy. Every housewife, every wage earner, every stock holder, every farmer, every small businessman—yes and many big businessmen know that our economy is lagging far behind its potential.

A reporter asked the President about this at a news conference earlier this year, one year after Mr. Nixon's *Inaugural Address.*

REPORTER: The question is, how, sir, do you assess the possibility that we may be in for perhaps the worst possible sort of economic conditions—inflation and recession?

NIXON: Well, Mr. Cornell, the major purpose of our economic policy since we came into office a year ago has been to stop the inflation which had been going on for 5 years without doing it so quickly that it brought on a recession.

Now, as a result, we are now in a position the critical position, in which the decisions made in the next month or two will determine whether we win this battle.

I would simply say that I do not expect a recession to occur. (*News Conference,* Jan. 30, 1970)

O'BRIEN: Regrettably, the President's expectations have not materialized, and, as so many of you are painfully aware, we have inflation and recession at the same time.

We call it Nixonomics: everything that is supposed to go up—your income, productivity, housing construction, profits, the stock market—is going down. Everything that is supposed to go down—unemployment, interest rates, the cost of living—is rising.

Every housewife is alarmed over the constant rises in food prices—hot dogs up 14 cents a pound, hamburger up 12 cents a pound, potatoes up a third—you know your grocery bill and how much it has gone up in the last year.

Do you know of a family earning less than $13,000 annually that has been able to buy a home this past year? And even those able to borrow money for a new home know that a $20,000 house costs an additional $35,000 for interest charges alone—the highest interest rates in 100 years.

In recent weeks Democrats and Republicans alike have been pleading with President Nixon to use the great powers of his office to stop this recession and inflation now, before more damage is done.

The President must use his great personal influence to roll back inflationary wage and price decisions, just as President Kennedy and President Johnson did on many occasions.

Right now—tonight—Mr. Nixon could direct the lowering of interest rates on home mortgages, car loans, and the clothes you buy on credit from a department store.

A Democratic Congress gave him this power last year, but unfortunately, he has refused to use it.

I urge the President to act immediately. Please don't wait any longer for our economy to decline even further.

There is probably nothing of greater worry to the American family than the threat of unemployment. At a news conference two months ago a reporter asked the President about this problem.

REPORTER. "On a domestic subject, the economy, sir. Unemployment is up, the stock market is down, things look generally discouraging. Do you have any views on that, and do you have any plans?"

NIXON. "Yes. Unemployment reached the point of 4.8, I noticed, this last month. In order to keep it in perspective, it should be noted that in 1961, 1962, 1963, 1964, and 1965 the average unemployment was 5.7. 5.7 is too high. 4.8, I think, is also too high. But the unemployment we presently have is the result of the cooling of the economy and our fight against inflation." (News Conference, May 8, 1970)

O'BRIEN. As the President said, it is partly a matter of perspective that 5.7 percent unemployment rate mentioned in the early 1960s reflected a steadily declining rate of unemployment, a decline from the high of 7 percent which President Kennedy inherited from the Eisenhower-Nixon Administration of the 1950s.

The fact is that unemployment fell during the 1960s and it was down to 3.3 percent in December, 1968. It has climbed steadily since President Nixon took office. Since last December, we have experienced the fastest five-month rise in unemployment since the recession in the late 1950's. But beyond this, instead of talking statistics and percentages, let's remember that more than four million seven hundred thousand Americans are out of work tonight.

Let's look at another major concern and see what candidate Nixon promised—what has happened since he took office.

NIXON: "And if we are to restore order and respect for law in this country, there's one place we're going to begin. We're going to have a new Attorney General of the United States of America . . .

"The wave of crime is not going to be the wave of the future in the United States of America." (Nomination Acceptance Speech, August 8, 1968)

O'BRIEN: Of course every new President has the power to appoint his own Attorney General, but what has been the record of the Attorney General President Nixon appointed?

Eighteen months have passed. The crime rate in this country has not gone down. In the first three months of this year it rose 15 percent over the same period last year. And it is especially alarming that the fastest rates of increase are now in the suburbs and in rural areas of our country.

The way to stop rising crime is not to blame others, such as Congress. The way to stop the rising crime rate is to help local and state law enforcement agencies who carry the major burden.

NIXON: "While it is true that State and local law enforcement agencies are the cutting edge in the effort to eliminate street crime, burglaries, murder, my proposals to you have embodied my belief that the Federal Government should play a greater role in working in partnership with these agencies.

"That is why 1971 Federal spending for local law enforcement will double that budget for 1971." (State of the Union Message, Jan. 22, 1970)

O'BRIEN: That's how the President addressed the crime problem in his State of the Union Message last January. What action has followed those farsighted words?

The facts are that the Nixon Administration budget requires one thousand dollars from every one of you—every American—to run the government. Of that one thousand dollars, the Administration has earmarked only $2.40 to assist state and local governments in the fight against crime—cutting the Democratic program in half.

And, while I am sure the President and the Attorney General want to reduce crime, I cannot understand why they have refused to support further improvements in the Safe Streets Act advocated by a Democratic President and enacted by a Democratic Congress in 1968—our major federal anti-crime program. They are improvements that would give cities with the greatest crime problems the most help.

I regret that so many of the top law enforcement experts brought to Washington by the Nixon Administration last year have now resigned, because, as they said, Attorney General Mitchell has refused to do what must be done to control the growing crime rate in America.

President Nixon's own anti-crime proposals have not been primarily directed at the national crime problem, but rather at Washington, D.C., and many people believe that some of these proposals are unconstitutional.

For the past generation both major political parties have stood together in the struggle for equal rights and opportunities for all of our citizens. In his acceptance speech, Mr. Nixon seemed to recognize the human stakes involved in the next urgent steps that must be taken in this continuing struggle.

NIXON: "They want the pride and the self-respect and the dignity that can only come if they have an equal chance to own their own homes, to own their own businesses, to be managers and executives as well as workers, to have a piece of the action in the exciting ventures of private enterprise.

"I pledge to you tonight that we shall have new programs which will provide the equal chance . . ." (Nomination Acceptance Speech, August 8, 1968)

"Now I know all the words. I know all the gimmicks and the phrases that would win the applause of black audiences and professional civil rights leaders. I am not going to use them. I am interested in deeds. I am interested in closing the performance gap." (News Conference, Jan. 30, 1970)

O'BRIEN: One of the biggest disappointments of the first 18 months of the Nixon Administration has been precisely this failure to match its words with deeds—to provide new opportunities for minority citizens, opportunities that must ultimately benefit all Americans.

Again, a number of experts brought to Washington by the Nixon Administration have resigned. They recognized this performance gap.

The failure to define clearly the policy for school desegregation has led to confusion in local school systems, and growing resentment and discouragement by families seeking equal educational opportunities for their children.

Above all, in the past 18 months we have been denied the strong moral leadership on this issue which only the White House can provide—that is *must* provide. We have lacked a President speaking forthrightly about the moral rightness of making the guarantees of the Constitution a reality for every American.

Again, Congress has had to take the lead—in overcoming the Administration's obstacles to renewing the Voting Rights Act, a law that provides *all* Americans with the most basic of democratic rights as well as extending the right to vote to 18-year-olds.

The times call for a new vision of our priorities. The President seemed to understand this when he addressed the nation last month.

NIXON: For the first time in 20 years, the Federal Government is spending more on human resource programs than on national defense.

"This year we are spending $1.7 billion less on defense than we were a year ago; in the next year, we plan to spend $5.2 billion less. This is more than a redirection of resources. This is an historic reordering of our national priorities." (Address to the Nation, June 17, 1970.)

O'BRIEN: The President says he favors this change in our priorities. But it was Congress, not the President, that cut five-and-a-half billion dollars from the Pentagon budget. And when Congress tried to channel less than a quarter of that money into educational and health programs—libraries, books, student loans—the President responded with a nationally televised veto message.

NIXON: "Now, if I approved the increased spending contained in this bill, I would win the approval of many fine people who are demanding more spending by the Federal Government for education and health. But I would be surrendering in the battle to stop the rise in the cost of living, a battle we must fight and win for the benefit of every family in this Nation." (Hew Veto Message, Jan. 26, 1970.)

O'BRIEN: In that same week when Mr. Nixon vetoed the education and health bill as inflationary, he announced a new multi-billion dollar spiral in the nuclear arms race.

Why wasn't this just as inflationary, if not more so?

Only a few days ago Congress overrode another Nixon veto and so restored funds to build desperately needed hospitals and mental health facilities for the nation's sick people. The President turned down this bill because he said it was inflationary. But more than two-thirds of Congress—including a majority of the members of the Republican Party—voted to allocate for hospitals some of the money cut from the budget.

National priorities? Let's consider again each American's thousand dollar share of the nation's budget: $4.50 for air and water pollution; $5.00 for urban renewal for our cities; $7.50 for elementary and secondary education; 50 cents for training the handicapped—and $375.00 for the military.

Once again, we must look to Congress for leadership.

It was Congress that more than doubled President Nixon's initial request for an increase in social security, providing a badly needed 15 percent increase. And just this week, your paychecks will be larger because a Democratic Congress voted to increase personal tax emptions and eliminate the 5 percent surtax.

So I ask you tonight: Who is really engaged in a "historic reordering of our national priorities"—the Congress or the President?

One of our most urgent priorities for this decade is cleaning up our environment. Most of you heard the President speaking to this problem in his State of the Union Message this past January.

NIXON. "The program I shall propose to Congress will be the most comprehensive and costly program in this field in America's history.

"It is not a program for just one year. A year's plan in this field is no plan at all. This is a time to look ahead not a year, but 5 years or 10 years—whatever time is required to do the job.

"I shall propose to this Congress a $10 billion nationwide clean waters program to put modern municipal waste treatment plants in every place in America where they are needed to make our waters clean again, and do it now." (State of the Union Message, Jan. 22, 1970)

O'BRIEN: That is what President Nixon said he would propose, and to many it seemed an impressive call for action. But the fact is that the 10 billion dollar program he promised calls for federal spending of only four billion dollars. The amount Mr. Nixon proposed for the first year of his new program to fight water pollution turned out to be *less* than Congress had already authorized.

And so, 18 months later, the pattern of the Nixon Administration's domestic program is abundantly clear—ringing calls for action, but few results, except when Congress takes the initiative and calls the shots.

But our attention to our critical domestic priorities continues to be diverted by the seemingly endless struggle in Indochina, about which the President addressed the nation on April 30.

NIXON: "Tonight, American and South Vietnamese units will attack the headquarters for the entire Communist military operation in South Vietnam. This key control center has been occupied by the North Vietnamese and Vietcong for 5 years in blatant violation of Cambodia's neutrality." (Address to Nation, April 30, 1970)

O'BRIEN: I have no intention of "taking on" the President in difficult decisions about military strategy, but I do want the President to level with all of us.

I share the relief of all Americans that our troops have crossed back into South Vietnam, but I also share the confusion of most Americans who wonder what Cambodia is really all about.

The President never consulted with his Cabinet or with Congress before he expanded the Indochina war. He has never told the American people that the Communist headquarters he said would be attacked was never attacked and apparently never even located.

Instead Mr. Nixon now has given other reasons to justify his surprise move of American troops into a neutral country, among them the preservation of a new Cambodian government.

And now we have become involved, whether or not we like it, in that new government. Now—although our ground troops are out—our bombers and our artillery continue to bomb the Cambodian nation. Now the South Vietnamese army continues to sustain a full scale military operation in Cambodia.

Before our military incursion, as this map shows, Communist activity in Cambodia was primarily limited to border sanctuaries.

But now, just two months later, Communist control has expanded to half the land area of Cambodia and Communists have infiltrated over a large part of the rest of that beleagured country.

The question must be asked: Has our action actually saved Cambodia, or put its survival in greater jeopardy?

To be a patriotic American is to question and probe the activities of those who govern us. That is our duty and our right.

The newly elected President promised to "bring us together again." But the opposite of that is occurring, polarization, unfortunately encouraged by Vice President Agnew in speech after speech across the country.

AGNEW: "You can't bring 200 million people together. Let's stop talking in technicalities and look at the President's figure of speech—was a plea for national unity to bring the responsible elements of our society together. But let's never overlook the fact that there are also irresponsible elements of our society and instead of attempting to dignify and condone what they're doing, let's polarize—let's get rid of these undesirable people by recognizing that they cannot participate in our legitimate processes of government unless they play the rules." (Washington Window, UPI Interview, November 16, 1969)

O'BRIEN: The words and thoughts of Vice President Agnew leave me saddened and disheartened. While I realize there are many who support Mr. Agnew, I deeply believe his road can only lead to further division and mistrust among our people.

In attacking the loyalty of millions who sincerely question the course of the present Adminstration, the Vice President is himself questioning and jeopardizing the very democratic tradition that has made us strong.

Is this the way we are to be brought together again? Is this the lowered voice President Nixon urged upon all of us eighteen months ago?

This is a time for healing, not for wounding, for trust and understanding, not for hatred and suspicion.

For 14 years, I was a friend and close associate of a man who could express these feelings far better than I. One bright, wintry day the world seemed full of promise as he reached out to us and summoned forth the best we Americans had to offer.

KENNEDY: "All of this will not be finished in the first one hundred days. Nor will it be finished in the first one thousand days, nor in the life of this Administration, nor even perhaps in our lifetime on this planet. But let us begin . . ." (Kennedy Inaugural Address, Jan. 20, 1961)

O'BRIEN: The Democratic Party, and the Democrats in Congress accepted that challenge a decade ago—and we rededicate ourselves today.

SST IS HARDLY ESSENTIAL TO U.S. ECONOMY

Mr. PROXMIRE. Mr. President, the White House staff report released this past weekend contains little in the way of encouraging news as far as the American environment is concerned. According to an article published yesterday in the Milwaukee Journal, the central theme of the report is that "despite severe deterioration of the American environment, the United States must continue to seek substantial economic growth in order to solve the problems of millions of its poor people."

Mr. President, while I am deeply concerned about the problems of the poor, and what we can do to alleviate these problems, I am troubled by the way this report presents alleviating poverty and environmental control in an either—or posture. I submit, Mr. President, that just this kind of attitude has been responsible for a great deal of our air pollution, water pollution, solid waste pollution, and noise pollution. There may, in fact, be instances where we face a difficult choice between social and economic gains on the one hand and preventing degradation of the environment on the other. But in most cases we face no such choice.

The SST is just one example. Here is a project which will create very serious noise pollution—not only from the sonic boom but also from the deafening sideline noise it will generate at our airports. Here is a project which can damage our protective layer of ozone—the Department of Transportation says "only" by 7 percent—and our ozone is all the protection we have against the sun's otherwise lethal ultraviolet radiation. Here is a project which will leave behind trails of water vapor in the upper atmosphere—trails which experts predict will substantially increase the earth's cloud cover and which in turn may affect our weather patterns. Clearly, Mr. President, the SST has an enormous potential for damaging the environment.

But is this counterbalanced by the SST's social and economic benefits? Are we faced with the difficult choice which the White House report envisions? Hardly.

The SST, if and when it flies, will be of use only to a very small fraction of our population. The SST's principal use will be on overseas routes,—routes which are flown by fewer than 1 percent of our population on a regular basis. And there is a good chance that for the SST to make any kind of a return for the airlines, the fare will have to be set at first-class rates—rates which would make the SST prohibitive for all but a handful of businessmen and the wealthiest of tourists.

Mr. President, this is hardly the kind of project "the United States must continue to seek" in order to "solve the problems of millions of its poor people". This administration continues to use this kind of justification for projects such as the SST, but when it comes to building hospitals, providing for education, or putting up new low and moderate income

housing, it accuses the Congress of being fiscally irresponsible.

Mr. President, who is kidding whom?

Mr. President, I ask unanimous consent that the article entitled "Growth Called Essential to U.S.," written by Jack Kole, and published in the Milwaukee Journal of Sunday, July 19, be printed in the RECORD.

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

GROWTH CALLED ESSENTIAL TO UNITED STATES

(By John W. Kole)

WASHINGTON, D.C.—Despite severe deterioration of the American environment, the United States must continue to seek substantial economic growth in order to solve the problems of millions of its poor people, a White House staff report declared Saturday.

That central theme was presented to President Nixon in a 228 page report submitted by his national goals research staff, which is headed by Leonard Garment, a special consultant to the president.

The problems of the environment, to which Nixon gave his No. 1 domestic priority in his first State of the Union message last January, were discussed in almost every section of the report, which was entitled "Toward Balanced Growth: Quantity With Quality."

Although the stated purpose of the report was to define problems and goals and not to select solutions, it was clearly committed to a high rate of economic expansion.

"An extreme solution would be intentionally to lower the rate of conventional economic growth," it said. "Such a proposal assumes that growth is the cause of environmental degradation and therefore that the cure is to soften the cause.

"But degradation of the environment is not a necessary consequence of economic expansion, and improving the environment will itself require new equipment—equipment that will be available only from increased output or from diverting resources from other users."

Moreover, the report continued, there is no guarantee that restricting growth would, by itself, reduce pollution.

"Restricting growth would also run counter to other policy objectives," the report said. "Slowing the rate of expansion would jeopardize full employment and would hinder the efforts of minority groups in poverty to increase their income.

"Thus, while it may be true that pollution can be associated with growth, it does not follow that consciously curtailing growth represents sound policy."

The conclusions are certain to be attacked by environmentalists, who feel that a slowdown of economic expansion is necessary to avert disaster.

The report was ordered a year ago by Nixon as he looked forward to the 200th anniversary of the U.S. in 1976.

"It is time we addressed ourselves, consciously and systematically, to the question of what kind of a nation we want to be as we begin our third century," he said then. "We can no longer afford to approach the longer range future haphazardly."

The report noted: "One of the cherished assumptions of Western civilization is that, by and large, people and institutions can and should be left to run themselves and that the results of their actions will be to the general good."

While this assumption is being seriously challenged and the government is exercising more controls than ever, it said, there must be extreme caution.

"Excessive continued public involvement in the guidance of such institutions can produce undesirable instability," the report said. "Excessive reliance on administrative controls will increase public costs, breed inflexibility or prove ineffective—if experience is any guide."

MUST SEEK BOTH

Despite the serious questions that have been raised about economic growth in recent years, the report declared that pitting quantity against quality was "a false phrasing of the issue."

"The new qualitative goals being proposed and the old goals yet unmet can be achieved only if we have continued economic growth," it said. "The issue is better put as one of how we can insure continued economic growth while directeing our resources more deliberately to filling our new values."

The national goals of staff was clearly at odds with "some scientists and other anxious citizens (who) assume a doomsday model of the future in which increased economic production will drive us to our destruction."

GROWTH MAY SLOW

On population growth, the report strongly implied that those who were warning about disastrous consequences for the US were exaggerating.

"More recent projections suggest that the increase in our population over the next 30 years may be considerably less than the additional 100 million that had generally been forecast," the report said.

"In fact, it may even be that the present rate of increase will slacken off so that we will reach the zero growth rate that some demographers have been advocating."

But it did see the massing of American population in 12 major urban conglomerates as a serious problem that had to be dealt with by encouraging the growth of new, self-contained communities of 25,000 or more.

These new towns, the report said, could provide only minor relief because the construction of the necessary facilities was a huge undertaking.

"Another complicating consideration is that new towns, if improperly designed, could aggravate the problems of the cities by siphoning off primarily middle and upper income residents, leaving the poor behind in cities stripped of their tax base," he said.

The American educational system must do a considerably better job of educating the underprivileged children of minority groups.

The leveling off of federal aid has created serious money shortages in the field of basic natural science.

Some other points made in the report:

America must find ways to continue technological advances while protecting the environment from new incursions.

Consumer groups are convinced that they need stronger government controls but the movement already has had "an important and beneficial influence on business practice."

The report said the definition of the gross national product (GNP) probably should be changed to reflect environmental improvements.

"It is therefore possible to conceive of some lowering of the conventional growth rate but at the same time some increase in real wealth if GNP were adjusted for the quality improvement being newly purchased," it said.

NO NEW FEATURE

But this would not be a new feature in American life, the recipient argued.

"The sacrifice of income in favor of leisure and the large portion of current output that is used instead of invested show that quality (leisure) and current enjoyment (consumption) have demonstrated that sheer economic growth for its own sake is not and has not been an absolute concern," it said.

"Therefore, caring for the wholesomeness of our environment can be considered an extension of America's historical concern for quality."

CONGRESS AND ITS FISCAL RECORD—STRAIGHT

Mr. MANSFIELD. Mr. President, certain questions have again been raised through the press about the reductions effected by Congress on the spending requests contained in the budget submitted by the administration. It is becoming increasingly clear that the message simply has not gotten through. So to set the record straight once again, I must point out that acting on administration budget requests for the fiscal year just concluded, Congress cut a total of $6.37 billion. At the same time Congress saved an additional $1.4 billion that was requested for the fiscal year just begun. Some of that advance savings, fortunately, may be available for areas where additional funds are vitally needed.

The record of Congress on this score has been most responsible, particularly in the light of our current economic difficulties. It is a record for which every Member may be proud. I ask unanimous consent that a table prepared by the Committee on Appropriations be printed in the RECORD. The table shows in detail where Congress cut items that were felt to have been unnecessarily bloated by the administration.

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

[SENATE APPROPRIATIONS COMMITTEE PRINT]

ACTIONS ON BUDGET ESTIMATES OF NEW BUDGET (OBLIGATIONAL) AUTHORITY IN APPROPRIATION BILLS, 91ST CONG., 1ST SESS. AND 91ST CONG., 2D SESS. AS TO LABOR-HEW APPROPRIATION BILL, H.R. 15931, AND FOREIGN AID APPROPRIATION BILL, H.R. 15149—AS OF MAR. 5, 1970

[Does not include any "back-door" type budget authority; or any permanent (Federal or trust) authority, under earlier or "permanent" law,[1] without further or annual action by the Congress]

Bill and fiscal year	Budget requests considered by House	Approved by House	Budget requests considered by Senate	Approved by Senate	Public Law	(+) or (−), Public Law amounts compared with budget requests to Senate
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Bills for fiscal 1970:						
1. Treasury-Post Office (H.R. 11582) (net of estimated postal revenues appropriated)	$2,314,714,000	$2,272,332,000	$2,314,714,000	$2,280,195,000	$2,276,232,000	−$38,482,000
(Memoranda: Total, including authorizations out of postal funds)	(8,821,727,000)	(8,779,345,000)	(8,821,727,000)	(8,787,208,000)	(8,783,245,000)	(−38,482,00)

Footnotes at end of table.

Bill and fiscal year	Budget requests considered by House	Approved by House	Budget requests considered by Senate	Approved by Senate	Public Law	(+)or (−) Public Law amounts compared with budget requests to Senate
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Bills for fiscal 1970—Continued						
2. Agriculture (H.R. 11612)	$6,967,562,050	$6,806,655,000	$7,237,562,050	$7,642,797,650	$7,488,903,150	+$251,341,100
3. Independent offices-HUD (H.R. 12307) (including 1971 advance)	15,380,413,600	14,909,089,000	15,512,969,600	[2] 14,985,449,000	15,111,870,500	−401,099,100
(Fiscal year 1970 amounts only)	(15,205,413,600)	(14,734,089,000)	(15,337,969,600)	[2] (14,985,449,000)	(15,111,870,500)	(−226,099,100)
4. Interior (H.R. 12781)	1,390,096,500	1,374,286,700	1,390,856,500	1,382,766,900	1,380,375,300	−10,481,200
5. State, Justice, Commerce, and Judiciary (H.R. 12964)	2,475,704,600	2,335,634,200	2,475,704,600	2,382,354,700	2,354,432,700	−121,271,900
6. Labor-HEW (H.R. 13111 vetoed by the President, Jan. 26, 1970)	(16,495,237,700)	(17,573,602,700)	(19,834,125,700)	(21,363,391,700)	(19,747,153,200)	[4] (−86,972,500)
(Fiscal year 1970 amounts only)	(16,495,237,700)	(17,573,602,700)	(18,608,125,700)	(20,245,811,700)	(19,747,153,200)	[4] (+1,139,027,500)
7. Labor-HEW (H.R. 15931 signed by President March 5, 1970)	18,608,125,700	19,381,920,200	19,834,125,700	19,381,920,200	19,381,920,200	[5] −452,205,500
Senator Cotton amendment Sec. 410; 2 percent reduction				−346,776,624	−346,776,624	−346,776,624
(Fiscal year 1970 amounts only)	(18,608,125,700)	(19,381,920,200)	(18,608,125,700)	(19,381,920,200)	(19,381,920,200)	(+773,794,500)
8. Legislative (H.R. 13763)	311,374,273	284,524,057	372,152,949	342,310,817	344,326,817	−27,826,132
9. Public works (and AEC) (H.R. 14159)	4,203,978,000	4,505,446,500	4,203,978,000	4,993,428,500	4,756,007,500	+552,029,500
10. Military construction (H.R. 14751)	1,917,300,000	1,450,559,000	1,917,300,000	1,603,446,000	1,560,456,000	−356,844,000
11. Transportation (H.R. 14794) (including 1971 advances)	2,090,473,630	2,095,019,630	2,090,473,630	2,147,152,630	2,143,738,630	+53,265,000
(Fiscal year 1970 amounts only)	(1,840,473,630)	(1,875,019,630)	(1,840,473,630)	(1,947,152,630)	(1,929,738,630)	(+89,265,000)
12. District of Columbia (H.R. 14916) (Federal funds)	228,842,000	188,691,000	228,842,000	173,547,000	168,510,000	−60,332,000
(District of Columbia funds)	(751,575,300)	(683,106,300)	(752,944,300)	(657,064,600)	(650,249,600)	(−102,694,700)
13. Defense (H.R. 15090)	75,278,200,000	69,960,048,000	75,278,200,000	69,322,656,000	69,640,568,000	−5,637,632,000
14. Foreign assistance (H.R. 15149)	3,679,564,000	2,608,020,000	3,679,564,000	2,718,785,000	2,504,260,000	−1,175,304,000
15. Supplemental (H.R. 15209)	298,547,261	244,225,933	314,597,852	296,877,318	278,281,318	−36,316,534
Total, these bills—						
As to fiscal 1970	134,719,895,614	128,021,451,220	135,200,040,881	[6] 129,106,910,091	[6] 128,829,105,491	[6] −6,370,935,390
As to fiscal 1971	425,000,000	395,000,000	1,651,000,000	200,200,000	214,000,000	−1,437,000,000
Total, 1970 bills including 1971 amounts	135,144,895,614	128,416,451,220	136,851,040,881	[6] 129,306,910,091	[6] 129,043,105,491	[6] −7,807,935,390
Bills for fiscal 1969:						
1. Unemployment compensation (H.J. Res. 414)	36,000,000	36,000,000	36,000,000	36,000,000	36,000,000	
2. Commodity Credit Corporation (H.J. Res. 584)	[3] 1,000,000,000	[3] 1,000,000,000	[3] 1,000,000,000	[3] 1,000,000,000	[3] 1,000,000,000	
3. 2d supplemental (H.R. 11400)	4,364,006,956	3,783,212,766	4,814,305,334	4,459,669,644	4,352,357,644	−461,947,690
Release of reserves (under Public Law 90–364)	(82,463,000)	(82,766,000)	(79,999,000)	(80,230,000)	(80,230,000)	(+231,000)
Total, 1969 bills	5,400,006,956	4,819,212,766	5,850,305,334	5,495,669,644	5,388,357,644	−461,947,690
Cumulative totals	140,544,902,570	133,235,663,986	142,701,346,215	[6] 134,802,579,735	[6] 134,431,463,135	[6] −8,269,883,080

[1] In round amounts, the revised (April) budget for fiscal 1970 tentatively estimated total new budget (obligational) authority for 1970 at $219,600,000,000 gross ($205,900,000,000 net of certain offsets made for budget summary purposes only), of which about $80,700,000,000 would become available, through so-called permanent authorizations, without further action by Congress, and about $138,900,000,000 would require "current" action by Congress (mostly in the appropriation bills). Also, the April Review of the Budget contemplates budget requests for advance fiscal 1971 funding in 4 items totaling $1,661,000,000.

[2] Reflects reduction of $175,000,000 for Appalachian highway program for 1970 and $175,000,000 for advance funding for 1971. Authorization Act provided for contract authority in lieu of new obligational authority, with payments for liquidation to be appropriated later.

[3] Shifted from fiscal 1970 budget, a portion of which is technically classified in the budget as "liquidation of contract authorization" rather than as new budget (obligational) authority.

[4] Although a reduction in the budget estimate of $86,972,500 is reflected in the total column of the bill, it must be made clear that the budget estimate column to the Senate includes $1,226,000,000 advance funding for ESEA for 1971 whereas none of these funds were included in the conference agreement. Deducting the $1,226,000,000, from the budget estimate column gives a comparison for fiscal year 1970 only and reflects the conference agreement over the budget estimates in the amount of $1,139,027,500.

[5] The budget estimate column to the Senate includes $1,226,000,000 advance funding for fiscal year 1971 for ESEA denied by the Congress.

[6] Includes reduction of $346,776,624 in the Cotton amendment, section 410 of Labor–HEW appropriation bill, H.R. 15931.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? if not, morning business is concluded.

DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business be laid before the Senate.

The PRESIDING OFFICER. The clerk will state the unfinished business.

The BILL CLERK. 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.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

CALL OF THE ROLL

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk called the roll, and the following Senators answered to their names:

[No. 247 Leg.]

Aiken	Curtis	McGovern
Allen	Ervin	Metcalf
Anderson	Goodell	Prouty
Bible	Griffin	Scott
Boggs	Hatfield	Sparkman
Byrd, W. Va.	Hruska	Stennis
Church	Jordan, N.C.	Tydings
Cooper	Jordan, Idaho	Young, N. Dak.
Cranston	Mansfield	Young, Ohio

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Louisiana (Mr. ELLENDER), the Senator from Tennessee (Mr. GORE), the Senator from Oklahoma (Mr. HARRIS), the Senator from Iowa (Mr. HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from New Mexico (Mr. MONTOYA), the Senators from Rhode Island (Mr. PASTORE and Mr. PELL), and the Senator from Alaska (Mr. GRAVEL) are necessarily absent.

I further announce that the Senator from Connecticut (Mr. RIBICOFF) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Kentucky (Mr. COOK), the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Florida (Mr. GURNEY), the Senator from New York (Mr. JAVITS), the Senator from California (Mr. MURPHY), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Alaska (Mr. STEVENS), and the Senator from South Carolina (Mr. THURMOND) 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. CRANSTON). 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:

Allott	Case	Hansen
Bellmon	Dole	Hart
Bennett	Fannin	Hartke
Burdick	Fulbright	Holland
Byrd, Va.	Goldwater	Hollings

Jackson	Moss	Smith, Ill.
Long	Muskie	Spong
Magnuson	Nelson	Symington
Mathias	Packwood	Talmadge
McCarthy	Pearson	Tower
McClellan	Percy	Williams, N.J.
McGee	Proxmire	Williams, Del.
McIntyre	Randolph	Yarborough
Miller	Russell	
Mondale	Saxbe	

The PRESIDING OFFICER. A quorum is present.

THE ABSENCE OF AN EXPRESS SEVERABILITY CLAUSE IN THE CONFERENCE VERSION OF THE DISTRICT OF COLUMBIA CRIME BILL

Mr. TYDINGS. Mr. President, while it is my personal conviction that every element of the conference report on S. 2601, the District of Columbia crime bill now before the Senate, is 100 percent in conformity with the U.S. Constitution, some of my colleagues in the Senate have expressed concern that the few close constitutional questions might warrant the inclusion of an express severability clause in the legislation itself.

It is my understanding, Mr. President, that the law implies such a clause—that such a clause is not needed. Moreover, it is the clear intent of the conferees on S. 2601 that, if the provisions of any part of the District of Columbia Court Reform and Criminal Procedure Act of 1970 or any amendments made thereby or the application thereof to any person or circumstance be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby. No negative intent is to be implied from the omission of such a clause in the conference report.

To clarify the law on this issue, I have asked the U.S. Department of Justice to advise me, and in turn the Senate, as to the need for a severability clause. Today I am in receipt of the reply of the Attorney General as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., July 20, 1970.

HON. JOSEPH TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: In response to your inquiry as to the necessity of a severability clause in legislation, let me point out that it has long been the law in this country that, if any part of a statute is held invalid, all of the remaining portions which are capable of standing alone remain valid.

The Supreme Court has stated clearly:

"The general proposition must be conceded, that in a statute which contains invalid or unconstitutional provisions, that which is unaffected by these provisions, or which can stand without them, must remain. If the valid and invalid are capable of separation, only the latter are to be disregarded." *Supervisors* v. *Stanley,* 105 U.S. 305, 312 (1881).

When the severability clause is included in the legislation itself a presumption of severability is raised but "the ultimate determination of severability will rarely turn on the presence or absence of such a clause." *United States* v. *Jackson,* 390 U.S. 570, 585 (1968). In *Jackson,* the Supreme Court held that the invalidity of the death penalty provision in the Federal Kidnapping Act, contrary to the view of the lower court, did not require invalidation of the entire provision even though Congress had included no severability clause.

In view of the long-standing principle of statutory construction repeatedly upheld by the Court, it seems perfectly clear that the absence of a severability clause in the District of Columbia Court Reform and Criminal Procedure Act of 1970 poses no difficulty.

Sincerely,

JOHN N. MITCHELL,
Attorney General.

Mr. GOODELL. Mr. President, like many of my colleagues, and like all the residents of this city, I, too, am subject to the fears that pervade this city. I, too, have watched with horror as the crime rate of this city, a city which should be setting an example for the rest of the country, and the world, increases at appalling rates. I, too, wish to institute measures which will somehow stop that crime so that once again we will not be afraid to allow our children to go out at night. But I am not willing to institute this District of Columbia conference report—a report which contains provisions that are in some cases unconstitutional and in other cases clearly undesirable, and deleterious to effective crimefighting and to the rehabilitation of criminals.

I have heard many of my colleagues say that although they do not support one or two provisions contained in the crime bill, they will support it for fear that, should it be defeated, there will be no crime bill. I implore my colleagues to abandon this line of thought. Firstly, I believe that with ample time to study this 243-page report, my fellow Senators would find more than just one or two provisions which are undesirable or unconstitutional. Second, we can have a crime bill for the District of Columbia should the conference report be voted down. Should it be rejected, there is a bipartisan substitute District of Columbia crime package upon which this body can immediately act.

I have introduced this substitute measure with 21 cosponsors—including two other members of the District of Columbia Committee, and five members of the Judiciary Committee—in the form of two bills, S. 4080 and S. 4081. The substitute measure has also been introduced by the Senator from North Carolina, also with the cosponsorship of 21 Senators, in the form of amendments 776 and 777 to H.R. 914, a House-passed private claims bill now pending on the Senate Calendar.

The first portion of the substitute measure contains provisions for court reorganization, the District of Columbia Bail agency, the interstate compact on juveniles, the public defender service, and a Federal payment to the District of Columbia to pay for this legislation; this first part is, in almost all aspects, exactly like the corresponding provisions in the conference report.

We did, however, make two changes from the conference language which, I believe, are clearly superior to the provisions of the conference report. These changes deal with confidentiality of Bail Agency records, and representations by the public defender service.

I. CONFIDENTIALITY OF INFORMATION GIVEN TO BAIL AGENCY

The conferees, I believe, wisely accepted provisions which will substantially enlarge the positive role that the Bail Agency can take in regard to the bail process; as such the agency will not only provide prebail information on arrested suspects to guide the judicial officer in setting release conditions, but will also supervise, or coordinate supervision by other persons, suspects released on conditions other than money bond.

Although wisely expanding the functions of the agency, the conferees also accepted a provision which was in the House-passed bill which, unwisely, would allow information gathered by the bail agency to be used in perjury proceedings, and for the purposes of impeachment in any subsequent proceedings. If the protection of confidentiality is removed as provided in the conference report, prisoners would be subject to penalties, which, as a result of what they say in the original interview with the bail agency, will be drastically changed. The bail agency would no longer be the neutral intermediary between the prisoner and the court that is now operating to the benefit of both, but it potentially will become an accuser and witness against the prisoner in future criminal trials. Prisoners have the right to be advised of their rights and to have counsel appointed and present at their interview with the bail agency. Although interviewing is done prior to the appointment of counsel for the prisoners involved, the prisoners interviewed now waive their right to counsel because nothing they say in the interview can be used against them under the provisions of the present law. However, should the protection of confidentiality be removed, it can be expected that counsel will have to be appointed and that prisoners will be advised not to submit themselves to interviews with the agency, in many instances. Thus, the provisions of the conference report will make it extremely difficult for the agency to obtain information for their report; will undermine the confidence with the accused that the agency has built up since it began operations in 1965; and will deprive the courts of information that is extremely helpful to them in the administration of justice. Clearly the change from existing law, and from the bill passed by the Senate earlier this year, made by the conferees is unwise; the substitute package retains the protection of confidentiality which clearly will make the bail agency more able not only to carry out its duties but to carry them out in a responsible and efficient manner.

II. PUBLIC DEFENDER REPRESENTATION

The other major change in the noncontroversial first portion of the alternative District of Columbia crime measure, S. 4080, and amendment 777 to H.R. 914, deals with representation by the public defender service. The conference report states that representation may be furnished at every stage of proceeding—including appellate, ancillary, and collateral—whereas the substitute states that representation shall be furnished at every stage of a proceeding, including ancillary, trial appellate, and collateral proceedings, where the person to be represented has a right to counsel under the prevailing law of the District of Columbia and where representation for such person is otherwise not provided.

Rather than maintain the permissive language of the conference report, the substitute measure, in adopting mandatory language, will protect the individual defendant by mandating representation at all stages. Once representation is undertaken, the service is bound to see the case through to the conclusion in the same manner as any other attorney would be bound.

III. COURT REORGANIZATION

Previous debate on the Senate floor during the last few days, and testimony before the Senate District Committee, has made one fact unalterably clear. That is, the best way to fight crime is to provide speedy trials. The conference report now before us will go a long way to insure speedy trials in the District of Columbia by its proposals for court reorganization. I support these court reorganization provisions—which make up over 90 percent of the report before us—as I would venture to guess, do all of my colleagues. Over and over again Senator TYDINGS, the distinguished chairman on the District of Columbia Committee, has asked that we in the Senate decide this bill on the merits, and not in the heat of emotion surrounding a few of the provisions like preventive detention and no knock.

No knock, preventive detention, and other objectionable provisions of the conference bill are an integral part of it, however, and a decision must be made on the merits of each of those issues. Should the Senate decide that the excess baggage which the administration and the conference report seek to tack onto court reorganization is poor policy and poor law, then the option of voting for court reorganization alone will, through the substitute which Senator ERVIN and I have introduced, remain available to us.

Let us scotch once and for all the argument that a vote against the District of Columbia conference report is a vote against vigorous anticrime legislation, a vote which will doom the possibilities for District of Columbia crime legislation to be passed in the near future. That is simply not true. A vote against the conference report is a vote against no knock, or against preventive detention, or against some or all of the 45 other antilibertarian measures which the conference bill includes. Let it be quite clear that we do have an alternative District of Columbia crime bill waiting in the wings, and that the Senate can exercise its option of passing that bill—and of giving the District the court reorganization which it so badly needs—immediately after rejection of the conference report.

Let me mention, before getting to the brunt of my argument on the no-knock provision, some of the 45 other provisions which I find so objectionable in the conference report.

IV. RESISTING ARREST

The conferees decided to accept a provision of the House which would forbid a citizen—any citizen—to resist arrest, even if such an arrest is unlawful, by an individual who the citizen has reason to believe is a law enforcement officer. This provision would further promote the ability of criminals posing as police—not uncommon in the District of Columbia—to prey on citizens.

In a far larger sense it is unwise and ill-conceived. This provision is based on the assumption that the "self-help remedy to resist unlawful arrest is unnecessary in today's society where the individual is fully protected by: First, the ability to obtain prompt release before a magistrate where probable cause for arrest is lacking and second, when the existence of civil remedies for unlawful arrest. As for the first assumption I have, unfortunately, not been able to uncover any indication that police superiors ever rigorously attempt to discipline police officers who make arrest without probable cause. And as to the second point regarding the adequacy of civil remedies for the person that is unlawfully arrested—they just do not exist. The statement of managers, in defending this provision, can say only that civil remedies are being developed by the courts. It is common knowledge, nevertheless, that recovery of money damages for unlawful arrest is a realistic remedy only in the most outrageous of cases.

Inclusion of this provision in the District of Columbia Code would affect us all. And one of us could be walking down the street and stopped on the pretension of arrest, and not daring to resist because we know it is unlawful we might find ourselves the easy victim of a robber; knowingly or unknowingly—just as bad, this law could be abused by actual policemen for a variety of reasons, none of them based on fact.

V. OTHER NOMINAL PROCEDURES

Another provision contained in the conference report which I consider to be entirely ill conceived is the provision which would abolish the Commission on Revision of the Criminal Laws of the District of Columbia and charge the Senate and House of Representatives with this task of making a comprehensive revision of the Criminal Code of the District Code of the District of Columbia. Inasmuch as the District of Columbia Criminal Code now consists of an unofficial compilation of disparate and largely ad hoc criminal measures this revision is of utmost importance; however, it should not be done by Congress if only because the months of deliberation and agreement over the present conference report show, changes in criminal law procedure are not apt to be quickly agreed upon here.

In addition the task of revising the Criminal Code of systematic law revision—requires both the advice and the painstaking, technical supervision of experts—something which is not generally available to the District Committees of the respective Houses.

The Senate statement of managers admit the superiority or desirability of having the provision included in the substitute when they say that although the Senate conferees gave in to the House they did so only under persistent insistence by the House. But they receded under the assumption that the respective committees would seek and listen to the advice of experts "in changing the District of Columbia Criminal Code," as would have been institutionalized under the bar association's proposal for the reconstituted committee.

The Commission on Revision of Criminal Laws of the District of Columbia was created by the act of December 27, 1967, for a period of 3 years. However, the Commission was not funded until the 1970 District of Columbia appropriations Act and as such has not been operating until this year. The Commission needs 2 additional years to adequately complete its task, and as such the District of Columbia crime bills would change the conference provision back to that which was originally passed by this body. That is, the Commission would make an interim report on May 1, 1972, and its final report on a date not later than May 1, 1973.

Another provision which I find particularly appalling is that provision, adopted by the conferees, which would increase the penalty for tampering with vending machines from the existing misdemeanor to a 3-year felony. It should be well noted, however, that no matter what the value of the sum or property involved, anyone who now steals from a vending machine is subject to a year's imprisonment under present law; and if the value of the money or property amounts to $100 or more, the penalty ranges up to 10 years; or if the value of the machine is over $200, which is usually the case, that the penalty ranges up to 10 years. There has been no showing to the effect that the larceny laws of the District are not adequate to the task of adequately punishing those who break into vending machines.

The statement of managers on behalf of the Senate justified this change by stating that "higher penalties should be available to deal with professional criminals," unfortunately the proposed treatment of vending machine theft, as adopted by the conferees, would severely punish the ghetto youth who break into a candy machine, while not noticeably altering the present punishment that now can be invoked against the experienced vending machine thief who is repeatedly robbing and destroying all sorts of coin-operated machines.

JUVENILE PROVISIONS

The honorable junior Senator from Maryland (Mr. MATHIAS) will soon call the attention of the Senate to many of the juvenile provisions contained in the conference report which were changed in the conference report. I have read a copy of the Senator from Maryland's statement, and I would like to express my concurrence with his thoughts and analysis. However, I would like to briefly advise my fellow Senators of three provisions contained in the juvenile section of the conference report which I find particularly odious.

The definition of a child as adopted by the conferees would allow a juvenile of 16 or 17 to be tried as an adult if he has been charged with certain numerated offenses. Although this definition, as adopted by the conferees, somewhat limits the number of crimes when this

can occur, as opposed to the original House provision, it still flies in the face of every expert who testified before the Senate District Committee in regard to juvenile proceedings. In fact it is interesting to note that the only witness to speak out in favor of the House proposal was the Justice Department.

The District of Columbia crime substitute package goes back to the definition of child that was previously passed by the Senate as part of S. 2981; in so doing our substitute closely conforms to the definitions recommended by recognized juvenile authorities. These experts have continually stressed that lowering the age limit at which a person could be tried as a child is not in the interests of improved law enforcement; what's more, in lowering the age limit we do not recognize that the potential rehabilitative nature of young people—even those who are guilty of more serious crimes—will be ignored in the adult correction system.

Another aspect of the juvenile proceedings section adopted by the conferees which I find particularly bothersome is the lack of time limits for factfinding and disposition hearings. It is true that the conferees did set time limits for various other aspects of juvenile proceedings, but what good does it do if all the proceedings surrounding one child's arrest go very quickly, and then when it is time for the factfinding hearing, it is not held for an indeterminate amount of time. Obviously, not imposing time limits for all stages can entirely undo the good that will come out of time limits at some stages.

It is unfortunate that the conferees, by not going all the way, missed the boat entirely as far as time limits for juveniles are concerned. This is especially unfortunate inasmuch as expedition in juvenile proceedings is the key to deterrence and effective therapy.

In S. 4081, and in amendment 776 to H.R. 914, time limits are imposed on all requisite stages of juvenile proceedings. In instituting a comprehensive scheme of statutory limitations, the District of Columbia crime conference substitute, as opposed to the conference report, adopts the unanimous recommendations of the American Bar Association's Minimal Standards for Criminal Justice Relating to Speedy Trial, the model acts of Illinois and New York, and, most notably, the President's Commission on Crime in the District of Columbia.

Another aspect of the conference report regarding juvenile procedures has to do with the right of a juvenile to a trial: Under the conference report they would be denied that right. I must recall to Senators that in the juvenile procedure bill passed this year there was no such jury trial, either—the denial of a jury trial afforded to a child was compensated for by requiring very high standards of proof in both delinquency and need of supervision cases. Unfortunately, not only did the conferees not see fit to provide adolescents charged with trials by jury, but also, they lowered the standard of proof for persons in need of supervision to "preponderence of the evidence" rather than beyond a reasonable doubt.

I believe that it is ill-advised to have such a standard of proof when no jury trial is provided. After all, such a finding requires some confinement—whatever purpose that confinement may be thought to serve—and a loss of liberty. Therefore, it seems manifestly unfair and constitutionally unsound to permit such a finding to be made upon a showing of evidence which amounts to anything less than proof beyond a reasonable doubt. After all, as Chief Justice Warren said:

> What we are striving for is not merely "equal" justice for juveniles. They deserve much more than being afforded only the privileges and protections that are applied to their elders.

Another very unwise provision adopted by the conferees would require that when a defendant's insanity is an element of the alleged crime, he establish his insanity by a preponderance of evidence. I think that is a mistake. This is contrary to present law which provides that the defendant has the burden of going forward with some evidence to put his mental condition in issue; but the Government still has the ultimate burden of proof on the issue of sanity or criminal responsibility, just as it does with every other element of an offense.

The shift of the burden of proof made by the conferees ignores the recent Supreme Court decision In re Winship which holds that the prosecution must shoulder the burden of proof beyond a reasonable doubt on "every fact necessary to constitute the crime charged." In addition, the practical effects of such a charge would make a sham of the insanity defense for indigent defendants who lack adequate representation or resources to establish the defense. But probably the most significant aspect of the inclusion of this provision in the conference report is this: The element of intent is fundamental to most crimes, and proof of intent is inseparable from proof of criminal responsibility; if the Government can be relieved of the burden of proof on this fundamental element of the crime, then there is nothing that cannot be shifted to the accused and the presumption of innocence is destroyed.

NO-KNOCK PROVISIONS

The conference bill authorizes a no-knock seizure and arrest under new and broader circumstances than those which have up to now been recognized as justifying an exception to the notice requirement at common law. Let it be clear that, despite protestations to the contrary by the distinguished senior Senator from Maryland, the no-knock provision of the conference bill does not merely codify existing law.

The conference bill authorizes a no-knock entry where circumstances at the time of breaking and entry give an executing officer probable cause to believe that:

First. Notice is likely to result in the evidence subject to seizure being easily and quickly destroyed or disposed of; or

Second. Notice is likely to endanger the life or safety of the officer or another person; or

Third. Notice is likely to enable the party to be arrested to escape; or

Fourth. Notice would be a useless gesture.

A comparison of the original Senate and House no-knock proposals with the final conference version indicates that the District Committee conferees followed substantially the House version of no knock. The only significant respect in which the conference bill reflects the Senate version rather than the House is the requirement of an application for a no-knock warrant where circumstances justifying such an entry are known at the time of application.

A. COMMON LAW REQUIREMENT OF NOTICE AND THE EXCEPTIONS

English and American courts have both cited the 1603 Semayne's case as being the leading judicial interpretation and application of the maxim that "Every man's house is his castle." In that case the court said:

> The Sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the King's process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open the doors.

The early American cases touching upon the question of illegal entry have frequently referred to the language of Semayne's case as setting forth the general rule requiring notice prior to entry. However, these cases have also recognized certain exceptions to the general requirement of notice. These exceptions have been recognized where notice would have been "useless," where it would constitute a "senseless ceremony," where no one was evidently present to hear it, or where the officer was invited into the house. In the case of *Read* v. *Case*, 4 Conn. 166 (1822), the court recognized an exception to the requirement of notice where there exists the possibility of imminent danger to human life. G. Robert Blakey, in "The Rule of Announcement and Unlawful Entry," 112 U. Penn. L. Rev. 499, suggests that the paucity of State and Federal court decisions concerning unlawful entry is due to the universal practice of giving notice before entry.

A large number of States and the Federal Government have enacted legislation expressly requiring notice before entry. Only one State, Georgia, has a statute governing forcible entry which does not expressly condition such entry upon due notice. No State has as yet attempted to codify any common law exceptions to the general requirement of notice.

B. SUPREME COURT DECISIONS CONCERNING NO-KNOCK ENTRIES

The Supreme Court of the United States has addressed itself to the problem of the no-knock entry on only two occasions. *Miller* v. *United States*, 337 U.S. 301 (1958); *Ker* v. *California*, 374 U.S. 23 (1962). Prior to these two decisions, the District of Columbia Circuit, in *Accarino* v. *U.S.*, 179 F. 2d 456 (D.C. Cir. 1949) rendered "the first judicial decision in Anglo-American law invalidating an arrest on the independent ground

that an announcment of purpose was not made prior to forcible entry." Blakey, p. 512.

In *Miller* v. *United States*, 356 U.S. 301 (1958), the Supreme Court held unlawful a breaking and entering by arresting police officers where proper notice was not given. While the Court's decision turned on its application of the governing Federal statute, 18 U.S.C. 3109, and not expressly upon constitutional standards, the Court discussed the history of the requirement of notice. Mr. Justice Brennan wrote for the majority:

> From the earliest days, the common law drastically limited the authority of law officers to break the door of a house to effect an arrest. Such action invades the precious interest of privacy summed up in the ancient adage that a man's house is his castle.

Mr. Justice Brennan cited Semayne's case as setting forth the common law rule concerning breaking and entering. He concluded his opinion by writing:

> The requirement of prior notice of authority and purpose before forcing entry into a home is deeply rooted in our heritage and should not be given grudging application.

In *Ker* v. *California*, 374 U.S. 23 (1962), the Supreme Court for the first time directed itself to the question of the constitutionality of a no-knock entry. It appears that at least eight Justices on the Supreme Court at the time of the Ker decision subscribed to the view that the fourth amendment implicitly prohibits unannounced entry in the execution of a search or arrest. The decision of the Court in Ker against California—affirming a State court's rejection of a contention that officers' failure to give notice was violative of the fourth amendment—also pointed to common law exceptions to the rule of announcement. It is the basis for and scope of the exceptions to the universally acknowleged general rule of notice that is specifically at issue in the various legislative proposals for no-knock entry.

In this case, the Supreme Court affirmed a California court decision which found sufficient circumstances to justify an exception to the constitutional requirement of notice, held to be incorporated in a California statute. Mr. Justice Clark quoted from *People* v. *Maddox*, 46 Cal. 2d 301 P. 2d 6:

> Since the demand and explanation requirements of section 844 are a codification of the common law, they may reasonably be interpreted as limited by the common law rules that *compliance is not required if the officer's peril would have been increased or the arrest frustrated had he demanded entrance and stated his purpose.*

Finally, the majority held:

> Here justification for the officers' failure to give notice is uniquely present. In addition to the officers' belief that Ker was in possession of narcotics, which could be quickly and easily destroyed, Ker's furtive conduct in eluding them shortly before the arrest was ground for the belief that he might well have been expecting the police. We therefore hold that in the particular circumstances of this case the officers' method of entry, sanctioned by the law of California, was not unreasonable under the standards of the Fourth Amendment as applied to the States through the Fourteenth Amendment.

The significance of the majority decision in Ker against California is diminished by the close 5-to-4 vote. Three other Justices joined Mr. Justice Brennan's dissent which rejected the majority's holding that the fourth amendment's protection against unreasonable searches and seizures had not been violated by the arresting officers in this case. Brennan contends that the majority has recognized a new and unsupportable exception to the common law and constitutional requirement of notice. Mr. Justice Brennan wrote:

> I have found no English decision which clearly recognizes any exception to the requirement that the police first give notice of their authority and purpose before forcibly entering a home. Exceptions were early sanctioned in American cases, *e.g. Read* v. *Case*, 4 Conn. 166, but these were rigidly and narrowly confined to situations not within the reason and spirit of the general requirement. Specifically, exceptional circumstances have been thought to exist only when, as one element, the facts surrounding the particular entry support a finding that those within actually know or must have known of the officer's presence and purpose to seek admission. Cf. *Miller* v. *United States, supra*, at 311–313. For example, the earliest exception seems to have been that "(i)n the case of an *escape* after arrest, the officer, on fresh pursuit of the offender to a house in which he takes refuge, may break the doors to recapture him, in the case of felony, without a warrant, and without notice or demand for admission to the house of the offender." Wilgus, Arrest Without a Warrant, 22 Mich. L. Rev. 541, 798, 804 (1924). The rationale of such an exception is clear, and serves to underscore the consistency and the purpose of the general requirement of notice: Where such circumstances as an escape and hot pursuit by the arresting officer leave no doubt that the fleeing felon is aware of the officer's presence and purpose, pausing at the threshold to make the ordinarily requisite announcement and demand would be a superfluous act which the law does not require. But no exceptions have heretofore permitted unannounced entries in the absence of such awareness on the part of the occupants—unless possibly where the officers are justified in the belief that someone within is in immediate danger of bodily harm.
>
> Two reasons rooted in the Constitution clearly compel the courts to refuse to recognize exceptions in other situations when there is no showing that those within were or had been made aware of the officers' presence. The first is that any exception not requiring a showing of such awareness necessarily implies a rejection of the inviolable presumption of innocence. The excuse for failing to knock or announce the officer's mission where the occupants are oblivious to his presence can only be an almost automatic assumption that the suspect within will resist the officer's attempt to enter peacefully, or will frustrate the arrest by an attempt to escape, or will attempt to destroy whatever possible incriminating evidence he may have. Such assumptions do obvious violence to the presumption of innocence. Indeed, the violence is compounded by another assumption, also necessarily involved, that a suspect to whom the officer first makes known his presence will further violate the law. It need hardly be said that not every suspect is in fact guilty of the offense of which he is suspected, and that not everyone who is in fact guilty will forcibly resist arrest or attempt to escape or destroy evidence.
>
> The second reason is that in the absence of a showing of awareness by the occupants of the officers' presence and purpose, "loud noises" or "running" within would amount, ordinarily, at least, only to ambiguous conduct. Our decisions in related contexts have held that ambiguous conduct cannot form the basis for a belief of the officers that an escape or the destruction of evidence is being attempted. *Wong Sun* v. *United States*, 371 U.S. 471, 483–484; *Miller* v. *United States*, *supra*, at 311.

PRIOR AUTHORIZATION OF NO-KNOCK ENTRY

With respect to the authority in the conference bill for the issuance of a no-knock warrant, it is significant to note that the traditional "exigent" circumstances justifying a no-knock entry have been circumstances existing at the time and place of the search. Any attempt at prior determination of the existence of such circumstances by a judicial officer miles from the scene and up to 10 days prior to execution of the warrant departs radically and unreasonably from this traditional approach.

There are absolutely no court precedents approving advance no-knock warrants. As demonstrated in Ker against California, the traditional common law principles are aimed at "exigent" circumstances occurring at the time of entry.

The Ker decision, moreover, is limited on its facts to the situation in which an officer perceives exigency upon the scene just prior to entry; Ker does not rule constitutional any no-knock search not based upon such an on-the-scene perception of exigency.

It is imperative to note that the conference measure, in authorizing prior judicial authorization, does not provide the extra protection to civil liberties which its Senate managers claim. First, since an officer may under the conference measure, as he could before, engage in a no-knock entry without applying for a warrant, he has no incentive to request the authority which he can exercise on his own. The supposed judicial check is, therefore, potentially ineffectual.

Should the officer in fact apply for a warrant, the situation becomes worse and the conference bill reaches far beyond the standards of Ker. "Exigent" circumstances, by their very nature, cannot be known with any exactitude in advance of the actual execution of a search or arrest.

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

Mr. GOODELL. I should prefer to yield to the Senator when I have concluded this thought.

Mr. Justice Brennan, in his Ker dissent, defines an essential element of exigency as follows:

> The facts surrounding the *particular* entry support a finding that those within actually know or must have known of the officer's presence and purpose to seek admission.

The exigent circumstances as defined in the Brennan dissent cannot be known in advance of arrival at the dwelling place, for unannounced entry is justified when "those within are then engaged in

activity which justified officers in the behalf that an escape or destruction of evidence is being attempted." Similarly, unannounced entry is authorized when officers are justified in their belief that "persons within are in imminent peril of bodily harm."

Prior judicial review necessarily involves a component of speculation less certain than the perception of the officer on the scene, and therefore necessarily involves a less stringent definition of exigency.

Mr. President, I am delighted to yield now to the Senator from Maryland.

Mr. TYDINGS. I am interested in the Senator's comment to the effect that prior judicial approval would lessen the degree of exigency. Has the Senator had any complaints about the codification of the New York law on executing search or arrest warrants without knocking?

Mr. GOODELL. I am aware that the New York law is not to my liking in these cases. I practice law in New York.

Mr. TYDINGS. Has the Senator ever had any complaints?

Mr. GOODELL. Have I had complaints?

Mr. TYDINGS. Yes.

Mr. GOODELL. Yes. I have made complaints myself.

Mr. TYDINGS. But has the Senator ever had any citizen complaints about the codification, section 799 of the Code of Criminal Procedure in the State of New York?

Mr. GOODELL. Yes. As I say, not only have I had complaints; I have made them myself as a defense attorney practicing in New York.

Mr. TYDINGS. Is the Senator aware that the New York codification with respect to no knock does not even use the language "is likely"; that it not only gives a judge authority beforehand to issue a warrant, but uses the language "may"?

Mr. President, I ask unanimous consent to have printed at this point in the RECORD section 799 of the New York Code of Criminal Procedure and also the decision of the New York Court of Appeals in the case of the *People of the State of New York* v. *Anthony DeLago*, 16 New York 2d 289, upholding the New York codification.

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

NEW YORK CODE OF CRIMINAL PROCEDURE

§ 799. Officer may break open door or window, to execute warrant

The officer may break open an outer or inner door or window of a building, or any part of the building, or any thing therein, to execute the warrant, (a) if, after notice of his authority and purpose, he be refused admittance, or (b) without notice of his authority and purpose, if the judge, justice or magistrate issuing the warrant has inserted a direction therein that the officer executing it shall not be required to give such notice. The judge, justice or magistrate may so direct only upon proof under oath, to his satisfaction, that the property sought may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice were to be given. As amended L.1964, c. 85, eff. July 1, 1964.

[Points of Counsel]

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, *v.* ANTHONY DE LAGO, APPELLANT

Argued December 1, 1965; decided December 30, 1965

Crimes—search warrant—execution without notice—warrant commanding search of premises containing four apartments is ambiguous but is clarified and validated by caption limiting search to first-floor apartment occupied by defendant—inclusion of clause in search warrant that officer is not required to give notice of his authority and purpose prior to executing same, as permitted by Code of Criminal Procedure (§ 799, as amd.), is proper—such provision is constitutional.

1. A warrant commanding search of "the structure, located at premises 2 and 3 Abendroth Place, Port Chester, New York, believed to be the * * * dwelling occupied by one Anthony De Lago", which structure contains four apartments is ambiguous but is clarified by the caption of the warrant which limits the search to "The first floor apartment at 2 Abendroth Place" which was occupied by appellant. As so clarified the warrant was not constitutionally deficient.

2. Where it was represented to the court by affidavit that gambling materials were likely to be found at the premises, the court could take judicial notice that contraband of this nature is easily secreted or destroyed and could infer as a fact that they would be and therefore could include in the search warrant, as permitted by section 799 of the Code of Criminal Procedure (as amd. by L. 1964, ch. 85), a provision that "the executing peace officer is not required to give notice of his authority and purpose prior to executing this order". That portion of section 799 of the Code of Criminal Procedure authorizing the inclusion of this provision in the search warrant complies with the Fourth Amendment to the United States Constitution.

APPEAL, by permission of an Associate Judge of the Court of Appeals, from a judgment and order of the Appellate Term of the Supreme Court in the Second Judicial Department, entered July 30, 1965, affirming (1) a judgment of the Westchester County Court (JOHN H. GALLOWAY, Jr., J.) convicting defendant, on his plea of guilty, of the crimes of book-making and possession of policy slips, and (2) an order of said court denying a motion by defendant to suppress as evidence certain property seized by the police during a search of defendant's apartment pursuant to a search warrant.

Michael I. Winter for appellant. I. The direction in the search warrant at bar to search an identified building or structure consisting of four separately tenanted apartments, on the basis of an attempted showing of probable cause for the search of only one of such apartments, is violative of constitutional and statutory requirements that the place to be searched be particularly described. (*People* v. *Marshall*, 13 N Y 2d 28; *United States* v. *Barkouskas*, 38 F. 2d 837; *Tyman* v. *United States*, 297 F. 177; *United States* v. *Hinton*, 219 F. 2d 324; *People* v. *Holcomb*, 3 Parker Cr. Rep. 656; *People* v. *Rainey*, 14 N Y 2d 35; *People* v. *Feliciano*, 23 A D 2d 806; *Weinstein* v. *New York State Thruway Auth.*, 27 Misc 2d 503; *United States* v. *Ventresca*, 380 U. S. 102; *People* v. *Hendricks*, 45 Misc 2d 7.) II. The search warrant at bar is legally deficient by reason of the provision therein contained relieving its executing officer of the constitutional obligation to give notice of his authority and purpose before entering to execute the warrant. (*Ker* v. *California*, 374 U. S. 23; *Accarino* v. *United States*, 179 F. 2d 456; *People* v. *Goldfarb*, 34 Misc 2d 866; *People* v. *Mills*, 18 A D 2d 960; *People* v. *Duell*, 1 N Y 2d 132; *Persky* v. *Bank of America Nat. Assn.*, 261 N. Y. 212.)

Leonard Rubenfeld, District Attorney (*James J. Duggan* of counsel), for respondent. I. The warrant in this case is an entirely valid one. (*People* v. *Rainey*, 14 N Y 2d 35; *People* v. *Feliciano*, 23 A D 2d 806; *United States* v. *Ventresca*, 380 U. S. 102; *People* v. *Rogers*, 15 N Y 2d 422.) II. There is no deficiency in the warrant by reason of the inclusion of the "no-knock" authority. (*Ker* v. *California*, 374 U. S. 23; *People* v. *Maddox*, 46 Cal. 2d 301; *People* v. *Mirasola*, 35 Misc 2d 886; *People* v. *Friola*, 11 N Y 2d 157.)

VAN VOORHIS, J. Appellant occupied one apartment in a four-apartment structure known as 2 and 3 Abendroth Place, Port Chester, New York. Policy slips and other gambling paraphernalia were found in his apartment in a search thereof by the police made pursuant to a warrant commanding the search of "the structure, located at premises 2 and 3 Abendroth Place, Port Chester, New York, believed to be the framed [*sic*] dwelling occupied by one Anthony De Lago". We regard this phraseology as sufficiently ambiguous to justify looking to the caption of the warrant for clarification (*People* v. *Martell*, 16 NY 2d 245; *Squadrito* v. *Griebsch*, 1 NY 2d 471, 475). The caption limits the search to the area described in the application for the warrant, namely, "The first floor apartment at 2 Abendroth Place, Port Chester," which was the living unit occupied by Anthony De Lago, the appellant herein. This was enough to sustain the warrant against the attack made upon it under *People* v. *Rainey* (14 NY 2d 35) that it was constitutionally deficient for "not 'particularly describing the place to be searched'" (N.Y. Const., art. I, § 12; U.S. Const., 4th Amdt.).

The search warrant is attacked upon the further ground that the Fourth Amendment to the United States Constitution requires an announcement by police officers of their purpose and authority before breaking into an individual's home (*Boyd* v. *United States*, 116 U.S. 616), and that the warrant is, therefore, void for dispensing with the need for such notification.

Section 799 of the Code of Criminal Procedure, as amended by chapter 85 of the Laws of 1964, authorizes an officer to break open an outer or inner door or window, or any part of a building "without notice of his authority and purpose, if the judge * * * issuing the warrant has inserted a direction therein that the officer executing it shall not be required to give such notice." That section continues by stating that the Judge may so direct "only upon proof under oath, to his satisfaction, that the property sought may be easily and quickly destroyed or disposed of, * * * if such notice were to be given."

Boyd v. *United States* (*supra*), *Accarino* v. *United States* (179 F. 2d 456, 465) and other cases are cited in support of appellant's contention.

Although the need for notification as a general constitutional requirement was reaffirmed in *Ker* v. *California* (374 U.S. 23), which is the leading case upon the subject, the Supreme Court upheld the lawfulness of a search (even without a warrant) where police officers entered quietly and without announcement in order to prevent the destruction of contraband, adding (pp. 37–38): "The California District Court of Appeal * * * held that the circumstances here came within a judicial exception which had been engrafted upon the statute by a series of decisions, see, *e.g.*, *People* v. *Ruiz*, 146 Cal. App. 2d 630, 304 P. 2d 175 (1956); *People* v. *Maddox*, 46 Cal. 2d 301, 294 P. 2d 6, cert. denied, 352 U.S. 858 (1956), and the noncompliance was therefore lawful."

The Supreme Court examined whether, notwithstanding its legality under State law, the method of entering Ker's home offended Federal constitutional standards of reasonableness. The court found no violation, even

assuming that the officers' entry by use of a key was the legal equivalent of a "break". The California case of *People* v. *Maddox* (46 Cal. 2d 301, 306) was followed to the effect that the Fourth Amendment is not violated by an unannounced police intrusion, with or without an arrest warrant, where those within, made aware of the presence of someone outside, are then engaged in activity which justifies the belief than an escape or the destruction of evidence is being attempted.

Although the validity of a warrant is determined as of the time of its issuance (*People* v. *Rainey, supra*), in this instance it was represented to the court by affidavit that gambling materials were likely to be found at this location, and in issuing the warrant the court could take judicial notice that contraband of that nature is easily secreted or destroyed if persons unlawfully in the possession thereof are notified in advance that the premises are about to be searched.

For this reason we consider that it was reasonable to include in this search warrant the provision under attack that "Sufficient proof having been given under oath that the gambling records and other paraphernalia sought may easily and quickly be destroyed and disposed of, the executing peace officer is not required to give notice of his authority and purpose prior to executing this order." Even though there is nothing in the affidavit to show specifically how or where these gambling materials would be likely to be destroyed or removed, the likelihood that they would be was an inference of fact which the Judge signing the warrant might draw. The portion of section 799 of the Code of Criminal Procedure authorizing the inclusion of this provision in the search warrant is held to comply with the Fourth Amendment to the Constitution of the United States.

The judgment of conviction and the order denying the motion to suppress should be affirmed.

Chief Judge DESMOND and Judges DYE, FULD, BURKE, SCILEPPI and BERGAN concur.

Judgment and order affirmed.

Mr. GOODELL. The upholding was at the State and the district court level. The question has never gone to the U.S. Supreme Court.

Mr. TYDINGS. Is the Senator aware that it has been held constitutional?

Mr. GOODELL. Yes, I am.

Mr. TYDINGS. On what ground?

Mr. GOODELL. I feel that the New York law is unconstitutional because it has not been decided through the Supreme Court.

Mr. TYDINGS. Will the Senator from New York admit that the conference report on the Senate bill provides much safer protection and a much higher degree of protection to the individual than does the New York statute?

Mr. GOODELL. I would question the word "much."

Mr. TYDINGS. A higher degree?

Mr. GOODELL. I think it does provide a higher degree of protection. I feel that the New York law as written, as a practical matter, would permit grants of no-knock permission at whim. I oppose that. There is nothing holy or pure about New York law. We have made many mistakes. I am proud that New York leads the Nation in many areas—in social legislation, for example—but I also recognize that legislatures and Governors in the past undoubtedly—not consciously—could have made mistakes.

There is, of course, an area of division as to what is constitutional and what is not; what rights are secured for the protection of an accused and what are not. The Senator makes a nice point, which is a whimsical point, perhaps to put me in an awkward position of defending a New York law which I do not favor.

Mr. TYDINGS. The Senator does agree, does he not, that our proposal provides a higher degree of protection and safeguards than in the present, existing New York law?

Mr. GOODELL. I agree to that. Yes; I have made that statement.

Mr. TYDINGS. One other question I should like to direct to the Senator relates to whether or not a police officer would know at the time he sought an original arrest or search warrant that the exigent circumstances are going to exist, circumstances which would make it dangerous to announce the execution of a search warrant.

As a former U.S. attorney, I cannot conceive of more than 1 or 2 percent of situations where, at the time a search warrant was issued, the officer asking for the search warrant or arrest warrant would not know at that time, and under the conference report on S. 2601 be required to divulge, the exigent circumstances, if any, that would require a no-knock entry.

I should like to make the point that the Senate provision clearly provides a much higher degree of safety than the present case law in the District of Columbia and the case law across the Nation. It provide another cause or another reason for the quashing of any search warrant or arrest warrant where a police officer fails to request permission of the court at the time the original search warrant or arrest warrant is issued. Of course, in the New York law there is a complete option on the part of the police officer, similar to the original bill. The police officer might or might not get court approval for "no-knocking," depending on how he felt.

Mr. GOODELL. I strenuously disagree with the Senator from Maryland on that point. I think the very phrase "under all exigent circumstances" not only implies but requires that a decision be made urgently on the spot, because of things arising right there to make it clear that there must be an entry without notice for very limited reasons, which have been defined in the case law. Such a grant of authority, in this case, carries with it, to me, the requirement that exigent circumstances are any circumstances that arise immediately, on the spot—viewing, witnesses, seizure by the officer—which could not be authorized by the court in advance.

I dispute the Senator's statement that only 1 or 2 percent of cases of exigent circumstances which might arise could be anticipated by the court, because that implies a very particular definition of exigent circumstances; that 99 or 98 percent of the cases would be permissible, with the officer coming in advance and saying, "This is a bad egg. We know they are involved in narcotics traffic, and if we go to that response, they are going to destroy the evidence."

The implication is that the courts are going to be granting a good many approvals of no-knock.

Mr. TYDINGS. Or that they are going to be turning them down as they do in requests for search warrants. The whole thrust is that it would be better to have a court pass on "no-knocking" in connection with arrest or search warrants, rather than an ordinary police officer.

Mr. GOODELL. The point of the search warrant is different. That request can be presented to the court in advance with respect to the need to search the premises. The search warrant normally has to be served by knocking by telling the individual who is there and the authority. The no-knock is uniquely interpreted in constitutional law as requiring exigent circumstances.

Mr. TYDINGS. Take the search warrant. The exigent circumstances where you would not be required to knock with a search warrant are very clearly spelled out—if in the particular case the evidence is likely to be destroyed. Can the Senator conceive of a case where an officer is getting a search warrant to search a premise for contraband or fruits of a crime, and where he would not know of the particular likelihood in that case of the gambling slips being burned or the narcotics going down the drain?

Mr. GOODELL. The point about exigent circumstances is that you have to be there on the spot at the time the circumstances arise. I do not know how the Senator defines "exigent," but if he will look in the dictionary he will find it means urgent, requiring immediate aid or action or attention on the spot. It is not something probable in advance.

If the Senator is asking if I would prefer to have a judge out there making the decision as to whether they are exigent circumstances existing, I would, but that is unrealistic. The theory here is that there are very few exceptions to no-knock, but nevertheless there are circumstances on the scene with which the arresting officer has to cope.

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

Mr. GOODELL. I yield.

Mr. ERVIN. Mr. President, I wish to ask the Senator from Maryland if the opinion of Justice Brennan in the case of Ker against California does not make crystal clear that the only way an officer can lawfully enter a dwelling without knocking—that is, acquainting the individual in the building of his purpose and presence—is on the basis of what occurs at the time he attempts to enter.

Mr. TYDINGS. Is the Senator asking me a question?

Mr. ERVIN. I am asking the Senator from New York.

Mr. TYDINGS. The Senator said the Senator from Maryland. I thought the Senator was going to let me have a chance.

Mr. GOODELL. The Senator is absolutely correct.

Mr. ERVIN. Justice Brennan——

Mr. TYDINGS. Is that not the minority view? Justice Brennan wrote the minority opinion. That is not the law of the land.

Mr. ERVIN. It is the view of eight judges.

Mr. TYDINGS. It is the minority view in Ker against California.

Mr. ERVIN. Technically, yes; actually, no. All of the Justices except Justice Harlan agreed on the constitutional principle involved, but split on the facts 4 to 4.

I want to call to the attention of the Senator from New York that the first exception is this: Where persons within already know of the officer's authority and purpose. How can the person within know of the person's presence until he is present just outside the door?

Mr. TYDINGS. Mr. President, will the Senator yield? I would like to respond.

Mr. ERVIN. Will the Senator from Maryland permit the Senator from North Carolina to propound some interrogatories to the Senator from New York?

Mr. GOODELL. Mr. President, I am delighted to yield to the Senator from Maryland after the procedure of the interrogatories is completed.

Mr. ERVIN. Does the Senator from New York agree with the Senator from North Carolina about this first exception; that is, to knocking, where the person within already knows of the person's authority and purpose? How can they know of that until the officer gets to the door?

Mr. GOODELL. I agree with the Senator completely. The only way I conceive of this goes back to the May case.

I refer to the instance where an officer is chasing an individual and he ran into the house and locked the door. The individual knows the officer is coming. That was another exception, but there are very few circumstances of that nature that would occur.

Mr. ERVIN. Unless the occupant of the house is informed in advance, he cannot possibly know of the officer's purpose to search his house until the officer gets there; can he?

Mr. GOODELL. The Senator is correct.

Mr. ERVIN. That is an exigency which can only exist at the moment the officer undertakes to enter. The second is where the officers are justified in the belief that persons within are in peril of bodily harm. How can an officer who goes and gets a search warrant on the basis of the information, know that somebody in the house is in imminent peril of bodily harm at the time he swears out the search warrant perhaps miles away? Is it not true that knowledge must be gained at the moment he seeks to enter or just before?

Mr. GOODELL. It shows how impossible it is for the judge to make a determination of exigent circumstances.

Mr. ERVIN. I invite the Senator's attention to the third statement by Justice Brennan: Where those within are made aware of the presence of someone outside, and are engaged in an activity which justifies the officer in the belief that escape or destruction of evidence is being attempted? That requires those within to know the presence of somebody outside, according to his express statement.

Mr. GOODELL. It does. I express agreement with the Senator. I think this point was not in dispute between the minority and the majority in the opinion in the Ker case.

Mr. ERVIN. Does the Senator from New York agree with the Senator from North Carolina that it is a virtual impossibility for an officer to know when he solicits the issuance of a search warrant at some time and distance before he gets to the House what the condition will be when he gets there?

Mr. GOODELL. I do agree.

Mr. ERVIN. Does the Senator agree that even if the language of this measure could be construed to harmonize with the fourth amendment, the application of that language in a particular case would be unconstitutional in virtually every case simply because the officer could not know until he got to the house what the exigent circumstances were?

Mr. GOODELL. I agree. That is the whole point of my argument, and I think the Senator makes the point very effectively.

Mr. ERVIN. I am sorry our good friend, the Senator from Maryland, stepped off the floor because I wanted to ask the Senator from New York about some provisions of the Constitution which undertake to protect people. This bill undertakes to take those protections away from them.

Mr. GOODELL. I will yield to the Senator from North Carolina as soon as the Senator from Maryland returns, if he wishes.

Mr. ERVIN. I thank the Senator.

Mr. GOODELL. Mr. President, if this colloquy shows anything, I think it demonstrates that the exceptions to the requirement of knocking, indicating presence and authority for entering, are limited to a very narrow sphere. That sphere is described as exigent circumstances, circumstances which arise on the spot where an officer can make the assessment. Of course his assessment must, in retrospect, be shown to have been accurate, if his entry is to be adjudged legal. Prior judicial review necessarily involves the component of speculation, less certain than the perception of the officer on the scene. Therefore, necessarily it involves a less stringent definition of exigent.

There is, moreover, a lack of clarity as to what kind of showing of facts is sufficient to justify authorization by the court of no-knock entry.

The Senate conferees argue that specific facts relating to a particular case are necessary for a showing of likelihood. The House conferees are satisfied, however, that a showing of mere destructibility of evidence is sufficient. Under the House interpretation, therefore, a showing that someone has flash cards on the premises would in and of itself, without more reference to the specific facts of the case, justify issuance of a warrant for no-knock entry.

The language of the bill is sufficiently broad to accommodate both interpretations with the result that the definition of "exigency" may be broadened.

It seems clear then that the provision in the conference bill for prior judicial authorization departs from the Ker delineation of the criterion for no-knock entry. There is moreover the question of whether judicial review in effect undermines the existing safeguard of the suppression motion.

Under the bill there is no provision for a motion of suppression. If common law grants one it is likely that a suppression motion will have to be based on a challenge to the appropriateness of the issuance of the no-knock authorization rather than its execution. Thus post hoc judicial review will be of a decision made by a brother judge rather than of one made by a police officer. It is probable that the judge engaging in post hoc review will be more loathe to suppress evidence gathered in a no-knock search pursuant to judicial warrant than he would be if the decisions had been made by a police officer. The result therefore is that the suppression remedy is weakened and post hoc review is made less rigorous than under present law.

It is interesting to hark back to the debate upon the no-knock provision in the Controlled Dangerous Substance Act for enlightenment upon the meaning of the provision in the conference bill. During the debate on that act S. 3246, Senator ERVIN objected to the language of section 702(b) on constitutional grounds. Senator DODD responded—January 26, 1970, RECORD page 1164—that under the language of that act a general showing that the evidence sought is easily destructible would not satisfy the constitutional burden of proof needed to get a no-knock warrant. Specific facts on the search in question Senator DODD asserted, would be necessary to meet the constitutional criteria for no-knock entry. Pursuant to the House debate on the conference bill, and particularly Mr. HOGAN'S statements—pages 24470–24471—and from a reading of the language of the conference bill itself, it seems clear that the language of the conference bill does not meet the constitutional test propounded by Senator DODD and Senator ERVIN.

Notwithstanding the assertion to the contrary by the Senate manager's report, the language of the conference bill's no-knock provision would authorize a no-knock entry, with or without a warrant, merely because of the destructible or disposable nature of the evidence. There is simply no line of court decisions which requires a more limited interpretation of this broad language, as is hopefully suggested by the supporters of the conference bill.

Mr. President, I believe it is very apparent that, although superficially it is normally a good thing to have a court approve in advance action to be taken by the police, this situation is quite the opposite. In the case of a search and seizure, it is clear that police officers can present to a judge evidence, well in advance, that indicates a desirability of searching a given dwelling. There is no problem with that. It is easily done. But even when a search warrant is issued by the court, there is a requirement that the officer serving that search warrant knock on the door and identify himself as an offi-

cer of the law. The issuance of a search warrant does not justify the officer's breaking in without notice. It does not justify a no-knock entry.

So the raising of the issues of a search warrant by the Senator from Maryland is obfuscation. It avoids the issue. The issue here is whether, with or without a search warrant, an officer can enter the premises without knocking.

I might say to my colleagues, we had better tread in this area with great caution.

I wonder what some of our suburban citizens, fearful of crime, who call for more law enforcement, would do if suddenly someone broke their front door down without ringing the bell. Might they not resort to their weapons, to find themselves shooting an officer of the law?

It is quite likely that those who urge this kind of provision tend to think in terms of something happening "down in the city," something that only happens to criminals who deserve it, anyway.

This is not the way a system of rights in this country operates. If you violate the rights of an accused who may have committed 30 crimes and may be guilty in this case, you violate your own rights. You violate the rights of every citizen. You cannot justify an open rule of entering without knocking in some cases, against certain individuals, and then defend against no-knock for the average citizen. That is a matter of great importance.

The District of Columbia crime bill will set a pattern nationally. It is true that if the Senator from North Carolina, and I, and others are correct that this is an unconstitutional provision in the conference report, eventually the courts will rule it unconstitutional. In the meanwhile many no-knock entries will be made. We cannot wash our consciences by simply saying, if it is unconstitutional let the courts take care of it in 2 or 3 or 4 years. It is up to us to assess not only that it is unconstitutional but that it is undesirable, whether technically a court would rule in a given fact situation that the no-knock entry was or was not unconstitutional.

NO-KNOCK BY PRIVATE CITIZENS

The conference has adopted the House provision that not only an officer executing a search warrant or making an arrest, but also any person aiding such officer may conduct a no-knock search. No need has been demonstrated for extending whatever right of intrusion there may be to private persons, and, moreover, the language of the conference bill leaves open the possibility of a self-labeled assistant to an officer breaking and entering alone on the barest suggestion from an officer or on the basis of what he alone interprets as an implied suggestion.

Mr. ERVIN. Mr. President, will the Senator yield so I may read into the RECORD a letter from a former officer of the District of Columbia indicating that no-knock is unwise as a matter of policy?

Mr. GOODELL. I am glad to yield for that purpose.

Mr. ERVIN. This is a letter written to me by David Paul, whose address is given as 1927 Byrd Road, Vienna, Va. He gives me his telephone number, area 703, 893–1762. The letter reads as follows:

I should first state that until my retirement in 1968 I was a Detective Sergeant in the Narcotics Section of the Metropolitan Police Department. I spent a total of nineteen years on the department, the last twelve with the Narcotic Squad, and at the time of my early retirement I was the second ranking member of the squad. During my time on the department I participated in the execution of thousands of search warrants, and was certified as an expert in the field of narcotics in both the United States District Court and the Court of General Sessions.

My strongest opposition to the crime bill is the "no-knock" provision. This section is useless, and creates new dangers to the safety of police officers. On the numerous occasions when I stood outside of a door waiting to execute a search warrant I always wanted the people inside to know that I was a police officer. Since most drug peddlers are constantly being robbed by other peddlers and addicts, they are a nervous lot, and my experience was that many of them were armed for protection against holdups, as they could hardly call the police and report that someone was attempting to rob them of their narcotics. During the thousands of executions I can only recall a dozen or so times when the peddler was able to dispose of the drugs before we gained entry to the premises. There are numerous ways in which the officer can gain swift entry into the premises after he has alerted the occupant of his presence. Many peddlers have their doors fortified, and even with the no-knock the evidence could most certainly be disposed of before the officers finally gained entry. There are certain methods which the police could use to gain entry to fortified premises without resorting to the no-knock.

I wanted to invite the Senator's particular attention to this:

Most of the officers who I know are opposed to the no-knock provision because it would lead to the justification of anyone who shot an officer during the execution of such a warrant.

Does not the Senator from New York agree with the Senator from North Carolina that the fear voiced by this former police sergeant of the District of Columbia police that officers would be in danger of being shot by the occupants of the house is a fear based on solid reasoning?

Mr. GOODELL. I do agree. I make that point most emphatically. I think if we authorize no-knocks under these circumstances, with advance determination by a court, perhaps 10 days in advance, we shall be opening a Pandora's box. It will broaden the whole concept, at least temporarily until the courts decree it unconstitutional, of the limitation on no-knock entries.

By definition, a court cannot, in advance, determine exigent circumstances. Exigent circumstances are circumstances that arise on the spot, observed and assessed by the officer on the spot.

I am sure that officers can go before judges and make a pretty good case that they may have trouble. They can anticipate that in many instances. They can make a pretty good case that "this fellow has been picked up four times before, though perhaps never convicted; they never were able to get the evidence on him. So we will go in there with no-knock, and get it."

Is that an exigent circumstance?

(E) STANDARD OF CONJOINED "PROBABLE CAUSE" AND "LIKELIHOOD"

The Senate conferees assert that they consented to language implying "likelihood," not "certainty," that evidence will be destroyed if a no-knock search is not made "only with the clear understanding that the language is not to be construed literally but rather, in conformity with the Constitution and Ker against California." Nonetheless, the clear language of the Senate bill does state that an officer may conduct a no-knock search if he has probable cause to believe that evidence is "likely" to be destroyed—not "will" be destroyed—otherwise. The conjunction of "probable cause" and "likely" in effect allows an officer to conduct a no-knock search at whim.

Let it be clear that the standard created by the conjoining of "probable cause" with "likelihood" is a new one, a weaker one than that of "probable cause" conjoined with "will," and a departure from the intent of Ker.

It is instructive here, once again, to return to the debate upon the Controlled Dangerous Substances Act of 1969. That no-knock standard stipulated in that act before floor debate was one of showing probable cause that a justification for no-knock entry "may" exist. Senator ERVIN noted on the floor—January 26, 1970, RECORD page 1167—that there was a great difference between that language and the language of the Senate-passed District of Columbia crime bill no-knock provision, which stipulated a requirement of showing probable cause that a justification for no-knock entry "will" exist. Senator DODD then agreed to change the language of the Controlled Dangerous Substances Act to conform with the District of Columbia crime legislation language, reported out of the committee chaired by the distinguished senior Senator from Maryland.

The next day, the Senator from Michigan (Mr. GRIFFIN), formally moved that that change be made—January 26, 1970, RECORD page 1174. Mr. GRIFFIN entered into the RECORD an excerpt from the report issued by Mr. TYDINGS in connection with S. 2869, the District of Columbia crime bill. In pertinent part, that report reads:

It was suggested that the standard be one of (A) probable cause (B) to believe that the property (C) *may* be destroyed (or that some person (C) may be endangered). The District Committee opted to substitute (A) probable cause (B) to believe that the property (C) *will* be destroyed (or that some person (C) will be endangered), as conforming more closely to the *Ker* case as described above—including its holding, dicta, facts and case lay background—and in order to avoid *a seeming unintended further pyramiding of uncertainties* (C) upon (A) and (B). That is to say, the committee was fearful lest it be argued that (A) probable cause for (B) belief as to (C) a possibility (indicated by the further "*may*") constitutes, with the three levels of uncertainty (A), (B), and (C), in fact no reasonable grounds at all. (Jan. 26, 1970, CONG. REC., p. 1175.)

The Senator from Connecticut (Mr. DODD) endorsed the amendment, and the Senator from Maryland (Mr. TYDINGS) then spoke as follows:

Mr. President, I am delighted that the Senator from Michigan is offering this amendment. I intend to support the amendment of the Senator from Michigan. His amendment, in my judgment, makes the provision fit within the language of Justice Brennan's opinion in Ker against California.

I was prepared to support the motion of the Senator from North Carolina to strike, because section 702 on page 72 of S. 3246, especially the use of the word "may", is unconstitutional, just as it similarly was unconstitutional in the District of Columbia crime bill which we received from the Department of Justice. The District of Columbia Committee studied it a great deal, and decided it could be made constitutional by amendment of the language originally submitted, just as the Senator from Michigan has done here, and changing the pertinent word from "may" to "will".

The Fourth amendment requires that the executing officer have knowledge of particular facts, not just a general impression, to justify breaking and entering without notice. To substitute the word "will" for the word "may", in my judgment, makes the provision constitutional, and therefore I support it.

The contributions of Senators GRIFFIN and DODD, and particularly of the distinguished chairman of the District Committee, Senator TYDINGS, to the debate, as well as the Senate's final passage of the "will" language, make it quite clear to me that the Senate in January of this year, regarded as unconstitutional and inconsistent with the Ker decision any no-knock standard weaker than the conjunction of "probable cause" and "will."

I am particularly grateful to the senior Senator from Maryland for the illumination which I gained upon this question from a reading of his contribution to that debate. The report sections which Senator GRIFFIN inserted into the RECORD make it clear that the District Committee read Ker narrowly, and that any departure from the "will" language would make any no-knock provision unconstitutional. The distinguished chairman of the District Committee himself made that point in floor debate. The distinguished chairman and the distinguished Senator from Michigan (Mr. GRIFFIN) agreed at that time in floor debate that "will" language, and that language alone, precludes an authorization of no-knock entry on the basis of a general showing of the destructibility of evidence, and requires a specific showing on the facts of that particular case. It is unfortunate that the House managers interpret the "likely" language in the conference bill before us now as not requiring such a specific showing.

A reading of the floor debate on the no-knock provision in the Controlled Dangerous Substances Act of 1969, and particularly of the sound legal commentary at that time of the distinguished chairman of the District Committee, lead me clearly to the conclusion that the "likely" language of the conference bill before us—language which conforms far more to the probability implied by "may" than to the certainty connoted by "will"—is unconstitutional and inconsistent with the standards stipulated by Ker.

CONCLUSION

Let it be clear that the no-knock provision in the conference report is poor policy which may apply in the future to those advocates of law and order who now so vigorously back it. Law and order is safeguarded by the provisions of the substitute District of Columbia crime legislation which Senator ERVIN and I have introduced, while civil liberties are preserved. It should be clear to those who now back the no-knock provision that they can get an anticrime bill without that provision if the conference report is voted down by the Senate. It should be clear, moreover, that that no-knock authority which they now intend to have used against the perpetrators of crime may someday be used, under a different administration, against them by those who would deny their elementary rights to dissent. This no-knock legislation, which serves as the potential prototype for national no-knock legislation, can be used to suppress the right of a citizen legitimately to keep arms, and to suppress the right of dissent of one who perceives his government drifting too much toward either the right or the left. The elimination of civil liberties, as Milton Friedman and the distinguished Senator from Arizona (Mr. GOLDWATER) have noted, is a two-edged sword.

I urge all Senators to read that January floor debate at the pages in the RECORD which I have noted, to recognize that the "likely" language in the present bill conforms far more to the probability implied by "may" than to the certainty denotated by "will," and to recognize that a vote against this conference report is necessary if for no other reason than that the no-knock provision establishes obnoxious policy and bad law, which is likely to be unconstitutional.

Mr. President, there are other provisions in this enormous conference report which should be troublesome to us all. It is a very big bill. It is very complicated. It heaps together a great many significant changes. It presents a great many significant approaches toward constitutional law, toward criminal law. I should like to name a few of the other provisions of this bill which I find obnoxious and which I must oppose.

AUTOMATIC MENTAL COMMITMENT

The conference bill in section 207(5) reverses existing law by requiring that a defendant who is acquitted by reason of insanity shall be automatically committed to a mental hospital, regardless of his present mental condition and without a new judicial inquiry into his sanity at the end of the trial. At a hearing to be held within 50 days, the defendant must then establish by a preponderance of the evidence that he is entitled to release.

Under the conference provision, therefore, a sane person may be automatically confined in a mental hospital solely because he has raised a reasonable doubt as to his sanity at the time of an offense for which he was tried and acquitted. This automatic commitment will take place even though the offense occurred so many years before the trial that any connection between his mental state at the time of the offense and at the time of trial has become remote and attenuated.

The 1968 Bolton case requires that a defendant acquitted by reason of insanity at the time of the offense have a separate hearing to determine whether he should then be committed to a mental hospital. There are a number of bases for this practice:

First. A defendant may have been insane at the time of commission of the offense for which he is acquitted and be sane by the time of his acquittal.

Second. The evidence may not establish a defendant's sanity beyond a reasonable doubt, yet there may not be enough evidence to prove insanity by a preponderance of the evidence.

Third. The Supreme Court in Baxtrom against Herold—1966—ruled that the equal protection clause prohibits commitment of persons acquitted by reason of insanity by procedures substantially different from civil commitments. If Bolton had not read the separate hearing requirement into the present District of Columbia statute, it would have been patently unconstitutional.

Moreover, although defendants acquitted by reason of insanity will thus be automatically committed, all other persons in the community are entitled to a wide panoply of rights, including trial by jury, before they can be committed to a mental institution. There is no justification for this disparity in the procedural rights of persons acquitted by reason of insanity and all other persons. Furthermore, this mandatory commitment provision has the effect of discouraging resort to the insanity defense. It is not in the tradition of this country to charge and convict people of crimes without giving them a full and unhampered opportunity to defend themselves.

MANDATORY MINIMUM SENTENCES

The conference bill in section 205 provides that any person twice convicted of a crime of violence while armed with a weapon, including an imitation pistol, must be sentenced to a minimum of 5 years' imprisonment and may not be released on parole until having served the minimum sentence.

Mandatory sentencing provisions are contrary to experience in penology and are likely to be counterproductive 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.)

Such provisions express a distrust of the ability of trial judges to protect the community in sentencing convicted offenders. 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 and would prefer to plead. There is no reason to plead guilty if the judge has no discretion to take a guilty plea into account and impose a lighter sentence. Mandatory sentencing provisions also can create serious disciplinary problems for the prison authorities. Since such provisions preclude a prisoner from shortening his time, they impede correction and rehabilitation by destroying his principal incentive for good behavior and self-improvement.

In summary, enlightened corrections practice disdains legislative determination of minimum sentences because they encourage prosecutors to dismiss and juries to acquit; they prevent the judge from tailoring penalties to fit each case; they remove prisoner incentive for rehabilitation; they encourage further crime pending trial; and they tend to exacerbate present overcrowding of the court system.

LIFE IMPRISONMENT FOR THREE FELONIES

The conference bill provides that any person convicted of any three felonies, whether violent or not, may be sentenced to life imprisonment, if such imprisonment is justified in the opinion of the court—section 201. This provision lacks the procedural safeguards which were contained in the Senate bill and are in the compromise. They require a judicial determination not just an "opinion," with the assistance of psychiatric and psychological experts, that the defendant is beyond rehabilitation before a life sentence could be imposed. If an individual may be imprisoned for life, it is surely reasonable to require a formal judicial inquiry, backed by relevant factual information as to the necessity for such a sentence. The compromise would provide this protection to the defendant and assurance to the community that a life is not being needlessly thrown away—S. 4081, section 301.

SHIFTING THE BURDEN ON INSANITY

The conference bill in section 207 takes the burden of proof on the issue of insanity from the prosecution—where it has been for hundreds of years—and places it on the defendant. The prosecution will no longer have to prove the defendant's capacity to commit the crime beyond a reasonable doubt, as it does every other essential element of a crime. Instead the defendant will have to prove that he lacked capacity to commit the crime.

This provision creates a serious constitutional problem and a serious problem for effective law enforcement where none existed before. The statistics on cases tried in the District of Columbia in recent years show that the insanity defense is not a threat to successful prosecution under present law. There are only a handful of acquittals every year by reason of insanity. Trial lawyers know that it is very hard for a defendant to win such a case. There is no evidence that defendants are thwarting the criminal justice system by phony pleas of insanity.

Under the conference provision, however, difficulties are certain to arise. There is a high probability that the provision will be declared unconstitutional. The Supreme Court has held that the standard of proof of all elements of a criminal offense beyond a reasonable doubt is constitutionally required as an aspect of due process of law. Shifting the burden of proof to the defendant on an essential element—capacity to commit the offense—appears to violate this principle. If the provision is held unconstitutional, the result is plain: every defendant convicted after raising the insanity defense, no matter how frivolous his claim of insanity is, will have to be given a new trial, since every one will have been tried and convicted under an unconstitutional provision. The prosecution will be unable to retry some of these defendants because witnesses or evidence have disappeared. The effect will be to upset convictions which would otherwise have been perfectly valid. This provision thus is self-defeating.

S. 4081 follows the presently existing approach of placing the burden of proof on the issue of insanity on the prosecution—section 304.

INTERLOCUTORY APPEALS

The conference bill in section 210(a) provides for an appeal by the prosecution from certain rulings during trial and authorizes the trial court to adjourn the trial for up to 4 days until an appeal is determined. It permits the Government to make an interlocutory appeal, interrupting the main trial, if the defendant wins a motion to suppress illegally seized evidence. It also permits such an appeal on any ruling made during trial which the prosecutor deems a "substantial and recurring question of law which requires appellate resolution." No such interlocutory appeal has heretofore been provided in the Federal courts, and the bill confers this interlocutory appeal, with its attendant disruption of the trial, only on the prosecution. No limit is placed on the number of such appeals which may be taken during trial. Adjourning a criminal trial for up to 4 days while an appeal is taken is a threat to a fair trial. In most criminal cases, the jurors' impressions of the witnesses and recollections of the testimony are critical to the outcome. This provision leaves those impressions and recollections to grow dim while the trial is suspended. Continuity in the presentation of evidence is interrupted and the possibility of an interlocutory appeal during trial provides another element of strategic jockeying in a process that should not be an exercise in gamesmanship but a search for truth.

CONSECUTIVE SENTENCES

The conference bill creates 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 comprehensive study which states:

> Consecutive sentences are rarely appropriate. (ABA Standards Relating to Sentencing Alternatives and Procedures, p. 171.)

If the judge intends to impose consecutive sentences, it is not too much to ask that he do so explicitly, as present law and the compromise version require. Under the conference bill, an oversight by a judge who does not intend to impose consecutive sentences but neglects to say so, will automatically work to the defendant's detriment. There is no justification for visiting the defendant with the consequences of such a judicial error.

RESISTANCE TO AN ARREST BY SOMEONE IMPERSONATING AN OFFICER

Section 206 of the conference bill accepts a House bill provision forbidding a citizen to resist an unlawful arrest by an individual who the citizen "has reason to believe is a law-enforcement officer."

As to unlawful arrests by actual police officers, this provision would immunize sloppy practice in effecting arrests. It would further promote the ability of criminals posing as police—not uncommon in the District of Columbia—to prey on citizens. Needless to say, it would aggravate police-community relations in the city.

Taking away a citizen's power to resist an unlawful arrest leaves only his civil remedies, which are neither presently adequate nor provided in the conference bill.

IMPEACHMENT OF WITNESSES (ESPECIALLY DEFENDANTS) BY EVIDENCE OF PRIOR CONVICTIONS

When a criminal defendant decides to testify on his own behalf, he runs the risk of having evidence of prior criminal convictions introduced. This may deter him from taking the stand. If he does testify, evidence of such convictions may be introduced for a limited purpose. That purpose is to impeach the defendant's testimony as a witness; that is, to attempt to convince the jury to disbelieve his testimony. In admitting evidence of such past convictions, the judge instructs the jury not to use it for any other purpose—such as to conclude the defendant is a bad guy who must be guilty of the crime charged. It is unnecessary to add that, even properly instructed, many jurors are unable to perform the mental gymnastics called for.

Present District of Columbia law, *Luck v. United States*, 348 F. 2d 763 (1966), recognizing these problems, allows the trial judge discretion in admitting evidence of past convictions. Specifically, it allows the judge to decide either, first, that truth would best be served by excluding the evidence, thus allowing the defendant to tell his story, or, second, that the risk of undue prejudice to the defendant is so great that it outweighs the positive evidentiary impeachment value of the conviction.

In section 14–305(b), the conference bill overturns the Luck rule by requiring that the judge admit all felony convictions and all misdemeanor convictions reflecting on honesty and veracity if the prosecutor offers them. This flies in the face of the Luck rationale. The compromise reinstates Luck.

Under present law, only convictions of crimes which reflect on honesty or veracity are admissible for impeachment purposes. Convictions for crimes such as as-

sault with a deadly weapon do not mean the guilty party has a tendency to give false testimony. The logic of this position is supported by the ALI model code of evidence, the uniform rules of evidence approved by the ABA, and the original administration version of S. 2601.

The conference bill recognizes the validity of the honesty or veracity requirement as to misdemeanor convictions but omits it for felony convictions. The compromise retains the full "honesty or veracity" requirement.

WIRETAPPING AND ELECTRONIC SURVEILLANCE

The conference bill follows the House provisions in significantly expanding the crimes in connection with which wiretapping and surveillance is authorized. A detailed comparison of the wiretapping and electronic surveillance provisions of the House, Senate and Conference bills follows:

Section 23-542—*Prohibitions:* adopts Senate version which makes interception, disclosure or use of illegally obtained information a felony, except where such information has become public knowledge.

Section 23-543—*Prohibitions:* adopts Senate version which makes sale, distribution, manufacture, and advertising of an intercepting device a felony.

Section 23-544—*Confiscation:* adopts Senate version which authorizes the confiscation of intercepting devices; adds new material concerning what is to be done with all confiscated material.

Section 23-545—*Immunity of Witnesses:* adopts Senate version which prescribes immunity of witnesses before a grand jury or court in the District of Columbia.

Section 23-546—*Enumerated Offenses:* adopts the House list of offenses with the omission of "abortion." This adds arson, burglary, destruction of property over $200, receiving stolen property over $100, and robbery to the Senate version.

Section 23-547—*Public Facilities:* has no provision mentioning the wiretapping of public facilities. The Senate version requires "special need" in order to wiretap such facilities. The House bill has no similar provision.

Privileged Relationships: represents a compromise; with regard to all four relationships and using both wiretapping and bugging, the conference report requires a new determination. The court must determine that (1) the facilities are being used in connection with conspiratorial activities characteristic of organized crime, and (2) the interceptions will be conducted as to minimize the number of interceptions. The conference bill contains no prohibitions.

The Senate bill requires "special need" in order to wiretap the three areas of physician, attorney, and clergymen, and to bug the place of habitation of a husband and wife. It prohibited the bugging of the business premises of the initial three relationships.

Emergency Situations: adopts the Senate provision which allows subsequent authorization in only one situation—that characteristic of organized crime.

The House bill allows one additional situation—that in which national security is involved.

Section 23-550—*Civil Remedy*: adopts the Senate provision providing for a civil remedy and eliminating the governmental immunity of the District of Columbia.

The House bill has no similar provision.

Section 23-551—Reports: adopts the Senates provision requiring a report with each wiretapping authorization and an annual report. The Conference Report omits the annual report which the Senate required to be made public.

The House bill has no similar provision.

Mr. President, many other provisions of the conference report should give each of us pause. It is not a matter of agreeing or disagreeing to just a few provisions and having a little doubt about some others.

We all know that the process of legislating inevitably involves compromise. We must accept imperfect legislation, from our own view, in most cases, because our views differ from those of our colleagues. This is not merely a case of a reasonable compromise. The conference report includes provisions that should not become law; provisions that, if understood by all Senators, would not become law.

Other Senators will speak in detail on specific provisions of the report which concern me very deeply, but I have not touched on them today. One of them is the issue of preventive detention.

I may say only that I recognize that preventive detention does exist today, as a pragmatic matter. It exists through the distortion of the bail system. I devoutly hope for a measure that can protect the constitutional rights of individuals charged with crime, and yet avoid the massive preventive detention that exists today; a measure that will still provide the courts with a reasonable opportunity to protect society in the interim between accusation and trial. That is not an easy matter.

We can differ on specific provisions that might guarantee the rights of individuals pending trial more effectively than the present operation of the bail system protects those rights. But I think it is clear that the provisions of the conference report for preventive detention do not do that. They are dangerous; they cover a wide variety of crimes; they cover first offenses. An individual charged for the first time is subjected to preventive detention. We have a limitation of detention that requires trial within 60 days, with nothing preventing renewal for several more 60-day periods. That is not enough protection. There is the definite probability that under the preventive detention section of the conference report innocent persons will be mixed with convicted criminals who are being held for extended periods of time pending trial.

The very minimum that should be required in any provision for civil custody pending trial should be that the detention facilities be separate; that the custody or guardianship be civil, for therapeutic treatment, not criminal custody. Such criminal custody could happen to any individual.

Some months ago, I toured the so-called Tombs in New York City. The Tombs are used for the holding of accused citizens prior to trial. There are no convicted criminals in the Tombs, except for a few who are employed there through the prison employment system. There are almost 2,000 inmates of the Tombs who are awaiting trial. Half of them are held under $500 bail, and they cannot make it. Half of them, as a matter of fact, are narcotics addicts. Until recently, they received no treatment at all for their addiction. Individuals who were picked up late at night in New York City and accused of crime but were unable to get a lawyer were taken down to the Tombs and kept there for perhaps prolonged periods of time before they could even get their bail and get out.

Many others, of course, were unable to raise bail. In the Tombs are individuals who have been awaiting trial for up to 2 years. That is massive preventive detention as it exists today under the bail system. We ought to do something about it. It is not enough to argue theory and constitutionality.

I think it is vital that we protect the constitutional rights of all citizens, but it is a little hard to say that we are protecting the rights of those citizens who are in the Tombs and in other jails throughout the country, awaiting trial, and kept there through a distortion of the bail system. There must be a better alternative. The ideal alternative is the one offered by the distinguished Senator from North Carolina (Mr. ERVIN) and other Senators. I certainly embrace that alternative—that is, a reform of the court structure so as to permit speedy trials. But that is a long way down the road. We all know it. Are we really going to disregard completely the rights of innocent citizens who are incarcerated and detained for prolonged periods prior to trial, in many cases with convicted criminals?

The measure before us was placed in the District of Columbia crime package over my objections. I refer to the provision for preventive detention. I had proposed some alternate approaches to eliminate the massive preventive detention that exists today and perhaps protect the rights of individuals pending trial as well as society. Those proposals have been subjected to hearings before the Subcommittee on Constitutional Rights, of which the Senator from North Carolina is the chairman.

I believe, before we enter into any kind of detention provision or experiment, if in fact we do, the Committee on the Judiciary and this body should debate the overall issue of preventive detention and the constitutional rights that are involved therein. That debate has not taken place. There was no debate whatever on preventive detention when the District of Columbia crime bill was passed in the Senate. The preventive detention provision was inserted in the House of Representatives. The Committee on the Judiciary and Senators themselves have not looked closely at this issue and we should not back into a preventive detention law. This proposal affects very deeply the rights of individuals of this country.

JUVENILE PROVISIONS

1. JURISDICTION

The conference report excludes from the jurisdiction of the proposed family division of the Superior Court individuals between the ages of 16 and 18 years who are charged with murder, forcible rape, burglary in the first degree, armed robbery, or assault with intent to commit any such offense. Section 16-2301 (3)(A). This constitutes a significant departure from the Senate bill which re-

quires, in addition to a charge of a serious crime, a prior finding of deliquency for a serious crime. The Senate rejects the mandatory first-offender transfer contained in the House and conference bill.

In contrast, the juvenile proceedings section of S. 4081 requires not only a prior determination of delinquency, but also a finding of probable cause or indictment before a person under 18 years is automatically subject to the adult criminal process. This additional requirement is included to prevent the waiver of juvenile court jurisdiction merely on the prosecutor's whim in framing the charge.

Requiring waiver to adult court without requiring a prior finding of delinquency on the juvenile's record denies him a chance to be rehabilitated through the specialized juvenile court, and thus may well constitute a denial of equal protection of the laws. There has been no showing that the juvenile court and judges are not equipped to handle these cases; and with the unproved court procedures and safeguards to insure prompt processing of cases set forth in this code, it is likely that the juvenile court would be better equipped than ever before to handle them. There has been no showing that juveniles of this age will be more amenable to ultimate rehabilitation incarcerated with adult criminals in adult penal institutions than in specialized juvenile facilities. The evidence in fact is to the contrary. Therefore, a child should at least be given a first chance to be rehabilitated through juvenile court and juvenile facilities, and the juvenile rehabilitation-oriented correctional system. Once a juvenile who has already been found to be delinquent commits another crime, and has demonstrated an inability to profit from juvenile court treatment, waiver to adult court would make sense.

2. TRANSFER OF CHILD FOR CRIMINAL PROSECUTION

Despite an apparent gesture to avoid the House language respecting the transfer of juveniles to the criminal process, which unwisely placed on the child the burden of proving his susceptibility to rehabilitation, the conference language did not follow the Senate version which clearly repudiated this regressive approach to jurisdiction over youthful offenders. Section 16–2307(d). While the conference report says that the Government has the burden, it also requires a transfer unless the court finds there are reasonable prospects for rehabilitation. Despite the gesture, the real burden is still on the child.

S. 4081 follows the Senate language which requires that the family division judge make an affirmative determination that there are no reasonable prospects for rehabilitation before it can order a transfer of the child to the criminal process. This would have the practical effect of requiring the prosecutor to persuade the court that no rehabilitation is likely.

3. PREVENTIVE DETENTION OF CHILD

The conference bill authorizes the prehearing detention or shelter care of a child alleged to be "delinquent" or "in need of supervision" merely if it appears "from available information" that detention or shelter care is required. Section 16–2310. Only the most meager procedural safeguards are provided for such detention and shelter care hearings. Section 16–2301(15); section 16–2310. The conference bill does not include any standard of proof as to the truth of the allegation's against the child.

The explicit authority for preventive detention of juveniles is new, and in conformity with the approach of preventive detention for adults. While juvenile court practice has permitted detention of the child, it has done so on the theory this is for the child's benefit. The bill, on the other hand, authorizes detention for the protection of others, or of property.

While S. 4081 does allow detention, it does so only for the protection of the child, and requires a hearing in which probable cause of the truth of the allegation must be shown.

4. TRANSFER TO JUVENILE PROCESS WHERE CHILD IS MISTAKENLY PROSECUTED IN THE CRIMINAL PROCESS

The conference bill authorizes continued jurisdiction by the criminal process, without a hearing, where the minor defendant was a child at the time of the offense but such fact was not discovered until after jeopardy attached—beginning of trial—but before judgment. Section 16–2302(b). The criminal court is given authority to determine, on the basis of criteria set forth for determining the reasonable prospects for rehabilitation (section 16–2307(e)), whether to enter judgment of its own or to refer the case for disposition by the family division. Section 16–2302(b).

S. 4081 again follows the Senate approach by requiring a hearing to determine whether, under these circumstances it should proceed to judgment or refer the case to the Family Division. This permitted any time up to actual judgment. The Senate bill (S. 4081), approach contrasts with the House-Justice Department-conference view which favors adult trial of juveniles, and tries to discourage transfer to juvenile court once the trial has begun.

5. JURY TRIAL

The conference bill eliminates the presently existing and longstanding right of a child to demand a jury trial on the adjudication of delinquency. Section 16–2316(a). The right to jury has recently been held to constitute an indispensable element of due process in criminal trials, binding on the States. The conference bill departs from the clearly established trend of court decisions making applicable to juvenile proceedings the fundamental elements of American due process.

S. 4081 preserves the right of a child to demand a jury trial on a deliquency adjudication. It does not require a jury trial, thus providing for flexibility and assuring that the child's own best interests can be secured. However, in giving the child a right to demand a jury trial, S. 4081 recognizes the traditional value of the jury as summarized recently by an outstanding group of District of Columbia practitioners:

> Jury trial may not be infallible, but the jury is the best factfinding mechanism our system of justice has been able to devise. In factual disputes as to whether or not a child actually committed an alleged offense he, like an adult, should be entitled to its safeguards.

6. RIGHT TO COUNSEL

The language of the conference bill does not make certain the right of a child to be represented by counsel at every stage where such representation may be important to a fair and thorough adjudication of the case. It suggests that the right attaches only at the factfinding or trial stage. Neither does it require the family division to appoint counsel when the child is financially unable to secure his own. Section 16–2304.

S. 4081 requires, without reservation or condition, that a child have the benefit of representation by counsel at all critical stages of the proceedings beginning at least with the first court appearance. A broad right to counsel is crucial to the realization of all other rights, and for this reason it is crucial that it be given at the earliest possible times. The right to counsel should be granted at intake since important rights are at stake there as at any other stage. It is doubtful whether any child should ever be considered legally competent to appear in complex legal proceedings involving the future course of his life without representation. Many children are too young, unsophisticated, or ill-informed to even understand the point of purpose of representation by counsel or to make an informed decision regarding the necessity of counsel.

7. TIME LIMITS

The conference bill eliminates the provision in the Senate version requiring dismissal of a petition of delinquency, need of supervision, or neglect on motion when time limitations as to the factfinding hearing are not met. Instead, it includes only the vague standard that time limitations shall be reasonably construed by the Division without any prescribed consequence no matter how gross or unjustified the delay in the juvenile process. It sets absolutely no time limits for the dispositional hearing.

The importance of prompt disposition of juvenile cases has been recognized by the American Bar Association standards and the HEW model juvenile act, which set forth time limits for each stage of juvenile proceedings. Such provisions have proved effective in jurisdictions such as New York, California, and Illinois. Time limits have been recommended in studies of the District of Columbia Juvenile Court by the Committee on the Administration of Justice and the District of Columbia Crime Commission.

S. 4081 incorporates the time limitations of the Senate bill. It recognizes that these limits will be effective only if there are sanctions to enforce compliance. S. 4081 requires that the factfinding hearing be commenced within 30 days of the filing of the petition if the child is not in custody, and 10 days when he is taken into custody. It imposes the Senate limits of 15 days when the child is in custody and 30 days when not as to the disposi-

tional hearing. It should be remembered that in adult court a defendant must be brought before the court for the equivalent hearing within a matter of hours and undue delay is grounds for constitutional attack—see Mallory.

8. STANDARD OF PROOF AS TO "IN NEED OF SUPERVISION CASES"

The conference bill departs from the Senate version which requires that in both "delinquency" and "in need of supervision" cases, the charges of misconduct be proved "beyond a reasonable doubt" at the factfinding hearing. The conference bill substitutes a standard of "preponderance of the evidence" for "in need of supervision" petitions.

There is no reason to justify a departure from the "beyond a reasonable doubt" standard in "need of supervision" cases. These cases involve children charged with truancy, being beyond control of his parents, or committing offenses committable only by children—such as drinking under age. Despite the apparently innocuous character of many of the "in need of supervision" charges, the ultimate disposition in these cases can result in incarceration in an institution for delinquents—a deprivation of liberty" which the Supreme Court found to be equivalent to penal servitude under due process standards in re Gault.

S. 4081 recognizes that the stigma and loss of freedom on the part of a child determined to be "in need of supervision" constitutes such a significant effect upon his life as to require the "beyond a reasonable doubt" standard. It thus takes into account the thrust of the Supreme Court's recent decision in the Winship case that those due process safeguards designed to protect innocent adults should also apply to innocent children.

9. PROOF OF "NEED FOR CARE AND REHABILITATION" AT THE DISPOSITIONAL HEARINGS

The conference bill follows the House provision that a finding at the factfinding hearing of the commission of any crime is sufficient to sustain a finding of "need for care and rehabilitation" in delinquency and need of supervision cases at the dispositional hearing. Section 16–2317(c)(2).

S. 4081, on the other hand, incorporates the Senate language which presumes a "need for care and rehabilitation" only where the factfinding hearing reaches a determination that the child has committed a felony. This is important so that minor crimes and technical offenses, where the juvenile does not need the rehabilitation or treatment offered by the juvenile court, do not automatically require that the court commit the child for treatment or rehabilitation. The purpose of the juvenile court is not to sweep in all possible juvenile offenders, but rather those that require its services.

10. DETENTION OR DISCHARGE OF THE CHILD FOLLOWING THE DISPOSITIONAL HEARING

The language of the conference bill follows the House version which appears to give the court authority to detain a child after a dispositional hearing without an affirmative determination of a "need for care and rehabilitation" unless it affirmatively determines that the child does not need such care and rehabilitation. Section 16–2317(d).

S. 4081, like the Senate language, makes absolutely clear the right of the child to discharge unless the court makes an affirmative determination that he is in "need of care or rehabilitation."

11. CONFIDENTIALITY OF FAMILY DISPUTES

The conference bill deleted the Senate confidentiality rule governing statements made to the social services agency in any subsequent criminal case.

S. 4081 retains the confidentiality rule to protect the agency's functions, and to guard against unconstitutional use of incriminating statements made without benefit of counsel.

The conference also rejected Senate language requiring that the social services agency first make a finding of a threat to commit a family offense before permitting him to testify in family court. The compromise keeps the Senate provision.

MULTIPLE OFFENDER PROCEDURES

Section 23–111—page 154—sets forth the procedure for establishing prior convictions for the purpose of imposing additional penalties.

The prosecution must file an information before trial or entry of plea listing the convictions to be relied upon. Upon a showing that they could not be obtained with due diligence, the trial may be postponed or the taking of plea postponed to obtain the record. An information is permitted if the additional penalty is up to 3 years; otherwise an indictment is required unless one was waived. Clerical mistakes and omissions beyond the record of convictions need not be presented.

Upon the filing of an information, the judge must inquire of the defendant whether he affirms or denies the convictions alleged. If he denies, he must submit his position in writing. Issues of fact raised by the written denial must be stated with particularity. The burden of proof is on the prosecution; but the exception in subsection (c)(2) reads that denials by the defendant in his response must be proved by him by a preponderance of the evidence, and that he waives challenges not raised in his response. It is unclear whether these two latter requirements pertain only to challenges on constitutional grounds, or to all issues raised by the defense. The language supports the latter interpretation.

The hearing is before the court without jury. If no response is filed, or the judge holds against the defendant in the hearing, the additional penalties apply. If the court holds against the prosecution, it must defer sentencing on the prosecution's motion, and must permit an appeal. No corresponding right of interlocutory appeal is permitted the defendant, and it is an open question whether he can appeal the sentence thereafter, or if so, to what extent. An appeal of the postponement of sentencing is permitted, however.

OBJECTIONS

This is substantially new statutory language on procedures to establish prior convictions. It appears to contain at least 6 violations of the Constitution. (See Senator ERVIN's speech of July 17, CONGRESSIONAL RECORD, p. 24837.)

First. Since the prosecution need only give the fact of convictions, and errors and omissions are excused, the warning to the defendant is inadequate. Parole, suspension, successful appeals, pardons all may be pertinent, and the prosecution is under no burden to provide this information.

Second. The permission to suspend the trial or plea means that the defendant can be surprised at any time. It also means that the crime for which he is charged—that part involving the penalty—may change after trial begins and certainly after indictment. In effect, the defendant will be tried for a different—more severe—crime than that which he was aware of before.

Third. The permission to file an information instead of an indictment when the additional penalty is up to 3 years, violates the constitutional requirement of an indictment for felonies.

Fourth. Since the indictment is not needed if the penalty is more than 3 years and if the defendant has previously waived indictment, that waiver will have been made on an open-ended charge, which the defendant could have had no prior notice of when he originally waived.

Fifth. The requirement that the defendant answer the inquiry of the judge and file a written statement of his objections violates the constitutional prohibition against self-incrimination.

Sixth. The requirement that all objections not raised are waived for appeal may violate due process, especially under the procedures of this hearing.

Seventh. If the shift of the burden of proof to the defendant on issues of fact he raises is the proper interpretation, then this violates due process.

Eighth. The permission of the Government to appeal on demand during trial is an unwarranted extension of prosecution appeal. It is further unique in that it permits an appeal by the Government on the sentencing. Since it is a one-sided appeal, it is even more unjust, and probably violates due process.

Mr. ERVIN. Mr. President, I wish to commend the able and distinguished Senator from New York on a most excellent speech and a very profound analysis of the District of Columbia crime conference report.

Mr. GOODELL. I thank the Senator from North Carolina.

Mr. ERVIN. 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. ERVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I am about to propound a unanimous-consent agreement. It has been cleared with the leadership on both sides. It has also been cleared with the able

manager in charge of the conference report and the distinguished Senator from North Carolina (Mr. ERVIN), as well as with the distinguished Senator from Nebraska (Mr. HRUSKA), and others.

I ask unanimous consent that the vote on the pending conference report occur at 3 p.m. on Thursday next; that there be 2 hours of controlled time beginning at 1 p.m. on Thursday next, with the time to be equally divided between the manager of the conference report, the Senator from Maryland (Mr. TYDINGS) and the Senator from North Carolina (Mr. ERVIN).

Mr. HRUSKA. I concur in the unanimous-consent request just propounded by the distinguished Senator from West Virginia as discussed among those on both sides of the aisle.

I would add, however, the name of the Senator from Vermont (Mr. PROUTY), the ranking Republican on the District of Columbia Committee. While he would have preferred a different hour on Thursday, nevertheless he goes along with the unanimous-consent request.

The PRESIDING OFFICER (Mr. BOGGS). Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

The unanimous-consent agreement, later reduced to writing, is as follows:

Ordered, That the Senate proceed to vote at 3 o'clock p.m. on Thursday, July 23, 1970 on the adoption of the conference report on S. 2601, omnibus D.C. crime bill, with the two hours for debate preceding the vote to be equally divided and controlled by the Senator from Maryland (Mr. TYDINGS) and the Senator from North Carolina (Mr. ERVIN).

MESSAGE FROM THE HOUSE

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

S. 417. An act to authorize the Secretary of the Interior to convey certain lands in New Mexico to the Cuba Independent Schools and to the village of Cuba; and

S. 778. An act to amend the 1964 amendments to the Alaska Omnibus Act.

The message also announced that the House had agreed to the amendment of the Senate to the amendments of the House to the bill (S. 885) to authorize the preparation of a roll of persons whose lineal ancestors were members of the Confederated Tribes of Weas, Piankashaws, Peorias, and Kaskaskias, merged under the Treaty of May 30, 1854 (10 Stat. 1082), and to provide for the disposition of funds appropriated to pay a judgment in Indian Claims Commission dockets Nos. 314, amended, 314-E and 65, and for other purposes.

DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970

The Senate continued with 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. MATHIAS. Mr. President, it is with considerable regret that I rise to oppose the adoption of the conference report on S. 2601, the District of Columbia omnibus anticrime bill.

Eleven days after taking office 18 months ago, President Nixon outlined a program for "curbing crime and improving the conditions of life in the city of Washington." At the very top of his agenda for attacking crime was the goal of "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."

I had hoped that long before now, the Congress could have completed and sent to the President a bill responding to this first priority of his January 1969 message.

The right to a speedy and fair trial is steeped in our history. It is in our Bill of Rights as one of the key provisions sought by the Founding Fathers in light of the disregard for individual rights which they had endured as subjects of a tyrannical government. And it is in many of the earlier declarations of rights adopted by individual American colonies. For example, the original Maryland declaration of rights, adopted in 1776—when the District of Columbia was still part of Maryland—stated:

That every free man, for any injury done to him in his person, or property, ought to have remedy by the court of the law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without any delay, according to the law of the land.

Indeed, court reform was one of the first priorities of our own District Committee, which, after a comprehensive series of hearings, reported a reorganization bill which the Senate passed in September 1969, just 2 months after the administration's detailed recommendations had been submitted. Nor is it the conference report's court reform section which gives rise to my inability to support it.

Through no fault of this body and despite its efforts, the desperately needed court reorganization provisions have been woven into an omnibus measure filled with controversial juvenile and criminal law provisions. Some of those provisions are unworkable and unwise. Constitutionality aside, they simply will not stem the tide of crime in the District of Columbia.

The technique of embodying in an omnibus bill the good and the bad, that which is palatable and that which is unpalatable, is an old legislative mechanism.

But in this case it is not simply a case of what is palatable and what is unpalatable. It is a case of what may be palatable and what is positively inedible.

I recognize and vehemently support the need for court reorganization. As Police Chief Wilson recently told the Senate District Committee, it is fundamental structural change which will ultimately secure for law-abiding citizens the ground recently gained in the war on District of Columbia crime.

We must clear criminal court backlogs and secure for defendants and for society the speedy trial promised by the sixth amendment. Society can no longer endure the delays of the law. Delays of a year or more before trial of criminal cases are common. In that length of time cases go cold. The witnesses may die, move away, or simply disappear. The chance of conviction rapidly diminishes. The accused loses his respect for the law and his apprehension of ultimate conviction and punishment. If we are to have law and order, we must have speedy and fair justice.

It is a tragedy that court reorganization, which will go so far in insuring prompt disposition of criminal cases and about which there is practically no debate, has been denied to the people of the District of Columbia for all these months. We must not let honest disagreement over the controversial aspects of this legislation delay court reform any longer.

Conference procedure, of course, does not allow us to amend the 217-page conference bill. We must swallow it whole or not at all. I for one find the conference bill unacceptable beyond a reasonable doubt and I therefore did not sign the conference report.

In an effort to reestablish priorities and regain perspective, I have joined nearly two dozen other Senators in sponsoring an alternative District of Columbia crime package. The first segment of the package retains virtually intact the language of the conference bill on first, court reorganization; second, the District of Columbia Bail Agency; third, creation of a full-time public defender for the District; and fourth, adoption of the Interstate Compact on Juveniles by the District. This substitute includes all the noncontroversial parts of the conference measure. It has been introduced as S. 4080 and as amendment 777 to H.R. 914, a House-passed private claims bill now on the Senate calendar.

The second segment of the package deals with criminal and juvenile law and procedure. Introduced as S. 4081 and amendment 776 to H.R. 914, it eliminates the controversial conference provisions on first, preventative detention; second, no-knock searches; third, wiretapping; and fourth, mandatory minimum sentences. It also conforms the juvenile code section with previous Senate action and modifies a few other criminal law provisions.

This package answers the fears of those who anticipate that the rejection of the conference report will mean no action this year. If the conference report is rejected, we thus have an immediate bipartisan substitute which answers the President's initial call for action and which enables us to give court reform the unanimity it deserves and to give the juvenile and criminal provisions the individual scrutiny and separate votes they deserve.

After passage of the court reorganization substitute, which has wide backing in this body, we can take up the areas of

controversy. Supporters of no-knock and other controversial provisions will be able to offer them as amendments to the second segment of our substitute package. Regardless of the outcome in these areas of honest disagreement, vitally needed court reform will be freed of the baggage which has delayed it so long and the Senate will be able to exercise its judgment on matters too important to accept as "riders" on court reform.

I now want to turn to one of the major areas in which I find the conference report seriously deficient, that of juvenile law and procedure.

One of the most unfortunate aspects of the crime problem in the District of Columbia is at the juvenile level. Police Chief Wilson has estimated that as much as 45 percent of serious crime in the District is committed by persons under 18. Testimony before the Senate District Committee indicates that serious crime referrals of 16- and 17-year-olds to juvenile court have skyrocketed. In the year ending June 30, 1969, cases involving 29 homicides, 37 rapes, 780 robberies, 1,115 burglaries, and 537 assaults were referred to juvenile court. The juvenile system, like its adult counterparts, suffers from recidivism; one-third of the juveniles referred in that period had previously been adjudicated delinquent.

In response to this drastic need, the Senate District Committee unanimously reported S. 2981, which passed the Senate December 22, 1969, nearly 7 months ago.

As the Senate report on the bill stated:

S. 2981 as amended in Committee constitutes a vital measure for the reduction of crime committed in the National Capital, as the bill's principal purpose is to break the crime cycle whereby juvenile offenders graduate from the juvenile system as adult criminals.

More specifically, the bill S. 2981 as reported has the following objectives: to expedite the adjudication of juveniles and enhance their rehabilitation, and to improve court procedures for juveniles so as to provide them their due process of law.

The Senate bill would have gone far to improve our capability to deal promptly, effectively, and intelligently with the youthful offender. I was proud to cosponsor that measure and to work actively on refining it into the form in which it emerged from committee and passed.

I, therefore, regret to say that the conference report retreats from a number of crucial and enlightened positions adopted by the Senate.

In comparing the Senate-passed juvenile provisions with those of the conference bill, I am reminded of a passage from Lewis Carroll's "Alice in Wonderland":

"And who are *these*?" said the Queen, pointing to the three gardeners who were lying round the rose tree; for, you see, as they were lying on their faces, and the pattern on their backs was the same as the rest of the pack, she could not tell whether they were gardeners, or soldiers, or courtiers, or three of her own children.

"How should *I* know?" said Alice, surprised at her own courage. "It's no business of *mine*."

The Queen turned crimson with fury, and, after glaring at her for a moment like a wild beast, began screaming, "Off with her head! Off—"

"Nonsense!" said Alice, very loudly and decidedly, and the Queen was silent.

The King laid his hand upon her arm, and timidly said, "Consider, my dear; she is only a child!"

DEFINITION OF CHILD

In the first instance, it is the legislature which determines which young people are eligible to receive the benefits of the juvenile system and which are remitted to adult courts and prisons. The impact on youth of borderline age behooves us to consider the question of family division (juvenile) jurisdiction with great care.

The decision whether or not to send a 16- or 17-year-old automatically to adult court is crucial not only for the child, but also for society. We cannot afford to give up on a youth who, through the juvenile process, can be rescued from a life of crime.

The British courts went through a long and painful period of self-examination and reform in this area 100 years ago. One of the motivations for that reform and that review was the widespread popularity of the novels of Charles Dickens. One of those novels, "Oliver Twist," relates how Oliver, although innocent, is arrested for picking a pocket. As Dickens pictured the scene:

Now, Young Gallows! This was an invitation for Oliver to enter through a door which he unlocked as he spoke and which led into a stone cell. Here he was searched; and nothing being found upon him, locked up.

Oliver then was brought before the judge, Magistrate Fang. Dickens further unfolds Oliver's plight:

At this point of the inquiry, Oliver raised his head and, looking round with imploring eyes, murmured a feeble prayer for a draught of water.

"Stuff and nonsense," replied Fang. "Don't try to make a fool of me."

"I think he really is ill, your worship," remonstrated the officer.

"I know better," said Fang.

"Take care of him, officer," said the gentleman . . . "he'll fall down."

"Stand away, officer," cried Fang; "let him if he likes."

Oliver availed himself of the kind permission and fell to the floor in a fainting fit. The men in the office looked at each other, but no one dared to stir.

"I knew he was shamming," said Fang, as if this were incontestable proof of the fact. "Let him lie there; he'll soon be tired of that."

"How do you propose to deal with the case, sir?" inquired the clerk in a low voice.

"Summarily," replied Fang. "He stands committed for three months—hard labour, of course. Clear the office."

Those familiar with Dickens will recall that Oliver was saved from this conviction by the dramatic entrance of a shopkeeper who swore the boy was innocent. But the sad fact was that this 11-year-old boy could not prove this to the court himself.

Our decision to remit a 16- or 17-year-old offender to adult courts and prisons is irrevocable. All versions of pending juvenile legislation provide a transfer process which enables the government to demonstrate a specific child's lack of susceptibility to juvenile handling and obtain his transfer to adult court.

The original version of S. 2981 defined "child" for purposes of juvenile court jurisdiction as persons under 18, except those aged 16 or 17 who were charged with certain enumerated serious crimes. It thus removed many first-time offenders from juvenile court.

This provision was opposed in hearings among others, the District of Columbia government, the Department of Public Welfare (the agency most intimately acquainted with problems and treatment of juveniles), the District of Columbia Bar Association, Juvenile Court Committee, and Professor Ferster, director of the juvenile offender and the law project at George Washington University. It was discovered to be widely divergent from the Department of Health, Education, and Welfare model juvenile act, the Uniform Juvenile Court Act, and the vast majority of State laws. The District of Columbia Crime Commission had likewise recommended that the age jurisdiction of the juvenile court should remain at its present level, so that the court will continue to assume jurisdiction over children up to 18 years of age. The original definition was favored by only one hearing witness. He was a representative from the Justice Department, although it is not clear to me whether his views were his own or those of the Department.

In order to bring the definition into accord with sound juvenile court practice, the District Committee reported and the Senate passed a provision which required that a 16- or 17-year-old charged with an enumerated serious crime also have been previously adjudicated delinquent before he could be treated as an adult.

This addition reflected at least two conclusions carefully drawn by the committee:

First. First-time offenders aged 16 and 17 should not be legislatively excluded from juvenile jurisdiction and its stress on rehabilitation. Only in those cases where a prior adjudication of delinquency is followed by a serious later charge is it appropriate to concluude that the juvenile process will not work.

Second. Although there may be a high incidence of crime committed by 16- and 17-year-olds, that fact does not indicate that 16- and 17-year-old first offenders are not susceptible to juvenile rehabilitation. Those 16- and 17-year-old first offenders who are not susceptible to juvenile rehabilitation should be transferred to adult court on a case-by-case basis, but a flat exclusion is unjustifiable.

As the report on S. 2981 stated, the committee:

Was mindful of the principal rationale underlying the maintaining of a juvenile court system, and appreciates the wisdom of the objective for punishment in cases of rehabilitation for as yet uniformed youths. The committee was not inclined, therefore, to approve a lowering of the jurisdictional age limit (for the Family Division) in simple reaction to statistics indicating a greater incidence of crime committed by juveniles aged 16 to 18.

The historic distinction between juvenile and adults is based on the assump-

tion that, until a certain age, a youth—although he may commit an offense against society—is not yet locked into a life of antisocial behavior. It assumes that his personality is still somewhat unformed, that his habits have not yet solidified, and that sincere, sustained rehabilitative programs can have a lasting impact.

Society's stake in keeping a youth from developing from a youthful offender into a hardened adult criminal dictates that we pursue this assumption in all appropriate cases.

Juvenile law and practice in the 1970's must also recognize that many youths by their midteens have gained a tragically high degree of sophistication on the streets. They have been exposed to drug traffic, to older offenders, and to the ins and outs of law enforcement; they may have become either so experienced or so cynical that they outgrow most if not all juvenile services.

At the same time, adult correctional systems have improved, and we have expanded rehabilitative programs, job training, and treatment for narcotics addicts. Prisons are becoming more than mere custodial institutions. Although a tremendous job lies ahead, the District of Columbia Department of Corrections has made great strides which are reflected in its relatively low recidivism rate.

Yet a third factor we must recognize is the present inadequacy of juvenile services. In the District of Columbia, as in many cities, facilities are overcrowded and understaffed. Programs for youth in various neighborhoods are, with some exceptions, fragmented, underfunded, and not fully effective. In general, we are simply not able to provide juveniles with the counseling, guidance, and personal attention which such troubled youths should have.

None of these factors, however, should cause us to abandon or even substantially curtail our efforts to help juveniles as such.

If we are going to protect society from evolution of these individuals into hardened criminals, we must start as early as we can. There is, of course, always the possibility that juvenile services will have no constructive impact on the 16- or 17-year-old first offender. But we must weigh that possibility against the probability that such a youth, if thrown into adult courts and adult jails, will receive a swift education in crime and mature beyond the reach of rehabilitation. The interests of both youth and society, in my judgment, dictate giving juvenile services and programs at least one try in the vast majority of cases. This is particularly so in the light of the improvements in juvenile court administration and procedure which court reorganization provides.

In contrast to the conference report, the substitute version of the bill adopts the Senate requirement of a previous adjudication of delinquency and also requires a determination of probable cause of the truth of the allegations in the petition. The latter safeguard is designed as a judicial check on the prosecution's otherwise unfettered discretion to exclude any first-time offender from juvenile court merely by charging him with one of the enumerated serious crimes.

TIME LIMITS

Sadly, cases in juvenile court presently undergo intolerable delays. A youth may well wait a year for adjudication if he is released into the community. Even if he is detained pending adjudication, he may wait several months. The 7,000 or more cases referred to the court annually, plus its 6,000-case backlog, contribute to the problem.

Under such circumstances, deterrence and rehabilitation become accidental byproducts of the system rather than carefully sought results. Delay is especially tragic in the case of the young offender. He is the one upon whom therapy is most likely to work and for whom deterrence must be swift to be effective. As we are beginning to recognize in the context of adult offenders, rehabilitation is society's most formidable weapon in the war against crime. Because the vast majority of persons in our juvenile and criminal courts are ultimately released because they eventually return to the streets—rehabilitation should be viewed as a right demanded by society rather than as a privilege of the individual violator.

The special urgency of prompt disposition of juvenile cases has been recognized by American Bar Association standards and the HEW model juvenile act, which specify time limits for each stage of juvenile proceedings. Such provisions have proved effective in jurisdictions such as New York, California, and Illinois. Time limits were also recommended in studies of the District of Columbia juvenile court by the Committee on the Administration of Justice, and the District of Columbia Crime Commission. In fact, Mrs. Patricia M. Wald, a well-known Washington lawyer, who has been with the Justice Department and is now with Neighborhood Legal Services, and who served on the District of Columbia Crime Commission, told the Senate District Committee that the Commission's time limits recommendation was its "single unanimous" and "single strongest" juvenile court recommendation.

Hearings before the Senate committee have further demonstrated that the additional manpower provided by court reorganization is only part of the answer.

The Senate wisely added its voice to the virtual unanimity in favor of time limits in passing S. 2981, which included an eminently workable comprehensive time scheme for the various stages of juvenile proceedings.

I ask unanimous consent that a brief chart of the Senate time limit provisions be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. MATHIAS. In defending the time limits in the Senate bill against charges that they were unnecessary and unworkable, the distinguished chairman of the Senate District Committee remarked on the Senate floor last December 22 that:

> In fact, the deadlines for disposition of juvenile court cases imposed by this bill follow the model New York Family Court Act and are less restrictive on the court than the deadlines which the Juvenile Delinquency Service recommends.
>
> The simple fact is that these guidlines have greatly improved the situation in New York, without detriment to the administration of the juvenile jurisdiction there.
>
> What is unworkable, in my view, is the present intolerable situation, in which in the absence of time limits, cases grow stale and the possibility of rehabilitation is lost. The public is burdened with enormous expense engendered by the delays which have arisen because time limitations have not existed before now. . .

And Mr. President, the chairman was right.

The conference bill, by eliminating time limitations on the two major stages of juvenile proceedings—factfinding and dispositional hearings—represents a serious retreat in the effort to permanently eliminate the present backlog.

Under the conference bill, therefore, a young man's case could proceed expeditiously to the factfinding stage, only to be stalled there for months while the youth stagnated in an institution or matured, unsupervised, on the streets. I particularly fear this is so in light of a statement made during House debate on the conference bill. One member of the House District of Columbia Committee, speaking "on behalf of all the House conferees" and "for purposes of legislative history," stated that the conference bill:

> While adopting a number of time limits for juvenile proceedings, specifically rejected time limits for the factfinding and dispositional hearings. The conferees did suggest in the House statement of managers, general goals to be sought by the courts in reaching the factfinding and dispositional hearings. However, these goals are not obligatory in any way and must not be construed to create any rights on behalf of the child to have his case heard within a specified time period.

Expediting certain phases of juvenile proceedings merely to allow delay in more crucial phases is not a promising way to eradicate the staggering 6,000-case juvenile backlog in the District of Columbia.

S. 4081, on the other hand, retains the Senate bill's full complement of time requirements.

STANDARDS OF PROOF

Under the provisions of court reorganization, three categories of juveniles are created—"delinquent," "persons in need of supervision" (PINS), and "neglected." The former two categories each involve misconduct by the juvenile, though delinquent behavior is the more serious. In each instance, a factfinding hearing is held to determine whether the charges against the juvenile are true. Where such truth is established, a dispositional hearing is held to determine whether the child is "in need of care or rehabilitation" and, if so, what order of disposition should be made. The factfinding and dispositional hearings roughly correspond, then, to adult trial and sentencing, respectively.

A critical question in any criminal or juvenile proceeding is the standard of proof required of the government.

It has been traditional in America that every element of an adult criminal offense be proved "beyond a reasonable doubt" before a defendant may be found guilty and sentenced. The Supreme Court has recently confirmed, in the Winship case, that this longstanding practice is required by the due process clause of the Constitution. The Court there stated that:

A society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is a reasonable doubt about his guilt.

The reasonable doubt standard is, of course, a term of art which denotes a very high certainty of correctness. It is to be contrasted with the lower proof by "clear and convincing evidence" and the even lower standard of proof by a "preponderance of the evidence." The latter standard is considered acceptable for a plaintiff in civil proceedings, on the basis that the defendant is not so likely to lose his liberty or his reputation as in a criminal prosecution.

The Court went on in Winship to state that:

The same considerations that demand extreme caution in factfinding to protect the innocent adult apply as well to the innocent child.

It held that the beyond a reasonable doubt standard is required of the government in a delinquency factfinding hearing. The Court did not reach the question of the standard required for PINS factfinding hearings or for delinquency or PINS dispositional hearings.

The Senate juvenile code bill accurately forecast the rationale of the Winship decision. Such delinquency and PINS cases both involve stigmatization of the child—unlike neglect cases—and possible loss of the child's freedom, the Senate bill required proof beyond a reasonable doubt in both types of factfinding hearing. The Senate thus recognized that the essential difference between delinquency and PINS cases lies in treatment, but that both involve a judgment of wrongdoing and possible loss of freedom.

A further basis for requiring a high degree of certainty of proof of involvement was outlined in the District Committee report on S. 2981:

The Committee is advised that a juvenile's involvement in fact—the actual commitment by the juvenile of the alleged acts—constitutes a therapeutic prerequisite, without which treatment may be entirely fruitless and even affirmatively harmful. A child cannot be effectively treated, it is suggested, unless he first is convinced that he has acted wrongly.

The Senate bill set out a somewhat lower standard of proof—clear and convincing evidence—for dispositional hearings in delinquency and PINS cases and for factfinding in neglect cases.

The Senate standards followed the HEW model juvenile act, the Uniform Juvenile Court Act, and recent changes in many of the States.

The conference bill requires only that the Government establish its case by a preponderance of the evidence in PINS factfinding hearings. There is no sufficient reason for requiring the traditional high criminal burden in delinquency cases and lowering the burden all the way to the traditional civil level in supervision cases. The substitute retains the Senate's adoption of an enlightened position, and reflects the Supreme Court's injunction that safeguards to protect innocent adults also apply to innocent children.

OTHER PROBLEMS

There are a number of other retreats from enlightened practice—some in clearer language than others—in the conference bill. The substitute bill corrects and clarifies these deficiencies. I ask unanimous consent that a chart of these deficiences marked appendix 2, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. MATHIAS. Mr. President, I will review each of seven areas briefly. Overbroad detention provisions. Preventive detention of juvenile "to protect the person or property of others" prior to the factfinding hearing is authorized by the conference bill. The conference bill also promotes unwarranted detention by eliminating from the Senate bill's definition of detention or shelter care hearing any explicit inquiry into probable cause of the truth of the charges against the child, something even the adult preventive detention provisions of the conference bill require. The conference measure further allows detention after the dispositional hearing unless the court finds that the child is not "in need of care or rehabilitation." The Senate version required release in the absence of an affirmative finding of need of care or rehabilitation.

The substitute bill strikes preventive detention of juveniles and avoids unwarranted provisions for detention by adopting Senate language defining detention or shelter care hearing and requiring release after dispositional hearing where appropriate.

Right to counsel. The substitute version makes it perfectly clear that a child shall be represented by counsel at all "critical stages" of proceedings, a term which will be further defined over time by the courts.

Burden of proof in transfer from juvenile to adult court. The conference bill contains an odd hybrid of Senate language—which properly placed the burden of transfer cases on the Government—and House language—which improperly placed it on the child. The substitute bill follows the Senate bill exactly to avoid the objectionable House result.

Jury trial. The substitute version retains the present waivable right to jury trial in delinquency cases. As a noted group of District of Columbia court experts have stated:

Jury trial may not be infallible, but the jury is the best factfinding mechanism our system of justice has been able to devise. In factual disputes as to whether or not a child actually committed an alleged offense he, like an adult, should be entitled to its safeguards.

Sanction for failure to bring a child before a judge. The requirement that the "initial appearance" before a judge be within 5 days of filing of a petition is substantially undermined in the conference report by a requirement that failure to hold the appearance on time shall not be grounds for dismissal. This insulates the most careless and negligent government practice. It is appropriate to permit the courts, by rule or case law, to prescribe sanctions for violations of time limits. Like the Senate version, the substitute omits this unnecessary limit on sound judicial discretion.

Presumption of need for care or rehabilitation. Once a juvenile's involvement has been determined in a factfinding hearing, a dispositional hearing is held to determine whether he is "in need of care or rehabilitation" and, if so, what disposition should be made.

The conference bill adopts House language establishing a presumption that commission of an act which would be either an adult felony or misdemeanor is sufficient, absent contrary evidence, for a finding of need for care or rehabilitation. The substitute adopts the Senate bill standard requiring commission of an act which would be an adult felony.

Transfer to juvenile court of child mistakenly prosecuted in criminal court. Where it appears that a criminal defendant should have been in juvenile court, but jeopardy has attached in the criminal proceeding and judgment has not been entered, the substitute bill retains the Senate requirement of a hearing to determine whether the court should proceed to judgment or refer the case to juvenile court.

CONCLUSION

During this debate we have heard, and unhappily we must hear, a great deal about the tremendous growth in juvenile crime, about the rapid spread of drug traffic in the local schools, and about the inability of present juvenile processes to keep first offenders from becoming second offenders. These facts are sobering. They are more than sobering; they are frightening. But they are not, however, an indictment of a whole generation of young men and women. Rather, they are an indictment of the past performance of the system—and, I submit, an indictment of Congress as the overseer of that system in the District of Columbia.

The question before us today is whether we are going to meet our responsibilities for the present generation of youth and for the next. The conference bill is, in its thrust, a pessimistic and in many ways fatalistic approach which I for one am not prepared to endorse. I am hopeful that the Senate will see fit to adopt a similar course and will enact the noncontroversial aspect of court reorganization at the earliest possible date.

EXHIBIT 1

APPENDIX I

Time limitations in S. 2981:

1. Motion to transfer juvenile for criminal prosecution; within 5 days of filing of petition.

2. Hearing on transfer motion; (a) for children in detention, within 7 days of filing of motion; (b) for children released into

community, within 15 days of filing of motion.

3. Background report for transfer hearing made available to counsel for child; 2 days before transfer hearing.

4. Filing of petition (charges) by Corporation Counsel (Subject to #6 below.); within 5 days after complaint referred by Director of Social Services to Corporation Counsel.

5. Initial appearance (for children released into community only); within 5 days after filing of petition.

6. Detention or shelter care hearing (for children in detention only); on or before the next day after arrest, with a maximum 5-day continuance for *probable cause determination only* (*i.e., no* postponement allowed for application of *detention* criteria).

7. Notice of interlocutory appeal from transfer or detention order; within 2 days after order.

8. Decision on interlocutory appeal from transfer or detention order; within 72 hours after filing of notice.

9. Factfinding hearing; (a) for children in detention, within 15 days after detention hearing; (b) for children released into community, within 30 days after detention hearing.

10. Dispositional hearing; (a) for children in detention, within 15 days after conclusion of factfinding; (b) for children released into community, within 30 days after conclusion of factfinding.

11. Commitment for mental or physical observation and examination; for up to 30 days with possibility of 2 extensions for additional 30-day periods.

EXHIBIT 2

APPENDIX II—COMPARISON OF SELECTED JUVENILE SECTIONS—HOUSE-SENATE, CONFERENCE, AND SUBSTITUTE D.C. CRIME LEGISLATION

Issue	House	Senate	Conference	Substitute
Definition of child:				
16- and 17-year old first offenders irrevocably sent to adult court?	Yes	No	Yes	No.
Time limits:				
Time limits established for crucial factfinding and dispositional hearings?	No	Yes	No	Yes.
Standards of proof:				
Rationale of Winship case accepted in supervision case factfinding hearings?	No	Yes	No	Yes.
Overbroad detention:				
Preventive detention permitted prior to factfinding?	Yes	Yes	Yes	No.
Inquiry into probable cause of truth of charges required at detention or shelter care hearing?	No	Yes	No	Yes.
Affirmative finding of need for care or rehabilitation required for dentention after dispositional hearing?	No	Yes	No	Yes.
Right to counsel:				
Counsel clearly required at all critical stages of case	No			Yes.
Burden of proof in transfer to adult court:				
Burden properly placed on the government to establish lack of prospects for child's rehabilitation in juvenile system?	No	Yes		Yes.
Jury trial:				
Present waivable right to jury trial retained?	No	No	No	Yes.
Sanction for delay in initial appearance:				
Court permitted to dismiss charges for gross government neglect in securing first appearance of youth before judge?	Yes	Yes	No	Yes.
Presumption of need for care and rehabilitation:				
Commission of "felony" required to activate presumption of need for care and rehabilitation?	No	Yes	No	Yes.
Transfer of juvenile from adult court:				
Hearing on referral to juvenile court required where juvenile mistakenly in adult court and jeopardy has attached?	No	Yes	No	Yes.

Note: Official designations of the bills analyzed: House bill, H.R. 16196; Senate bill, S. 2981; Conference bill, S. 2601; Substitute bill, S. 4081.

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

Mr. ERVIN. Mr. President, I should like to commend the able and distinguished Senator from Maryland (Mr. MATHIAS) on his very fine speech, in which he points out how the Senate Committee on the District of Columbia in reporting the original bill and the Senate itself in the passage of that bill undertook to do something constructive to save juveniles from becoming habitual criminals. But the conference report nullifies those wise efforts on the part of the Senate Committee on the District of Columbia and the Senate itself with respect to the original bill.

Mr. DOLE. Mr. President, today, after over a year of debate, controversy, and compromise, the Senate has before it the Omnibus District of Columbia crime bill for final action. Our vote of approval will send this long needed and important legislative item to President Nixon's desk for signature. By passing the bill we will give the courts and the police the weapons they need to turn back the crime wave in the Nation's Capital.

COURT REORGANIZATION

While I wish to stress the subject of pretrial detention, by no means is that or the other issues that have caused such prolonged and heated controversy the most important feature of S. 2601. This bill is, at heart, a court reorganization proposal. For years it has been an open scandal that due to their archaic structure and jurisdictional maze the courts in the District of Columbia have been almost totally paralyzed and unable to dispense adequate justice. For example, it takes from 9 months to 1 year to bring a felony defendant to trial in the local U.S. district court.

The present system, with misdemeanor jurisdiction in one understaffed court and felony jurisdiction in another equally understaffed court, has led to chaos. The juvenile court system is in an even worse situation. Three juvenile court judges are expected to handle a backlog of cases that exceed 6,000 in number and there are 2,000 new cases coming in every 3 months.

S. 2601 seeks to remedy this situation by reforming the local court structure and thus providing the one sure remedy for crime—swift and certain justice.

The basic features of the court reorganization are the consolidation of local courts, the gradual transfer of all jurisdiction to the new updated and adequately staffed local courts, the creation of a new family division to include juvenile matters, new provisions to ensure quality judges, and extensive provisions for modern court administration.

The new basic local court, to be called the Superior Court, will have five separate divisions—civil, criminal, family, probate, and tax. The present District of Columbia Court of Appeals will be raised to the status of the highest court of the jurisdiction. At the same time the Federal court system, presently handling not only Federal business but the bulk of local jurisdiction as well, will be returned to its proper role as a federal court hearing only truly Federal cases—not purely local cases.

In addition the legislation will create 17 new judgeships. This alone will strike a major blow for the goal for swift and certain justice. In sum, the court reorganization package in S. 2601 will provide the Nation's Capital with a fully integrated and vastly more efficient system for administering justice in the city.

No court reorganization program will be complete in the District of Columbia without two other items—A public defender system and a new revised bail agency. S. 2601 contains both.

In January 1969 President Nixon said that it was time to convert the pilot project called the Legal Aid Agency of the District of Columbia into a full-fledged public defender program. The bill now before us creates such a service with authority to represent up to 60 percent of the adult and juvenile defendants who are unable to obtain adequate representation. In addition, the service will assist the private bar and the court in coordinating the appointment of private counsel.

The representation provided by the public defender service will be at every step of the proceedings. Perhaps the most important result of this expanded program will be to provide the indigent with an experienced attorney. This will have the added advantage of speeding the entire criminal process which often is slowed by the lack of knowledge of criminal law possessed by appointed counsel from the private bar.

BAIL REFORM

S. 2601 also contains amendments to the District of Columbia Bail Agency Act to increase its responsibilities and enable it to expand beyond its present unrealistic appropriations ceiling of $130,000. The agency is presently authorized to recommend release on personal recognizance, personal bond, or on other nonfinancial release conditions. Under the proposal the agency will be authorized to recommend whether the defendant should be released, to verify new information, and to modify and supplement its original reports. In addition, it

will now supervise all persons on nonsurety release as well as serve as coordinator of third party custodians. S. 2601 will thus create a truly effective bail agency able for the first time to exercise some degree of control over persons released pending their trials.

Included in an extensive new Code of Criminal Procedure within S. 2601 is an important proposal—that of pretrial detention. I should like to concentrate the remainder of my remarks on that proposal.

PRETRIAL DETENTION

Mr. President, no more misunderstood provision has been before this Congress than that of pretrial detention. One of the central attacks on the proposal is that it is a new concept, unknown to our traditions and system of laws. This attack is grossly inaccurate, for pretrial detention has always been with us and always will. The reason is simple. There are some defendants who, when apprehended, present clear dangers to the maintenance of community safety and who must be detained.

We in this country practice pretrial detention in all our major cities every day of the week. Often a judge who is faced with a dangerous felon seeking pretrial release will set a bail sum too high for the defendant to meet. This is done on the alleged grounds of danger of flight. In most cases of high bond there is no real danger of flight. In reality this is pretrial detention and it is hypocrisy, for the defendant is really being held because the judge considers him dangerous and because the law forbids that as a ground for pretrial detention in noncapital cases.

The pretrial release provisions of S. 2601 will bring this hypocritical practice to light. Detention will be possible but only for the truly dangerous defendant and only after the true issue—that of potential dangerousness—is openly litigated at a hearing where the defendant is represented by counsel, given an opportunity to testify in his own behalf, and a chance to cross-examine any witnesses presented against him.

We practice pretrial detention in other ways also under our laws. For instance, ever since 1789 anyone charged with a capital offense can legally be held without bail The Bail Reform Act of 1966 itself permits danger to the community to be used as the basis for pretrial detention in capital cases. We also detain, prior to trial, those who need mental examinations or who are alcoholics.

Moreover, every country that shares our common law heritage and our devotion to civil liberties, practices pretrial detention of those deemed dangerous. I am speaking of Great Britain, Canada, Australia, and New Zealand.

Mr. President, I will not take the Senate's time to discuss the pretrial release provisions of S. 2601 in detail. Suffice it to say that is a very carefully drawn and precise statute. It seeks, on the one hand, to limit those eligible for pretrial detention by careful and restrictive wording of the detention categories. Efforts in the Senate-House conference have resulted in even more restrictive categories. The net result is that only the truly hardcore dangerous defendant can be held. On the other hand, the provision affords the person detained the full panoply of due process protections from an open hearing and written findings of fact to an expedited trial and a strictly limited detention period of 60 days. Mr. President, no person held today in jail or a high money bond, and there are hundreds of them, is afforded anything close to the rights that this proposal grants to those who will, under S. 2601, be detained.

Mr. President, S. 2601 is a vast and comprehensive bill ranging from court reorganization to pretrial detention. It will be a major step on the part of the Congress in the war on street crime in our Nation's Capital. I urge an affirmative vote on S. 2601.

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

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

SHOOTING OF CHICAGO POLICE OFFICERS

Mr. PERCY. Mr. President, last Friday many Chicagoans were shocked and have since been deeply concerned at the murders of Patrolman Anthony Rizzato and Sergeant James Severin of the walk and talk Community Relations Arm from the Damen Avenue Task Force. Both were shot down outside the Cabrini Green Highrise complex Friday evening.

The vast majority of black citizens have welcomed police protection that brings with it a greater degree of sensitivity to and understanding of the special problems of the community. Both patrolman Rizzato and Sergeant Severin had committed themselves to this end.

Such a wanton action can only be self-defeating in terms of solving neighborhood and local problems. In addition, it silences the very voice of compassion and earnest reconciliation between police and community. I deplore this tragic and unprovoked assault. Over the weekend I talked with Mrs. Rizzato as well as members of Sergeant James Severin's family to express my heartfelt sympathy. I talked with Mrs. Rizzato again this afternoon and I plan to attend Sergeant Severin's funeral with Mrs. Rizzato, on Tuesday.

Certainly this kind of action does nothing to solve the basic problems we are facing.

We all extend our deepest sympathies to the families of these law enforcement officials, both of whom were trying every possible way to better understand the community they were trying to serve.

SOYBEAN INDUSTRY HAVING GOOD YEAR BUT COULD BE THREATENED BY U.S. TRADE POLICY

Mr. PERCY. Mr. President, I am making this special report to the Senate on behalf of everyone in the State of Illinois directly or indirectly involved with one of our most important agricultural crops, soybeans and soybean products.

In the spirit of full disclosure for public officials, farming interests in Livingston County, Ill., that have been in my wife's family for over 100 years yielded to Mrs. Percy and me $2,523 in 1969 on the sale of soybeans but did not involve the receipt of any Government price supports.

U.S. soybean growers are selling more beans at favorable prices in 1970. By the end of this year, soybean crushers will have bought some $2.7 billion worth of soybeans from farmers and the Commodity Credit Corporation—about $300 million more than they bought last year.

Exporters' purchases will be up to an estimated $1.5 billion—$325 million more than last year and a 29-percent increase. Total soybean demand has increased from 945 million bushels to an estimated 1,200 million bushels. The increase represents the production from an additional 9½ million acres.

The turnaround in soybean sales began last year, and a good share of the credit must go to determined actions on the part of the Nixon administration to expand demand for U.S. agricultural products. First, Secretary of Agriculture Clifford Hardin reduced the price support on soybeans from $2.50 to $2.25 per bushel. Second, the administration was able to get the Japanese Government to install a soybean tariff reduction that had been worked out in the Kennedy round of tariff negotiations a year earlier. Third, we convinced the Common Market that a threatened levy on soybeans was contrary to the General Agreement on Tariffs and Trade and would bring swift U.S. retaliation against Common Market exports. I worked with the administration on all these steps and fully supported them.

The soybean price support had been at $2.50 since 1966—and our soybeans had lost their competitive edge. U.S. bean markets, which had been growing rapidly and steadily before the increase, suddenly went stagnant. Competitors' sales shot up. World sunflower seed exports tripled from 1965 to 1968. Fishmeal exports went from 2.2 million metric tons to 3.5 million in the same period; rapeseed exports increased 64 percent. Brazil's soybean production went from 19 million bushels in 1965 to an estimated 50 million in 1970.

This year, we removed the high guaranteed price that our competitors had been counting on in the past. At the same time, we have had less foreign competition. For instance, the Russians have, temporarily at least, dropped out of the sunflower-seed export picture, and the South Americans have found fewer and smaller fish in their nets. Other factors have worked in our favor, like flooded rape-seed fields in Eastern Europe.

As a result, U.S. soybean sales this year will be up about 225 million bushels over last year. Prices, which started the crop year around $2.23 a bushel, were up to $2.52 in May, and over $2.60 in June. Bids for new crop beans are ranging as high as $2.67 for delivery this fall.

Demand has been so strong, in fact, that the market is taking all of the record-large 1969 soybean crop, and will probably absorb about 85 million bushels of the big carryover stocks that were built up during 1966–68.

Growers are marketing the production from an extra million acres of soybeans at higher prices than they got last year. Experts estimate the extra acres will add about $100 million to U.S. farmers' incomes.

Growers put about 180 million bushels of 1969-crop soybeans under CCC loans—the third-highest total on record. Many of them have thus been in position to take full advantage of prices which have risen as the season progressed. Getting soybean stocks reduced also benefits the growers, since it relieves some latent supply pressure, and helps reduce politically sensitive storage costs.

We are regaining the foreign market penetration that we lost during 1966–68. And we are providing that U.S. soybeans are more reliable than other sources. There should be little reason for customers to switch back to other commodities if we continue to keep our prices competitive.

Soybean exports this year are expected to total 415 million bushels, 128 million bushels more than last year—a major agricultural contribution to our balance of payments. The export value of U.S. soybeans in fiscal year 1968–69 was $1.123 billion. Based on the first 10 months the export value for fiscal year 1969–70 is estimated at $1.450 billion—a 29 percent increase and equivalent to our entire NATO balance-of-payment deficit.

The whole U.S. soybean industry has done well this year. Growers have sold more beans at favorable prices. Exporters have found ready markets for larger volumes. Crushers have been running their plants at 93 percent of capacity—a record high level that leaves little time for maintenance and repairs—and still have not been able to fully meet their demand.

Crushers have invested over $60 million in new capacity to handle the increased soybean crops being produced by U.S. farmers. The current expansion in crush facilities should produce a 15-percent increase in crushing capacity—raising it from the 770 million bushels of 1969 to 885 million bushels by next spring.

There is one pending action, however, which could have severe adverse effects on this continuing success story of soybeans. Should Congress enact quota legislation on textiles alone or textiles plus other commodities, the export market for soybeans could be severely affected.

The problem of textiles is not just one that concerns United States-Japanese relations. Synthetic fibers are also imported from Europe. The Common Market has made it clear that should textile quotas be enacted in the United States, the Common Market would take counteraction to protect its own trade interests. I was personally warned again in Brussels 2 weeks ago by Ambassador Robert Schaetzel of this threatened retaliation. Edmund Wellenstein, the Common Market's Director General of Foreign Trade, made it clear in the NATO North Atlantic Assembly meetings at the same time that one logical candidate for retaliatory action would be U.S. soybean exports to Europe. The United States exports over $500 million of soybeans to the Common Market annually. The loss of this market would be a severe blow to the success story of American soybeans.

This threat to U.S. soybean exports was clearly seen by Mr. Leslie Tindal, president of the American Soybean Association, in testimony before the House Ways and Means Committee on June 16. He said that:

> We recognize this committee and Congress have a difficult job weighing the threat to employment in the textile and shoe industries against the possible loss of sales to our major trading partners.

But, he went on to say:

> The tremendous overseas demand for soybeans and soybean products means jobs for hundreds of thousands of Americans, creates billions of dollars of new wealth in our rural areas and our cities, and contributes more to the U.S. balance of payments than any other agricultural commodity.

Mr. Tindal also noted that Japan has cut in half her tariff on soybeans under the Kennedy Round of GATT but has postponed total elimination of the tariff while waiting to see what the action may be taken by Congress against Japanese textiles.

Thus, Mr. President, quota legislation on textiles and other products will severely harm those sections of the country that grow soybeans. This would particularly hurt Illinois, which is the largest grower and exporter of soybeans, but would also harm other Midwestern and Southern States.

The picture for soybeans looks generally good at the moment, but the enactment of quota legislation could make the soybean picture look very bleak indeed. The midwest and southern soybean farmer should realize that if trade restrictions are enacted, his income in all probability will be reduced sharply and quickly. For this reason I am unalterably opposed to the imposition of absolute quotas by Congress on the wide variety of products now being proposed for Senate action.

TESTIMONY OF DR. McCRACKEN AND MR. SHULTZ BEFORE THE JOINT ECONOMIC COMMITTEE

Mr. PERCY. Mr. President, this morning before the Joint Economic Committee we heard testimony from both Dr. Paul W. McCracken, Chairman of the Council of Economic Advisers, and George P. Shultz, Director of the Office of Management and Budget.

During the course of the testimony and questions that followed, a number of very important points were brought out. First, in response to a question that I asked. I inquired whether or not the $60 billion deficit that had accrued in the first approximately 8 years of the 1960's did not have a great impact upon the problems we are now facing in the economy—the problem of inflation, the problem of high interest costs, and the problems of resultant unemployment that we have now experienced as a result of efforts to dampen the economy and the boom, in order to fight inflation. Both of them responded in the affirmative. In years of high prosperity in the late sixties—1967 and years of that type—when we had the war going on in Vietnam, when we were unwilling to pay for that war with increased taxes, and we ran a deficit of $20 billion to $25 billion, certainly this was the cause for the boom getting out of hand; and that brought about the necessity of the present administration to try to stabilize the economy through fiscal and monetary policies.

Dr. McCracken pointed out that we estimate that our trade surpluses this year—exports over imports—will be on the order of about $3.8 billion.

I asked whether or not the imposition of quotas might not bring about retaliation and a trade war. Both witnesses indicated this possibility existed, and if it did come about U.S. production would be hurt because we are in a surplus position.

Mr. Shultz indicated in response to a question that in his judgment we could get additional budget relief as a result of our NATO allies having accepted the principle of burden sharing so that more of our expenses in Europe incurred for the common defense would be paid for by our European allies.

The testimony was exceedingly valuable, and it is my hope also that, by some time in August, we can have a revised estimate from the administration as to what the revised deficit is expected to be for fiscal year 1971.

The last figures that we had came from the President in May, when, instead of the hoped for $1.3 billion budget surplus, it was anticipated that we might have a $1.3 billion deficit.

It is my opinion that the deficit we face in fiscal year 1971 is substantially higher than that figure. It could be of the order of $6 billion to $10 billion, and the potential deficit for the year 1972 might be even greater.

I am hopeful we can have a firmer estimate from the administration, so that Congress can be guided in the next few months as to what we need to do to increase our revenues and what we need to do to hold back and restrain expenditures.

I wish to commend the administration for the strong statement by the President last Saturday, when he indicated that Congress should impose the same kind of ceiling on its expenditures that the Congress has imposed on the President and the executive branch of Government.

At this time I ask unanimous consent to have printed in the RECORD the excellent statements of Mr. Shultz and Dr. McCracken.

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

STATEMENT OF GEORGE P. SHULTZ, DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET, BEFORE THE JOINT ECONOMIC COMMITTEE

Mr. Chairman and Members of the Committee:

My first appearance before a Congressional Committee as Secretary of Labor was in this distinguished forum and this is my first appearance in my new job of Director of the Office of Management and Budget. As an economist and an observer and admirer of the work of the Joint Economic Committee over the years, I am honored to participate again in these initiation rites, although I have noticed that the proper meaning of that word as applied to economic affairs, let alone its spelling, has often been in dispute in your discussions. That is to be expected in such a controversial area. I enter the discussion in the spirit of exchanging ideas and information and in the hope that issues may be clarified, if not resolved, and that what differences there are may be more carefully defined and perhaps narrowed.

The focus of my testimony is the Federal Budget, leaving to others, including the various Administration witnesses, responsibility for the review of other aspects of the economic scene, including its present contours and probable lines of development.

SOME GENERAL OBSERVATIONS

The President's Budget is simultaneously a financial expression of his objectives and priorities, an assessment of the proper role of Federal revenues and expenditures in economic developments, and a detailed and unified accounting of program costs and sources of funds.

The budget process itself must be a continuous one, since there are strong interrelationships among actions appearing at widely separated time periods. Actions in 1970 and 1971 affect developments in 1972 and beyond, just as objectives for future years must be reflected in immediate budgets if these objectives are to be realized effectively. For this reason, in considering our present budget situation, we must look at the year just completed and the years ahead, as well as at the budget of the current year.

Further, the continuing budget process, with its vast financial and economic implications, imposes a continuing obligation to keep the total picture in mind, while working on the many and highly varying parts. As Adam Smith noted, specialization increases with the size of the market. Both the Legislative and Executive Branches of Government are elaborately organized for such specialization, which encourages a preoccupation with the individual parts of the Budget.

But the very creation, let alone the work of this Committee, emphasizes the need for a continuing review of what these parts are adding up to in total and what the economic implications of these totals are. This mid-year review is certainly appropriate, since it brings attention to the totals at a time when we might otherwise be overly preoccupied with the parts.

SHIFTING PRIORITIES

An overriding and universal objective is the attainment of a stable peace and a return of resources to peacetime and civilian purposes. Budget developments over the past three years reflect a dramatic movement in this direction and stand as a statement of Presidential objectives and priorities. Between fiscal years 1968 and 1971, defense expenditures will have declined from 9.7 percent of the Gross National Product to about 7.5 percent and from 45 percent of budget outlays to a projected 37 percent. By sharp contrast, the budget outlays allocated to human resources programs[1] rose from 32 percent in 1968 to a projected 41 percent in 1971. This dramatic shift in priorities is underscored by recognition that expenditures by State and Local governments concentrate on the human resources area and that, as private individuals and groups, we devote a large proportion of our incomes to these objectives.

This shift in priorities, desirable though it is, does have transition costs, as individuals, industry and labor groups, and particular communities are directly affected by reductions in military personnel and in defense contracts, with consequent layoffs of employees.

We must recognize our present situation for what it is: a mild slowing of the economy, as necessary to curb the inflation, combined with a movement away from defense-related activities. This movement may have a direct impact on as many as 2,000,000 people during the period from early 1969 to mid-1971, with over 700,000 already affected. Of course, many others have been and will be indirectly affected, varying with the dependence of particular communities and industries on defense activity.

If the beginning of wisdom is to recognize the problem, the outcome of our analysis must be action to help people through transition problems. There is no doubt that the problems can be solved and that a healthy economy is our most important program for doing so. But we must apply the further principle that those who bear this cost most directly deserve help from all of us, who share the social gains achieved by the transition.

Secretary Hodgson will be discussing this point in some detail so I will not labor it further. I must mention, however, two proposals of special relevance to this problem, proposals that were put before the Congress by the President about one year ago. I urge the Congress to complete action to strengthen and extend the system of unemployment insurance and to move on the proposed Manpower Training Act. As you know, both these pieces of legislation contain automatic trigger formulas that would, respectively, extend the period of unemployment compensation and increase appropriations for work and training programs in the event that unemployment reaches specified levels.

THE BUDGET AND THE ECONOMY

The President in his Statement of July 18, 1970, put forward the general principles that should guide our thinking about revenue and expenditure totals and their meaning for the economy.

"In raising the issue of budget deficits, I am not suggesting that the Federal government should necessarily adhere to a strict pattern of a balanced budget every year. At times the economic situation permits—even calls for—a budget deficit. There is one basic guideline for the budget, however, which we should never violate: except in emergency conditions, expenditures must never be allowed to outrun the revenues that the tax system would produce at reasonably full employment. When the Federal government's spending actions over an extended period push outlays sharply higher, increased tax rates or inflation inevitably follow. We had such a period in the 1960s. We have been paying the high price—and higher prices—for that recently."

This general guide, while it does not lend itself to precise point estimates for future periods, nevertheless provides a method of crucial importance to the assessment of where we are and where we are going. We know, for example, that revenues fell short of their full employment potential in fiscal year 1970. A small deficit created thereby does not have a major inflationary potential, and indeed, is part of the automatic and desirable system of fiscal stabilizers. By contrast, the deficit of fiscal year 1968 represented a large expenditure overrun, beyond the revenue producing capacity of the tax system. It thereby contributed heavily to the inflationary problems we have since been trying to cure. There is a lesson of immediate relevance in these contrasts as we consider the Budgets for fiscal year 1971 and 1972.

We know, of course, that fiscal policy is not the full story in the management of economic policy. As this Committee has well recognized in the past, monetary policy is also of critical importance. Here it may be noted that, while the President is charged by the Employment Act of 1946 with responsibility for "setting forth . . . a program for carrying out the policy declared in Section 2", he has no authority over the operation of the Federal Reserve, with its statutory and traditional independence. Conversation, yes, but that is as far as it goes.

We know also that wage and price movements in individual industries must be addressed as a part of the overall strategy of economic policy. It was this realization that led the President to create over a year ago a committee on lumber prices and subsequently another on copper prices. Both these efforts have been fruitful. More recently, in this same vein but with a broader and continuing responsibility, the President created a Regulations and Purchasing Review Board to "determine where Federal purchasing and regulations drive up costs and prices." Further, the Council of Economic Advisers will prepare a periodic inflation Alert to "spotlight the significant areas of wage and price increases and objectively analyze their impact on the price level."

A National Commission on Productivity has also been appointed, with an outstanding membership (list appended to this statement). Its major responsibility will be to develop and recommend new ideas, initiatives, and policies to encourage continued productivity growth both now and in the long run.

Productivity is a key link between wages and prices. Its growth in the United States has been poor in recent years by both historical and international standards. The slow growth of productivity in 1969 and the decrease in the first quarter of 1970 is one important explanation of the long lag between the cooling of demand pressures and the improvement in price performance. The rate of wage increases in the total economy did not appear to accelerate very much during this period.

Near term prospects for productivity growth are much better than the 1969 experience. While complete data are not yet available, it appears that the annual rate of growth in productivity in the second quarter of 1970 was at least 3 percent, which is close to its historical level. This and subsequent improvements will contribute significantly to the improved price performance that is expected in the last half of this year.

THE BUDGET OUTLOOK

Having in mind the linkages in budget flows from one year to the next, the necessity for relating the parts to the totals, and the President's guide to the relation of total revenues and expenditures to economic developments, let us turn to the budgets for fiscal years 1970, 1971, and 1972.

In February the President proposed budgets for fiscal years 1970 and 1971 with surpluses of $1.5 billion and $1.3 billion, respectively. A combination of events since February has, as reported in the May estimates, pushed both budgets from surplus into deficit.

[1] Human resources programs are those included in the functional categories, income security, education and manpower, health, and veterans benefits and services. Almost all of the outlays for veterans benefits and services can be identified with the preceding three categories.

The revised estimates for fiscal year 1970 showed that the shift from a $1.5 billion surplus to a $1.8 billion deficit resulted almost entirely from a shortfall in estimated receipts rather than from an overrun in spending. Preliminary figures for 1970 will be published before the month is out. For this reason, I shall not speculate about what the specific results for the year will be. Data for the first 11 months suggest strongly, however, that outlays have been held within the May estimate of $198.2 billion.

This is despite significant and continued pressure from some uncontrollable costs, the increase over the proposed budget of education and veterans programs, and Congressional inaction on postal rate increases.

Any deficit will result from a shortfall in revenues below those that would have been generated at full employment. In May, as you recall, receipts were estimated at $196.4 billion.

The outlook for the current year—1971—is clouded with uncertainty and for the most part the clouds are dark and threatening. It was concern with these threats that prompted the President's Statement of July 18, a Statement calling attention to problems when there is ample time to do something about them.

On the revenue side of the budget, problems are of two types. On the one hand, Congressional action or inaction has reduced potential revenues. The Tax Reform Act of 1969 reduced estimated receipts below the President's April tax proposals by about $3 billion for 1971 and by about $5½ billion in 1972. Moreover, no action has been taken on the President's proposals for a tax on lead in gasoline, a speedup of estate and gift tax collections, and an increase in postal rates.[2] These three items together would yield revenues of about $4.5 billion in 1971.

On the other hand, though the economy is expected to be expanding throughout fiscal 1971, it will not be operating at a level sufficient to generate revenues to the full potential of the present tax system.

Both potential and actual revenues can be affected by prompt Congressional action on the President's revenue proposals. We will need these expanded boundaries if expenditures are to be contained within the revenue producing capacity of the tax system.

The expenditure side also presents a mixed picture. The May revision showed a rise from the original estimate of $200.8 billion to $205.6 billion, the result in significant part ($2.1 billion) of increased estimates for mandatory payments: interest on the debt, unemployment compensation, public assistance, and a miscellany of other items. These mandatory items may well call for somewhat higher outlays, perhaps by a total of $3.5 billion rather than $2.1 billion. These increases and Presidential and Congressional changes identified in the May review are carrying the expenditure total upwards.

The major uncertainty, of course, is the outcome of the appropriations process. This matter deserves our closest attention since it poses problems of great concern and potential damage to the long term economic outlook.

The two largest appropriations bills—Defense and HEW-Labor-OEO—have not yet cleared the House. But many others have passed both House and Senate and are in Conference or awaiting Conference. The Education bill needs only action by the Senate and it will be on its way to the President.

A tabulation of some of the actions involved here suggests the nature of the problem:

[In millions of dollars]

	1971 request	Changes from request		
		House	Senate	Conference
Appropriation bills:				
Education	3,967	+320	+701	+453
Independent offices and HUD	17,293	−78	+1,187	.....
Agriculture	7,748	−298	+728	.....
Labor-HEW-OEO (Deletion of social services limit may add $200 in outlays.)	18,732	+93	.....	.....
Foreign assistance	2,977	−756	.....	.....
Interior	1,840	−230	−5	.....
Other bills passed by House	16,748	−515	.....	.....
Defense	68,746	.....	.....	.....
Major changes from request in substantive bills:				
Social security (H.R. 17550)	.....	+1,500	.....	.....
Veterans education (Public Law 91-219)	.....	+169	+169	+169
Veterans compensation (S. 3348)	.....	+226	+114	.....
Employee health benefits (H.R. 16968)	.....	+140	.....	.....
Emergency home financing (S. 3685)	.....	+1,500	+60	.....
Food stamp program (S. 2547)	.....	.....	+750	.....
National service life insurance (permit use to purchase mortgages, H.R. 9476)	.....	+750	.....	.....

What will emerge from the appropriations process, of course, remains to be seen. In view of these uncertainties, added to those on the revenue side, we do not offer any further reestimation of the 1971 Budget beyond that identified in May.

But the problem is clear, as is the need for care and caution at both ends of Pennsylvania Avenue. Dedication to and fascination with parts of the budget cannot be allowed to obscure the sum-total to which the parts must finally add.

The perspective of the longer run also urges prudence and responsibility by the Congress in acting on fiscal year 1971 appropriations requests and substantive legislation. We have begun to assemble data preparatory to developing a budget for fiscal year 1972. Just as the 1970 actions are now adding to 1971 outlays, legislation currently being considered by the Congress would boost 1972 outlays significantly. In our preliminary look at possible expenditure levels in 1972, we have examined with care these and other factors. We simply cannot accept the result to which the path of least resistance takes us.

We are on the threshold now of getting control of a problem that has proven stubborn and resistant. We know what caused the inflation, we know how difficult it is to rein in inflation once it starts running, and we know the pains that accompany such an effort. We must keep the momentum of Federal expenditures from carrying them again, as in 1967 and 1968, beyond the revenues produced by the tax system at full employment. We would surely pay fully for such expenditures—whether in higher tax rates or higher prices.

Thus, the quality of Congressional action in the weeks immediately ahead on both the revenue and expenditure sides of the Budget is of critical importance, not only to this year, but to next year and the years ahead; not only to the Federal Budget, but to our continuing effort for a healthy and expanding economy, reaching full employment with reasonable stability of prices.

AN EXPENDITURE CEILING

The Congress passed and the President signed only weeks ago a bill that imposed on him a ceiling on expenditures. The Congress, however, has placed no such limitation on itself. Such a ceiling, with necessary discretion to reallocate funds within the total, can be an important tool in the effort to relate action on parts of the Budget to its overall dimension. The President in his July 18 Statement, reaffirmed his intention to live within that ceiling and he suggested that Congress bind itself to that ceiling as well.

I hope that this Committee, with its special concern for economic aggregates and for guidance on economic policy, will want to endorse this suggestion and carry it to your colleagues with a sense of its genuine merit and urgency.

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David M. Kennedy, Secretary of the Treasury.

Maurice H. Stans, Secretary of Commerce.

Paul W. McCracken, Chairman of the Council of Economic Advisers.

George P. Shultz, Director of the Office of Management and Budget.

STATEMENT OF PAUL MCCRACKEN, CHAIRMAN OF THE COUNCIL OF ECONOMIC ADVISERS, BEFORE THE JOINT ECONOMIC COMMITTEE

I appreciate the opportunity to appear again before this Committee for its mid-year review of economic developments and their implications for policy. The past few months since I was last before the Committee have been a period of great uncertainty about where the economy was going and of unusual volatility in sentiment. Recent developments and information, however, have made the main elements in our situation somewhat clearer.

First, the economic decline has not cumulated, but appears to be bottoming out and

[2] Technically, postal rate changes are treated in the unified budget as a change in outlays.

at worst is unlikely to proceed much further. Its maximum dimension will be far short of the experience in any of the postwar recessions.

Second, signs of the expected slowdown in the rate of inflation are becoming stronger, and there is little doubt that continuation of economic policy on its planned course will reduce the rate of inflation further. The inflation rate has proved to be more stubborn than was commonly expected, but it has not been immune to changing economic policies and conditions.

Third, attention should now focus on the requirements for assuring that the upturn will carry through steadily to full employment but not so rapidly as to cause inflation to speed up once more.

ECONOMIC DEVELOPMENTS IN THE FIRST HALF OF 1970

Let me now turn to economic developments during the first half of 1970, partly against the background of expectations held at the beginning of the year.

The slowdown of demand

A major factor in the change that has occurred in the economy in the past year has been the reduction in the rate at which total expenditures (private and public) for goods and services increased. Reducing the rate of increase in this money demand for output was one of the key steps in the policy of reducing the rate of inflation. It was obvious at the beginning of 1969 that with the economy crowding capacity and with total output capable of growing by around 4 percent a year, continued increases of expenditure much in excess of that rate inevitably meant continued rapid inflation. The objective of fiscal and monetary restraint was to check the growth of total expenditures for output, but not so sharply as to trip off a downward spiral of incomes and output.

The rate of increase in these total expenditures declined by almost 50 percent from the three quarters ended in July–September 1969 to the three quarters ended in April–June 1970. The dollar amounts of these changes in total expenditures and in its main components are shown in the accompanying table.

CHANGE IN THE ANNUAL RATE OF TOTAL EXPENDITURES (GNP), BY COMPONENTS

[Seasonally adjusted annual rates in billions]

Component	1968–IV to 1969–III	1969–III to 1970–II
Total	$51.2	$27.5
Federal purchases	.6	−2.9
Defense	(.6)	(−2.7)
All other	50.6	30.4
Change in business inventories	2.0	−8.7
Final sales (excluding Federal purchases)	48.6	39.1
Consumption expenditures	31.3	32.1
Nonresidential fixed investment	9.9	1.2
Residential construction	−.7	−2.5
Net exports	1.2	1.2
State and local purchases	6.9	7.1

Source: Department of Commerce.

The complex interaction among components of GNP makes it impossible to say how much of this slowdown in spending was due to policy actions and how much to spontaneous forces, or to isolate the separate effects of different policy measures. Nevertheless, it seems reasonable to conclude, since it conforms to expectations based on past experience, that the reduction in the rate of monetary expansion had a general and pervasive influence. The money supply, which had grown at highly inflationary rates in 1968 and set the stage for further overheating the economy in 1969, increased only moderately in the first half of last year, and in the second half of 1969 there was virtually no expansion. Indeed, the money supply broadly defined to include time deposits actually declined slightly in that half-year period.

The influence of monetary policy was supplemented and to some extent directed into specific channels by the fiscal actions which accompanied it. The shift from increasing to decreasing defense production has clearly exerted an independent influence, and it was on a larger scale than is indicated by defense purchases alone because some part of the reduction in inventory accumulation was also the result of lower defense production. At the same time budgetary actions—the tax reduction and the social security benefit increase especially—were helping to sustain the increase of consumption expenditures in the face of a much reduced increase of earned personal income. But these budgetary actions helped to shift the budget position, as measured in the national income accounts, from a surplus at the annual rate of about $7 billion in the second half of calendar 1969 to a deficit of about the same size in the first half of calendar 1970. This contributed to the continued tightness of capital markets and to the lag of housing.

ANNUAL RATE OF INCREASE IN THE MONEY SUPPLY AND TIME DEPOSITS

[Seasonally adjusted; in percent]

Period	Money supply	Money supply plus time deposits
December 1967 to June 1968	7.3	6.4
June to December 1968	7.1	12.5
December 1968 to June 1969	4.4	.1
June to December 1969	.6	−.3
December 1969 to June 1970	4.2	5.7

Source: Board of Governors of the Federal Reserve System

Although the increase of total expenditures for output has been markedly less in the past three quarters than earlier, the increase was larger in the second quarter of 1970 than in the previous quarter or in the fourth quarter of 1969. This is part of the evidence of an emergent economic expansion.

That the rate of increase of total spending for output should slow down was, as I have already indicated, both expected and desired, in order to reduce the inflation. The actual increase in the rate of spending from the third quarter of 1969 to the second quarter of 1970 was $6 billion below the increase expected when we made our projection for the year in January. This difference is largely accounted for by an unexpectedly sharp reduction in the rate of inventory accumulation. Final sales, *i.e.*, total expenditures less additions to inventories, have risen about $1 billion more than we had projected.

THE DECLINE OF REAL OUTPUT

A slowdown in the rise of real output was an inevitable part of the disinflationary process. The rate of inflation would not respond immediately to the slower growth of total expenditures, and this lag would adversely affect the rise of real output. Real output would move below its potential, but this would be essential as a part of altering the balance of market pressures against wage and price increases.

It was part of the strategy of policy that a sharp decline of output was to be avoided and that the gap between actual and potential output be kept small. The reason for this was to limit adverse effects on incomes, production, and employment, and to reduce the danger that the slowdown would set off a cumulative downward spiral. It was recognized that caution on that side implied some willingness to accept delay in seeing anti-inflationary results.

In fact, total production, as measured by the gross national product in constant dollars, has declined 0.9 percent from its peak in the third quarter of 1969 to the second quarter of 1970. For perspective, this may be compared with 3.2 percent in the corresponding period after the peak in 1953, 3.4 percent after 1957, and 1.3 percent after 1960.

Industrial production has declined 3.4 percent from its peak in July 1969 to June 1970. Industrial production is typically more variable than total output. The current decline of industrial production has also been smaller than the decline over an equal interval in postwar recessions.

We consider it important to note that real output showed no sign of a cumulative decline. The largest decline came in the first quarter and, according to preliminary estimates, total output was essentially unchanged in the second quarter. Industrial production continued to fall through June, but the percentage decline in June was less than in May or April.

In our Annual Report at the beginning of the year, we indicated our belief that total real output would be approximately level in the first half of 1970. Instead, the decline in the first quarter and leveling in the second quarter left second quarter output about 0.7 percent below the fourth quarter rate.

Employment and unemployment

The slowdown in the increases in demand and output have, of course, affected the employment and unemployment picture. By the end of the first half of 1970, total civilian employment, although one-half million greater than a year earlier, was one-half million less than in December 1969. We expected that the demand for labor would be weak in the first half when real output was edging down.

The unemployment rate increased markedly in the first half of 1970, from 3.6 percent in the fourth quarter of 1969 to 4.1 percent in the first quarter and to 4.8 percent in the second. The increase in unemployment during the first quarter was in part a consequence of an unusually rapid growth in the labor force. On a seasonally adjusted basis, the civilian labor force grew at a 5.9 percent annual rate from December to March, far in excess of its normal rate. However, some correction of this extraordinary growth occurred in the second quarter, when the labor force contracted. By June the labor force was only 2.0 percent above its level a year earlier, a growth rate much more in line with normal expectations.

At the beginning of 1970, we expected some increase in unemployment during the year. The greater than expected increase in unemployment was a result of several factors in addition to the very large increase in the labor force in the first part of the year. Output was more sluggish in the first half than we had expected, and employment growth was consequently weaker. In addition, strikes in the trucking industry, particularly in the Midwest, led to widespread temporary layoffs.

Cutbacks in the defense industry also contributed significantly to job loss, particularly among highly specialized workers in certain parts of the country. The extent of this and its economic implications are inadequately recognized. From the last quarter of 1968 to the second quarter of 1970, the annual rate of defense purchases, of goods and services, declined by about $13 billion in real terms (at mid-1970 prices). Further significant decline may be expected during the remainder of this year. As I pointed out earlier, the decline in defense production is undoubtedly larger than the decline in defense purchases because as defense orders fall more and more deliveries are made out of inventories rather than out of production. The armed forces have been reduced 423,000 from their peak, and employment in defense product industries has declined 320,000 over the past 2 years.

The unemployment problem normally associated with such a transition from defense to civilian production and employment comes on top of the unemployment problem associated with the ending of an inflation. In other circumstances, a stronger gen-

eral demand for labor might have existed or been created, which would have speeded up the absorption of former defense workers into other employment.

The number of persons counted as unemployed increased by 1,137,000 from June 1969 to June 1970. The common picture of this as meaning that 1,137,000 persons once permanently employed are now permanently unemployed is, of course, incorrect. In any year large numbers of people experience some unemployment, most of them for very short periods, such as four or five weeks or less. An increase of unemployment is almost always made up of some increase in the number of people experiencing unemployment and of some increase in the average duration of unemployment before a job is resumed. Although figures for 1970 will not be available until next year, both parts of this process are clearly going on now, and a large part of the increase of unemployment is due to a rather moderate increase in the median duration of unemployment, from 4.4 weeks in June 1969 to 5.1 weeks in June 1970. This is not, however, to belittle the grave problems that these developments have posed for those whose employment has been interrupted. I want to emphasize what I have stated in the past that so long as anyone is unable to find a job, we have unfinished business.

Prices and wages

At the start of the year we expected that the gap between the economy's actual and potential output would bring about conditions making for a slower price rise. With jobs harder to find, labor would find it more difficult to make the kind of wage bargains it had during periods of low unemployment. Businesses in turn, facing more competitive markets, would be less likely to grant large wage increases if they believed that it would be difficult to recover higher costs in the form of higher prices. Furthermore, business would take more vigorous steps to cut costs by eliminating the inefficiencies that had grown up over the long period of inflation. This change in behavior was not expected to come all at once; we could not expect to root out in a few months problems of an inflation of long standing.

Specific signs of progress in the fight against inflation are not as numerous as we had hoped but they are now emerging. They should increase in number as 1970 progresses because the gap between our actual and potential production will persist.

The most comprehensive measure of price increases, the GNP deflator, showed a clear-cut slowdown in the second quarter. The 4.2 percent increase was smaller than in any quarter of 1969 and approximately matched the annual increase from 1967 to 1968. This slowdown is good news for all of us even though the improvement was greatly influenced by changes in the composition of GNP. (Some of the earlier recorded increases in the deflator, of course, also reflected obverse shifts in composition).

We do have final figures on the wholesale price index and here there is unmistakable evidence of a slower rise in prices in the first half of 1970. From December to June, the WPI rose at a seasonally adjusted annual rate of 2.6 percent, which was well below the average quarterly gain of 1969. In the second quarter, the rise came to only 1 percent. All of the improvement this year as compared with 1969 has occurred in prices of farm products and processed foods. On a seasonally adjusted basis, the rise in industrial commodities is about the same as the quarterly average last year. However, the price rise for both producer and consumer (nonfood) finished goods has been smaller from December to June than it was from June to December, 1969.

Two further points should be made here. The decline in food prices is extremely important and should be reflected with the usual lag at the retail level. Second, there is some reason to believe that some price cutting is going on in industrial markets that is not being picked up in the official prices indexes, which tend to reflect list prices only.

Unfortunately, the declines at the wholesale level have yet to be felt at retail. We have no evidence as yet of a slowdown in the consumer price index. However, with more favorable movements in wholesale food prices and with some slowdown in wholesale prices of other consumer finished goods, some response at retail should be forthcoming.

Data for the first half of 1970 indicate that average wage increases for the whole economy have slowed down somewhat during this period. The annual rate of increase in average hourly earnings in all private industries from the fourth quarter of 1969 to the second quarter of 1970 was only 5.2 percent as compared with an increase of 6.3 percent in the corresponding quarters one year earlier. From the first to the second quarters of 1970, average hourly earnings increased at an annual rate of 6.5 percent, while the increase was 6.9 percent for the same period in 1969. The slowdown in the rate of increase appears to be related to the elimination of overtime and changes in industry mix.

Wage increases negotiated under major collective bargaining agreements have not slowed down in the first half of 1970. The highly publicized large collective bargaining settlements, however, can give a distorted view of overall wage developments. Although the calendar for these collective bargaining negotiations is heavy in 1970, only about 6 percent of the total labor force will be covered by settlements reached under major agreements. Furthermore, most of the extremely high settlements have been in construction and trucking, which partially reflect symptoms of continuing structural problems in these industries. The high settlements in construction, for example, appear to result in part from a combination of the rapid expansion of demand for nonresidential construction in the late 1960's and union limitations on entry to the industry.

The relationship between wages and prices depends heavily on the behavior of productivity, of output per man-hour. It is only when the recent pace of wage increases is combined with the absence of gains in productivity that we can understand the rapid increase of unit labor costs which has contributed to the persistance of inflation. For example, from the fourth quarter of 1968 to the first quarter of 1970, compensation per man-hour in the private nonfarm economy rose at the annual rate of 6.4 percent, but productivity actually declined at the annual rate of 0.8 percent, with the result that labor costs for unit of output rose at an annual rate of 7.2 percent. This, of course, had a great deal to do with the fact that prices of private nonfarm output rose at an annual rate of 4.9 percent in the same period.

Preliminary information for the second quarter of 1970 suggests that productivity began to rise again, and may have increased at the annual rate of as much as 3 percent. This in turn may be related to early evidence suggesting that profits were somewhat better in the second quarter that many had feared earlier. Whether or not that turns out to have been true, all the conditions seem present for a rise of productivity in the future.

Balance of payments

Our international transactions during the first half of 1970 have shown both favorable and unfavorable developments. On the favorable side there is a significant improvement in our current transactions. Our merchandise trade surplus, in particular, has shown a fairly steady increase from the low figures of late 1968 and early 1969. In 1968 our merchandise balance had declined to a monthly rate of only $70 million. In 1969 it was $105 million. And in the first five months of 1970 it was $226 million (seasonally adjusted).

Taking goods and services (including factor income) together, our exports for the second quarter of 1970 are provisionally estimated at a seasonally adjusted annual rate of $62.5 billion, or 23.5 percent above the average rate for 1968, and 12.6 percent above the average for 1969. Our imports of goods and services in the second quarter are tentatively put at $58.7 billion, or 22.0 percent above 1968 and 9.5 percent above 1969. The surplus on goods and services of $3.8 billion, if confirmed by later estimates, would be the largest since the end of 1967. This improvement is due in part to strong demand for our exports and a continued growth in income on investments abroad, and also to some slowdown in the growth of imports.

Developments have been less reassuring in our capital accounts. Second-quarter estimates will not be available for some months, but in the first quarter U.S. private long-term capital flowed out at a record rate. Despite controls on direct investment of U.S. corporations, there was a net outflow at a seasonally adjusted annual rate of $5.2 billion. Portfolio investment by U.S. residents was also at a high level, while the net inflow of foreign private capital was much less than in the years 1968 and 1969. There was a small reduction in U.S. Government grants and capital, to an annual rate of $3.3 billion.

The net result of these diverse developments in the current and the capital account was a liquidity deficit at an annual rate of $6.2 billion, including the first allocation of Special Drawing Rights at an annual rate of $0.9 billion. This is a large deficit by historical standards, though it was exceeded in the second and third quarter of 1969. The official settlements balance, again including SDR's, turned from a sizable surplus in 1969 to a large deficit of $11.4 billion in the first quarter of 1970, reflecting primarily the accumulation of dollars in the hands of foreign official institutions. Tentative indications suggest that the liquidity and official settlements deficits continued into the second quarter but at a significantly lower rate.

PROSPECTS FOR THE REMAINDER OF 1970

We have behind us a moderate decline in the real economy and the first signs of a decline in the rate of inflation.

What lies ahead?

With economy activity bottoming out in the second quarter of 1970, it is reasonable to expect a resumption of growth in real GNP in the second half, accompanies by a better price performance. As we stated in our Economic Report, the existence of slack in the economy means that increases in demand can be translated primarily into output increases rather than price increases. At the same time we are likely to experience a further moderate rise in unemployment rates over the average level that prevailed in the second quarter. The unemployment rate will start to level out and decline only after the recovery is vigorous enough to diminish the gap between actual and potential output.

At the start of 1970 it was recognized that in order for the economy to resume its expansion in the second half, it would be necessary to relax monetary policy at the beginning of the year. A change in monetary policy occurred around mid-winter. Growth of the money supply from December to June averaged 4.2 percent at an annual rate, as compared with 0.6 percent for the preceding half year.

In capital markets, the change in policy first produced easier credit conditions. Short-term interest rates declined sharply. Although U.S. Government and municipal bond yields also receded, corporate yields only leveled off and in May they began to rise again. With pessimism about profits and with a continuing need to refinance short-term indebtedness incurred in earlier months, corporate demand for long-term credit remained intense. Corporate bond issues, which had totaled $9.3 billion in the

first half of 1969 and $9.1 billion in the second, were $14.1 billion in the first half of 1970. However, the early weeks of July brought signs that these pressures have abated, and bond yields have backed down from the peaks of June.

At the turn of the year, deposit flows into savings institutions recovered dramatically from the severe decline of 1969. The net change in mortgage holdings of all financial institutions, which had fallen sharply after the middle of 1969, reached a low point in March and showed a definite improvement in April and May.

The increase in the money supply and improvement in credit market conditions should be felt throughout the economy but should be most noticeable in the case of homebuilding and State and local expenditures. There have already been some signs of an imminent upturn in homebuilding; building permits rose in April and May to their best levels in about a year. Housing starts rose sharply in June. A very considerable backlog demand for housing has built up as a result of the low volume of housing starts in the past several years, and the easing of credit ought to find a reasonably prompt response in housing starts.

Fiscal policy also became more expansive in the first half of 1970, and we have by no means felt all of the effects of this stimulus. That is suggested by the unusually high savings rate (7½ percent) in the second quarter, indicating that consumers have not yet fully adjusted outlays to increases in their after-tax incomes. Furthermore, starting in July, there was the complete elimination of the surtax as well as the increases in personal exemptions that were part of the Tax Reform and Relief Act of 1969. These provisions will add an estimated $5 billion to consumer disposable income in the third quarter. Altogether, the elimination of the surtax, the rise in Social Security benefits, the Federal pay raise and the reform and relief provisions of the tax law have added over $16 billion to consumer disposable income since the final quarter of 1969. We have already seen some positive results in consumer spending in the first half, and it is reasonable to expect more in the second as consumers adjust more fully to these income changes.

Federal expenditures are not likely to show much change over the current half year. Cutbacks in defense purchases will continue, offset by rising expenditures of other types.

Finally, plant and equipment outlays ought to be a little higher in the second half than in the first. This is not inconsistent with a further scaling back of the plans reported in the June Commerce-SEC survey. Inventory accumulation should also rise after unusually low figures of the past half-year.

When we put these figures together, they add to increases in real GNP of moderate size in the second half. This assumes no interruptions from major strikes, about which I have no special knowledge. We should also see for the first time a slower price rise at the consumer level. Prospects are particularly favorable for retail food prices to change relatively little in the second half because of larger supplies coming to market.

THE PROBLEM OF LIQUIDITY

The Chairman of the Committee requested that I comment on the liquidity problem. This is an important matter. It is a factor thought by some to cloud the prespect for economic revival and even to hold potential danger that a decline might resume.

A liquidity problem in the sense of disorganized financial markets clearly does not exist. If there were a generalized scramble for funds, interest rates, particularly short-term rates, would be rising sharply. In fact, they have been declining. Our banks are strong. Consumer credit is not out of line with incomes, and delinquency rates are well within the range of normal expectation.

Certain statistical measures of average liquidity have shown substantial declines. The ratio of quick assets (cash and U.S. Government securities) to current liabilities for nonfinancial corporations declined from 0.33 at the end of 1964 to 0.19 at the end of 1969, and to 0.18 in the first quarter of 1970. For manufacturing corporations in this five-year period, the decline was from 0.43 to 0.23. These declines seemed to come heavily in two spurts, one from 1964 to 1966 and the other from 1968 to date.

These declining measures of liquidity reflect many things. There has been a long-run trend toward holding smaller reserves of cash and marketable securities, as companies have been attracted by the increased profits obtainable from investing such funds in inventories and other forms of working assets. Modern techniques of short-term portfolio management have also encouraged this development.

LIQUIDITY RATIOS OF U.S. CORPORATIONS

Year (end of period)	Nonfinancial corporations [1]		Manufacturing corporations [2]	
	Current ratio [2]	Quick ratio [3]	Current ratio [2]	Quick ratio [3]
1964	1.84	0.33	2.39	0.43
1965	1.79	.29	2.27	.37
1966	1.74	.25	2.16	.30
1967	1.75	.24	2.20	.29
1968	1.72	.23	2.14	.28
1969	1.64	.19	2.01	.23
1970 (1st quarter)	1.63	.18	1.99	.21

Sources: F.T.C., S.E.C. Quarterly financial reports for manufacturing corporations, S.E.C. Statistical Bulletin.

[1] Excludes banks, insurance companies, and savings and loan associations.
[2] Total current assets divided by current liabilities.
[3] Cash plus Government securities divided by current liabilities.

In addition to these long-run trends, two further developments seemed to become more evident in recent years. Both were related to the persisting inflation that began to gather momentum in 1966. As the inflation persisted, and after 1967 accelerated, firms began to shift from cash and financial assets to inventories and physical capital assets. This was presumably a preventive measure reflecting fears about an erosion of the real value of assets from continuing inflation. In their endeavor to minimize this risk, some businesses may have come to give inadequate weight to the normal risks and contingencies for which quick assets and a strong current position are a part of prudent financial management.

Moreover, business capital demands were intense in 1969, as projected increases in outlays for plant and equipment rose to the 12–14 percent range, this is an economy capable of increasing real output by roughly 4 percent per year. There was in many of these capital budgets also a strong component of inflation-mindedness. These developments began to crowd against a flow of internal funds adversely affected by declining profits. Heavy demands were, therefore, thrown into credit markets also under growing pressure from restrictive monetary policies. Financial markets tightened and interest rates rose sharply. In the face of high bond yields and falling equity prices, many companies borrowed short-term funds last year with the intention of converting to long-term financing at a more opportune time later. This year many firms were faced with converting this short-term indebtedness into longer-term maturities. As a result, the demand for long-term funds continued to be intense this year, and the bond market has been forced to handle a tremendous volume of new issues. In the intense competition for funds, some borrowers have inevitably been squeezed out.

We are now engaged in a more detailed study of the liquidity problems of corporations and hope to be able to submit its results to this Committee soon. However, our study of this problem to date has led us to three main conclusions.

First, the financial institutions of the country are in sound condition and financial markets are working effectively. The ability of the banking system to meet demands upon it has been strengthened by accessibility of the Federal Reserve discount window and by the new ability of banks to attract funds through certificates of deposit.

Second, although the liquidity of nonfinancial corporations on the average has declined by almost any measure, it is only in quite exceptional cases that serious difficulties exist. These cases do not constitute a problem for the economy as a whole. At the same time we must be alert to these situations, and have the capability and will to handle them decisively, in order to minimize the danger of adverse secondary effects.

Third, the overall supply of liquidity, as measured by the supply of money and the availability of credit, is on the low side of what is needed, especially for a period which we expect to be the beginning of renewed economic expansion. Assurance of a sustained rise in the economy would be improved by more rapid strengthening of the economy's general liquidity position.

MANAGING A NONINFLATIONARY EXPANSION

There is strong and increasing basis for confidence that the decline of the economy is about over and that we will soon be seeing the signs of an upturn. While there is, as usual, disagreement about the precise dates and quantities involved, it is timely for us to look beyond the turn as such and explore the problems of managing an orderly recovery to full utilization of our productive capacity.

The word "managing" deserves emphasis. Having come this far along the road of reestablishing the basis for a more stable price level, we must resist the temptations of overly expansionist policies. There is too much viscosity in our economy for an immediate and dramatic rebound, and in trying to achieve this we would court the risk of reactivating inflationary pressures and inflationary fears.

At the same time we can now begin a more expansionist course for the economy and still continue to make progress against the inflation. Price developments in the period ahead will heavily reflect the emergence of slack in recent quarters. Price-making forces move slowly through the economy. We have already incubated disinflationary pressures whose results on the price level are still largely to come into the picture.

Moreover, even when the economy has turned the corner, we cannot assume an automatic return to full employment. In 1958 the economy began a strong recovery from its low point, but that did not continue long enough to eliminate its slack. The 1960–61 recession was the mildest of postwar history, but four years after its low point the unemployment rate was still 5 percent, and another year was required to achieve 4 percent. Certainly our goal must be to regain full employment more promptly this time.

We must begin now to think in terms of the magnitudes that will be required in the period ahead. They are large. Potential real output rises by at least 4 percent per year as a result of the growing labor force and the various factors that increase productivity. In addition to this we now have some arrearages to make up in a reasonable period. Total output was probably running about 4 percent below its potential, in the second quarter of 1970, as conventionally defined; that is, it was about 4 percent below the output we would have produced if unemployment had been 4 percent and productivity had been on its long-term trend. And the price level in the period ahead will have some upward drift even though the inflation con-

tinues to decelerate. Therefore, the rates of increase of money GNP required for recovery to full employment will be somewhat higher than the needed rates of increase of real output alone. These figures suggest that even for the economy to move along an essentially noninflationary growth path, needed rates of growth in the money demand for output must be large.

Such rates of increase of total output would also involve unusually large increases in productivity—in output per man hour. The possibility of achieving a large increase of productivity is implicit in the estimate that, while employment in the second quarter of 1970 was roughly 1 percentage point below full employment, real output was 4 percent below potential. A rapid increase of productivity has been our normal experience when the economy was in the early stages of recovery from a slowdown, and there is no reason why it should not occur now.

The rapid rise of productivity would, of course, make a substantial contribution to the reduction of inflation, reversing a factor which has been making a major contribution to the continuation of inflation. If productivity should now rise for a time at the rate of 4 or even 5 percent, which is not impossible, the rise of unit labor costs would be dramatically reduced, and so would cost pressures on the price level.

In the management of fiscal and monetary policy it will be essential to keep in mind that a rate of expansion which is appropriate if we are moving along the path of reasonably full employment is not adequate when we begin from a position substantially below that path. This is doubly important when we bear in mind that it is also an economy needing some strengthening of its liquidity condition.

The problem of fiscal management in the period ahead is particularly complex. The basic task of fiscal policy is always to assure that we make provision for the most important national needs which should be met through the Federal budget and that resources and finance are left available for those important public and private needs that must be met outside the Federal budget. The overwhelming requirements of this task, and of the political process through which it is performed, leave little room for flexible variation of the budget to meet changing requirements of economic stabilization. In fact, as experience demonstrates, just to keep the budget from being a destabilizing force in the system is difficult.

Probably the basic contribution fiscal policy can make to the orderly and expeditious recovery of the economy is that it should not place upon either monetary policy or on private market forces the need to adapt to sharp changes of conditions. We should achieve at least a balance and hopefully a moderate surplus in the budget when the economy regains full employment, because after this present multifaceted transition the demand for captal to finance housing, State and local investments, and business investment will be high, and a strong budget will help to meet those demands. The transition from today's deficit to the desired full-employment balance or surplus should be made smoothly as the economy rises to its potential. Particularly we should avoid falling off this path into significantly larger deficits. One of the most serious consequences of such a development would be to interrupt the emergent recovery of housing.

The recovery of the economy added to its normal growth will greatly increase the revenue-yielding base. But what is truly amazing is the extent to which this increase is already committed, by tax reductions scheduled under the 1969 Act and by a seemingly irresistible flood of expenditure increases built into existing legislation. The dominant, persistent budgetary problem of our time will be to hold expenditures in line with what the people are willing to pay for. We cannot afford to be diverted from that task.

The Administration relies basically on the combination of fiscal and monetary policy, with the spontaneous adaptive forces of the private economy, to move us along the path to full employment with less inflation. Still we have been anxious, as any Administration would be, to find supplementary measures that would really help to speed the disinflationary process. To this purpose we began considering in March, 1969 a wide rang of possible actions falling within the category loosely called price-wage policy of incomes policy. We have not lacked suggestions in this area.

Our objective was to isolate those elements of such possible actions that held promise of success. In this consideration, it was necessary to get behind the labels pinned on policies to discover what they really consisted of and were likely to perform. The conclusion of considerable study and discussion within the Administration was that the following steps would be useful:

1. To mount a major cooperative effort of the private sector and the government to increase productivity.

2. To provide a forum within which leaders of the private sector and of the government can discuss the requirements of a stable and growing economy.

3. To provide the public with more information about the consequences for the course of the inflation of private wage and price decisions.

4. To assure that in the exercise of the Federal Government's procurement and regulatory functions more weight be given to the objective of restraining inflation.

The President announced in his address on June 17 that these steps would be taken. Since then we have been engaged in putting them into effect. A National Commission on Productivity has been established. It will hold its first meeting on August 6. At that time the Council of Economic Advisers will submit to the Commission its first Inflation Alert, outlining the consequences of major price and wage decisions for changes in the price level. A Regulations and Purchasing Review Board has also been established to determine where these Federal activities tend to drive up prices, and this Board is now also functioning.

These measures have been carefully chosen. They are an effort to assure that, within the logic of a free economy, we leave nothing undone to assist the country through the difficult transition we must now make. We will pursue this effort as diligently as possible and are hopeful it will make a contribution.

CUSHIONING ADJUSTMENT HARDSHIPS

During this period of transition we need measures to cushion the adverse effects of adjustment. The unemployment insurance system has been a support to hundreds of thousands of workers during interruptions of employment. Last year the Administration proposed legislation that would have extended unemployment insurance coverage to millions of workers now uncovered, and improved the system in other respects. It is to be hoped that this can soon become legislation.

The Administration has also proposed an automatic increase of 10 percent in funds allocated to manpower training programs when the unemployment rate rises above 4.5 percent for 3 consecutive months. Had this legislation been enacted, this increase would already have taken effect. Unemployed workers could take advantage of these increased opportunities for training and upgrading of skill levels during interruptions of employment. Higher skill levels of the work force have been an important source of productivity growth, and the increased training opportunities under the Manpower Training Act would enable these workers to obtain better jobs and lay the basis for future improvements in their earnings capacity and in national productivity.

CONCLUSION

This review of recent economic developments, evidence about our prospects, and the implications of these for the management of economic policies has led me to four major conclusions.

First, the adjustment of the economy to needed measures of disinflation though painful has produced no cumulative decline in business activity. In overall terms it has established itself as discernibly less severe than the 1960–61 decline, which itself was the mildest recession of the postwar period.

Second, an evaluation of basic forces which will be shaping the course of the economy in the period ahead leads to cautious optimism about an improvement in business conditions during the second half of the year.

Third, in our understandable desire to regain full employment promptly, we must not undo the substantial progress that has been made in establishing the basis for a more stable price level.

Fourth, mindful of the need to move in an orderly way, we must now face up to managing the resumption of an expansion that in a reasonable period can bring the economy back to the zone of full employment. The magnitudes are large because the basic capacity of the economy is growing rapidly, we set out on the return to full employment from a position that is below the basic path, and some strengthening of the economy's liquidity resources commends itself now as a prudent consideration of policy.

MEN ON THE MOON—1 YEAR LATER

Mr. GRIFFIN. Mr. President, 1 year ago, Astronauts Neil Armstrong and Edwin Aldrin made man's first landing on the surface of the moon.

As we all recall, this was a moment of great national pride and elation. We remained by our television sets and rejoiced as Neil Armstrong took man's first steps on the moon.

And now, 1 year later, what is the Nation's attitude? In today's edition, the Washington Daily News has some pertinent observations on that score and I ask unanimous consent that its editorial be printed at this point in the RECORD.

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

THE FIRST MOON MEN

Outside of a few modest celebrations like the one today in Jefferson City, Mo., the first anniversary of man's landing on the moon will be largely ignored by most Americans.

This must seem incredible to anyone who remembers the national elation on the night of July 20, 1969, when astronaut Neil Armstrong and Edwin Aldrin planted the stars and stripes on the lunar surface.

But times have changed—and the Apollo program is not the popular darling it used to be.

There have been two moon missions since Apollo 11, one successful and the other ending in near-tragedy three months ago. The next flight has been delayed at least until January to correct the defects that plagued Apollo 13.

Meanwhile, in the past year, cuts in the Apollo budget have eliminated 7000 jobs at the Kennedy Space Center in Florida. And the U.S. Senate came very close this month to chopping even more millions from the already truncated $3.3 billion space budget for 1970–71.

In short, the nation seems to be going

from one extreme to another—from lunar bliss to lunar boredom.

This is unfortunate for several reasons, one of which is that the quest for scientific excellence is not something that should be turned on or off at the whim of the moment.

The exploration of space must be continued—not just for the national pride involved, but for the benefits that knowledge can bring.

Neil Armstrong called it "one giant leap for mankind." Or have we forgotten so soon?

Mr. GRIFFIN. Mr. President, most Americans, including this one, believe there must be a reordering of our national priorities. But at the same time it is important to recognize that scientific excellence such as that developed in the space program is "not something that should be turned on or off at the whim of the moment."

Mr. President in the midst of changing attitudes in this country my attention has been called to another editorial which appeared in the July—and final—issue of Armed Forces Management magazine—a publication which has been suspended after 16 years.

One need not agree with all the conclusions in that editorial to recognize that it presents a thoughtful assessment of some of the changes in attitude taking place. I ask unanimous consent that this editorial also printed in the RECORD.

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

THIRTY

To a newsman, "thirty" means the end of a story, and this is, indeed, the end of Armed Forces Management's story. After sixteen years, AFM will suspend publication with this issue. So, too, will another Ziff-Davis publication Space/Astronautics magazine.

For reasons best left to a businessman to explain rather than an editor, it would take a bit of a miracle in the trade publishing field to reverse those decisions. But at the root of such a miracle would have to be a substantial shift away from the antimilitary mood that has so heavily infected this country in recent years. There is no such shift anywhere in sight.

The demise of these two privately owned publications leaves only one major, independent trade magazine—as opposed to those sponsored by special interest groups or service associations—to cover continually, and hopefully objectively, an industrial and governmental complex of vital importance to this nation. Though business in defense and aerospace publishing has probably never been worse, the need for solid, objective reportage, analysis and commentary in this field has never been greater.

To be sure, the disappearance of two more magazines will cause no more than a tiny ripple in the already troubled waters of the defense establishment. It does, however, at least provide a moment to reflect upon a malaise which has caught hold in this sector or national affairs and which seemingly will continue to spread unchecked. A feeling grows, almost daily, that the nation's defense and aerospace establishment—the uniformed military, the civilian government workers, the industrial managers and metal workers—is being more than just trimmed. Dismantled. Both physically and mentally, may turn out to be a better description.

For more than 150,000 engineers, technicians and laborers who chose to sail on Jack Kennedy's "new ocean" of space, the journey has ended with a "For Sale" sign on their small patch of grass at Cape Kennedy, or Huntington Beach, or a dozen other places. That sign is usually about 25 yards from their neighbor's sign. For additional hundreds of thousands of those uncomplicated souls who believed the service recruitment posters, or the government's drive to bring fresh talent into public service, or whose conscience didn't seem to be upset by work in a defense plant, there suddenly is not much left but a dozen years of nontransferable experience.

Actually, there is not much disagreement, even within the highest levels of the military-industrial complex, that the U.S. defense establishment had grown too large, that costs in some cases had gotten out of hand, that we were stretched too thin militarily, that some reordering of American priorities was badly needed. Nor was there much surprise among the spaceniks that landing men on the moon was going to be an extremely tough act to follow.

But what gnaws on those who are concerned not just about jobs or advertising is the feeling that a steamroller—a crushing yet imprecise tool—has bullied its way into the operating room; that while the nation's defense and technology have not yet become inferior, traditional national attitudes in both areas are giving way to weariness and unreason and that we are now merely passing through a point on the way down where we cannot yet prove that we are in any real danger.

What we can prove, or at least infer, is that the intensity of our soul-searching and demand for change is unmatched among our most important military and technological rivals;

That an aerospace industry which had become the nation's largest manufacturing employer just a few years ago now has some 500,000 people out of work;

That pride in uniform and in military career is badly and unfairly eroded; that a soldier home on leave or an ROTC cadet on summer recess can count on little acceptance from his contemporaries;

That the far-sighted attitude toward investment in advanced technology that nurtured the great economic surge of the Sixties and which kept the U.S. balance of payments from going completely out of whack is now at the mercy of short-term gain seekers;

That some of our most important institutions—MIT's Instrumentation Lab, Stanford's Electronics Lab and the Bell Telephone Laboratory, for example, each with vital defense skills that remain unduplicated elsewhere, are all too easily being forced out of contributing to national security;

That dozens of defense contractors face grim and immediate financial pressures while the question of where the fault and responsibility lies, in-house or with the customer, remains unanswered; and

That honorable and productive corporations who see nothing immoral about producing defense material are being forced to hold stockholder meetings behind police barricades.

Even as hopeful a sign as a national movement to clean our environment is infected with sizable doses of irrationality and political opportunism aimed at blindly tipping over segments of industry.

Sour grapes? Perhaps. But it is not within this reporter's admittedly short memory, nor reflected in the notes of interviews with older, wiser men, that so few traditionally optimistic citizens could look ahead as they have always done with that feeling of certainty that the future would always bring a wiser and stronger America.

S. 4101—INTRODUCTION OF THE FEDERAL CHILD CARE CORPORATION ACT

Mr. LONG. Mr. President, there is probably no parent in this country who has not felt at one time or another the need to have in his community a trusted resource for helping him find adequate care for a child, either on a temporary or a long-range basis. And yet, despite this almost universal need, our society has not produced any mechanism, either private or public, which can respond to more than a very small portion of the demand.

The result is that both families and children are being hurt. Mothers who want and need employment or study are often either unable to undertake them, or are forced to rely on inadequate child care arrangements. Children who would benefit greatly from good child care are often being damaged by poor care or no care at all.

The need for child care resources is great and is growing, and it reflects the increasing participation of mothers in our Nation's labor force. The number of working mothers has increased more than seven times since 1940, and has more than doubled since 1950. There are, at the present time, approximately 13 million women with children under age 18 who are in the labor force. More than four million of these women have children under age 6.

Furthermore, the number of women workers is expected to grow rapidly in the years to come, and in fact is expected to increase faster than the number of men workers. It is estimated that by 1980, the labor force will include more than 5 million mothers between the ages of 20 and 44 who have children under age 5. This would represent an increase of more than 40 percent in the number of such mothers just over the next decade.

We know that at the present time there are many mothers who would be working if they could arrange adequate care for their children. This is as true of mothers in low-income families as it is of middle-class mothers. A recent study of welfare mothers in New York City showed that seven out of 10 would prefer to work if they could find care for their children. Similarly, studies and statistics relating to the work incentive program for recipients of aid to families with dependent children have shown that lack of child care is a major impediment preventing mothers from participating in employment and training programs.

The facts and figures document the very great demand by parents at all economic levels for child care resources. Unfortunately, we can also document the very poor supply of resources available to meet this demand.

Recent statistics indicate that licensed child care facilities today can accommodate only between 600,000 and 700,000 children. This is, of course, only a fraction of the children who now need child care services.

Perhaps even more serious is the fact that in spite of greatly increased willingness to pay for child care services by both governmental institutions and by private individuals, the supply of child care services is not increasing rapidly. In 1967, when the Congress established the work incentive program, we authorized unlimited Federal matching funds for child care for mothers in work and training. Despite a Federal appropriation of $25 million in fiscal year 1969, only $4 million was actually used to purchase child care. A major reason for

this failure to utilize the funds available was the lack of administrative organization, initiative and know-how to create and provide child care services, as well as barriers at the local level through licensing and other requirements. In other words, the present method of simply providing matching funds to the States and hoping that child care will become available is not working. It is not resulting in the necessary increase in supply.

The States themselves have had very limited resources to devote to child care, and for many of them child care services have been given a low priority. A number of State governments are simply not staffed to handle child care services, even on a minor scale. Many States which have established licensing requirements do not have the staff to constructively help organizations wishing to establish child care facilities to meet the licensing requirements.

In very few instances is there strong State initiative in promoting the development of child care resources. Private voluntary organizations will never be capable of meeting the magnitude of need for child care services, however admirable a job they are able to do in individual instances. Local governments have shown themselves generally to be incapable of providing leadership in this area, and in many cases, unnecessarily restrictive and complex local ordinances make it difficult for any group to establish a licensed child care facility.

Private enterprise has begun to move into the gap, and in some areas is doing an excellent job in providing needed child care. On its own, however, we cannot expect private enterprise to do the whole job of organizing and providing a wide range of child care services wherever they are needed in the Nation.

In my view, Mr. President, we need a new mechanism in facing this problem, a single organization which has both the responsibility and the capability of meeting this Nation's child care needs. It must be an organization which has the welfare of families and children at the forefront, an organization which, though national in scope, will be able to respond to individual needs and desires on the local level. It must be an organization which will be able both to make use of the child care resources which now exist and to promote the creation of new resources. It must be able to utilize the efforts of governmental agencies, private voluntary organizations, and private enterprise.

The new Federal Child Care Corporation, which would be created under the bill I am introducing today, would be such an organization.

The creation of the Corporation would represent a new milestone in the concern of the Congress and of the Committee on Finance in the field of child care services. The Committee on Finance, on which I have had the privilege of serving for 18 years, has long been involved in issues relating to child care. The Committee on Finance has been dealing with child care as a segment of the child welfare program of the Social Security Act since the original enactment of the legislation in 1935. Over the years, authorizations for child welfare funds were increased in legislation acted on by the committee.

A new emphasis began with the Public Welfare Amendments of 1962, in which the committee placed increased stress on child care services through a specific earmarking of child welfare funds for the provision of child care for working mothers. In the 1967 Social Security Amendments, the committee made what it believed to be a monumental commitment to the expansion of child care services as part of the work incentive program. Although our legislative hopes have not been met, and much less child care has been provided than we anticipated, it is a fact that child care provided under the Social Security Act constitutes the major Federal support for the care of children of working parents today. Through its support of child welfare legislation and programs, the committee has shown its interest, too, in the quality of care which children receive. Yet, despite our concern, child care services are so inadequate today that we are allowing children to be without child care services altogether, or to suffer the consequences of substandard care. We know of the existence of latchkey children, who have no supervision whatsoever. We know also of the existence of child care programs which do not even provide custodial care of adequate quality, much less the kind of care we would like to have to meet the child's individual needs for healthy development.

The bill I am introducing today would change this situation. Mr. President, I would like to outline how the bill would meet our national need for adequate child care services.

The bill would establish a new Federal Child Care Corporation. The basic goal of the Corporation would be to arrange for making child care services available throughout the Nation to the extent they are needed.

To provide the Corporation with initial working capital, the Secretary of the Treasury would be required to lend the Corporation one-half billion dollars, to be placed in a revolving fund. With these funds the Corporation would begin arranging for day care services. Initially, the Corporation would contract with existing public, nonprofit private, or proprietary facilities providing child care services. The Corporation would also provide technical assistance and advice to groups and organizations interested in setting up day care facilities under contractual relationship with the Corporation. In addition, the Corporation would provide child care services directly in its own facilities.

The Corporation would charge fees for all child care services provided or arranged for; these fees would go into the revolving fund to provide capital for further expansion of child care services. The fees would have to be set at a reasonable level so that parents desiring to purchase child care can afford them; but the fees would have to be high enough to fully cover the Corporation's costs in arranging for the care.

If after its first 2 years the Corporation felt it needed funds for capital investment in the construction of new child care facilities or the remodeling of old ones, it would be authorized to issue bonds backed by its future fee collections. Up to $50 million in bonds could be issued each year beginning with the third year after the Corporation's establishment, with an overall limit of $250 million on bonds outstanding.

Mr. President, my bill is carefully designed so that the Corporation's operation's and capital expenditures over the long run would not cost the taxpayers a penny. The Corporation would pay interest on the initial $500 million loan from the Treasury, interest which each year would match the average interest paid by the Treasury on its borrowings. The Corporation would further be required to amortize the loan over a 50-year period by paying back principal at the rate of $10 million annually. Finally, the Corporation's capital bonds would be sold directly to the public and would not be guaranteed by the Government, but only by the future revenues of the Corporation.

From the standpoint of parents, the Corporation would provide a convenient source of all kinds of child care services, at reasonable fees. Like the Social Security Administration, the Corporation would maintain offices in all larger communities of the Nation, where parents desiring child care services would be able to obtain them through the Corporation either directly in Corporation facilities or in facilities under contract with the Corporation. In either case, the parents could be confident that the child care services were under the supervision of the Corporation and met the standards set forth in the bill.

The bill would require the Corporation to make available a wide variety of child care services, some already well known and some unavailable in most places today. For example:

Parents primarily interested in an intensive educational experience for their preschool age children would be able to send their children to nursery schools, kindergartens (where these are not already provided by the school system), or child development centers such as those under the Headstart program.

Parents seeking full-day child care in a facility offering a balanced program of education and recreation for preschool-age children would be able to send their children to a child care center.

Parents wishing to have their preschool-age child cared for in a home setting among a small group of children under the supervision of a trained adult would be able to select a family day care home.

Parents of school-age children would be able to choose a facility whose hours and programs were patterned to complement the child's day in school. School-age child care could take the form of a recreational program run by the school itself, or it could be offered, like preschool-age child care, in a center or under trained adult supervision in a home.

Parents seeking child care during the summer vacation would be able to send their children to day camps or summer camps.

The Corporation would be required to establish temporary or drop-in child care facilities for the parent who requires child care services from time to time while taking courses at a school or university, shopping, or otherwise engaged.

The Corporation would be required to arrange for at-home child care, or babysitting. This would enable a parent to continue at work if the child became sick or had a brief school vacation. It would also assure the parent of the availability of babysitting during the day as well as in the evening when the parent was absent.

Parents requiring child care services regularly at night would be able to send them to night care facilities, primarily designed to care for the child during sleeping hours. Nurses, maintenance staff, and persons in other nighttime jobs now find it almost impossible to arrange for child care services while they work.

Parents requiring care for their children 24 hours a day for less than a month would be able to arrange for the care at a boarding facility. This kind of facility, which could be a summer camp, would provide care if the parents planned to be away for a weekend or for a vacation. If a welfare agency were purchasing care on the child's behalf, provision could be made for a disadvantaged child in a city to be sent to summer camp.

Now, Mr. President, let me turn to the major issue of improving the quality of child care services. As I have already pointed out, of the millions of children who are not cared for by their parents during the day, well under 1 million receive care in licensed child care facilities. One of the major goals of my bill is to insure that the facilities providing care under the Corporation's auspices meet national child care quality standards which are set forth in the bill.

Just recently, Dr. Edward Zigler, the new head of the Office of Child Development in the Department of Health, Education, and Welfare, was before the Committee on Finance for hearings on his confirmation. I asked Dr. Zigler if he agreed that it was unnecessarily difficult to set up a licensed child care facility in a large city. Dr. Zigler replied:

I think it is probably true that there have been so many demands placed on both profit and non-profit groups that in certain instances it is becoming ridiculous because there is overlapping responsibility on the part of local people, State people, and so forth. I think if we are serious about setting up a worthwhile social institution such as day care for working mothers we may have to develop guidelines at a national level which would have some nationwide application. It would be a standard process because now it is too difficult and it is too rigid, and I am very much afraid the professionals have overdone themselves here. They have bent so far backwards in protecting the physical welfare at the expense of psychological well-being that I do not find myself in great sympathy with some of the statutes.

As Dr. Zigler points out, overly rigid licensing requirements in general have relegated children to unsupervised and unlicensed care, if indeed any care, while their parents work.

The problem is highlighted in a recent report entitled "Day Care Centers—The Case for Prompt Expansion," which explains why day care facilities and programs in New York City have lagged greatly behind the demand for them:

The City's Health Code governs all aspects of day care center operations and activities. Few sections of the Code are more detailed and complex than those which set forth standards for day care centers. The applicable sections are extremely detailed, contain over 7,000 words of text and an equal volume of footnotes, and stretch over two articles and twenty printed pages.

The provisions of the City's Health Code that apply to day care center facilities constitute the greatest single obstacle to development of new day care center facilities. The highly detailed, and sometimes very difficult-to-meet, specifications for day care facilities inhibit the development of new facilities. Obviously there must be certain minimum fire, health, and safety standards for the protection of children in day care centers. The provisions of the Health Code go far beyond this point. Indeed, some sections of the Code are a welter of complex detail that encourages inflexibility in interpretation and discourage compliance.

Section 45. 11(1) of the Health Code, for example, reads: "Toilets shall be provided convenient to playrooms, classrooms and dormitories and the number of such toilets shall be prescribed by section 47.13 for a day care service, 49.07 for a school, or 51.09 for a children's institution. In a lavatory for boys six years of age and over, urinals may be substituted for not more than one-third of the number of toilets required. When such substitution is made, one urinal shall replace one toilet so that the total number of toilets and urinals shall in no case be less than the number of required toilets. Toilets and urinals shall be of such height and size as to be usable by the children without assistance."

Subsection 6 of Section 45.11 of the Health Code is another example. It prescribes lighting standards for day care centers, as follows:

(1) Fifty foot candles of light in drafting, typing, or sewing rooms and in all classrooms used for partially sighted children;

(2) Thirty foot candles of light in all other classrooms, study halls or libraries;

(3) Twenty foot candles of light in recreation rooms;

(4) Ten foot candles of light in auditoriums, cafeterias, locker rooms, washrooms, corridors containing lockers; and

(5) Five foot candles of light in open corridors and store rooms.

Legally, only those centers that conform to the Health Code may be licensed. Faced with Health Code requirements of such detail, personnel of the Divisions concerned in the Department of Health and in the Department of Social Services have had to choose between considering the regulations as prerequisites to the licensing of new day care centers or merely as goals toward which to work.

In general, the choice is made in favor of strict interpretation notwithstanding the fact that this severely handicaps the efforts of groups attempting to form centers in substandard areas.

My bill clearly sets forth standards requiring child care facilities to have adequate space, adequate staffing, and adequate health requirements. The bill avoids overly rigid requirements, so as to allow the Corporation the maximum amount of discretion in evaluating the suitability of an individual facility. The Corporation would have to assure the adequacy of each facility in the context of its location, the type of care provided by the facility, and the age group served by it.

I am concerned that we assure the physical safety of child care facilities. The bill therefore requires that facilities meet the Life Safety Code of the National Fire Protection Association. Today, millions of children are cared for somehow, while their parents work, in unlicensed facilities whose safety is simply unknown. The bill will assure that children receive child care in safe buildings.

Any facility in which child care was provided by the Corporation, whether directly or under contract, would have to meet the Federal standards in the law, but they would not be subject to any licensing or other requirements imposed by States or localities. This provision would make it possible for many groups and organizations to establish child care facilities under contract with the Corporation where they cannot now do so because of overly rigid State and local requirements. From the standpoint of the group or individual wishing to establish the facility, this provision would end an administrative nightmare. Today, it can take months to obtain a license for even a perfect child care facility, by the time clearance is obtained from agency after agency at the local level. Under the bill, persons and groups wishing to establish a child care care facility would be able to obtain technical assistance from the Corporation; they would have to meet the Federal standards and they would have to be willing to accept children whose fees were partially or wholly paid from Federal funds, in order to contract with the Corporation.

In summary, Mr. President, my bill would accomplish the following goals:

It would greatly expand the availability of child care services all over the Nation while utilizing suitable facilities now available.

It would make available many different kinds of child care.

It would improve the quality of care for those millions of children who do not now receive care in any kind of licensed facility.

It would enable the establishment of child care facilities by many groups and organizations who are now hampered in their efforts to do so.

Mr. President, it would be my hope that persons and organizations interested in child care would study the bill and present their views to the Committee on Finance at the same time as they testify or submit their views on the Family Assistance Act.

I may say, Mr. President, that while this is offered on behalf of myself as a bill, to bear its own number, it is my intention to offer it as an amendment to the Family Assistance Act, because it seems to me that this is an essential part of any work-fare bill. When we expect to ask mothers to help themselves by going to work, someone has to take care of their children while they are working. Because of the almost complete failure of the Federal Government to effectively use the money the Congress has appropriated for child care in the past, there is little hope that sufficient child care will be provided

unless something along the lines I am suggesting is done.

I envisage the measure I am introducing today as an essential improvement for the rather defective and deficient welfare bill which is presently in the Finance Committee and on which we resume hearings tomorrow.

I am aware of the fact that earlier today the Senator from Georgia (Mr. TALMADGE) introduced a significant amendment relating to the work incentive program. While I do not pass judgment on the Senator's suggestions at this time, there is no doubt that amendments along that line designed to strengthen the work incentive phases of that measure are an absolute must if we are to enact a workfare bill instead of a welfare bill. Tomorrow we expect to show the Secretary of Health, Education, and Welfare some very serious defects in the administration revision of the family assistance bill when he appears before the Committee on Finance. But the committee is not simply trying to throw sand in his eyes; we want to work with him in proposing a bill that meets the national interest and advances a solution for national needs.

The concern of the committee is not so much the cost of the bill, which would exceed $4 billion a year in additional Federal spending. Our concern is to see that the Federal Government receives value for the investment in terms of helping people to become independent. If we are able to assure that the $4 billion is a very good investment of Federal funds, this Senator will enthusiastically support a measure that might cost that much money. But the Senator from Louisiana, along with the majority of those on the Finance Committee, is very reluctant to support anything so costly as the proposal presently before the committee unless we have some indication that it will amount to an efficient and effective investment to advance national interests.

I ask unanimous consent that the bill I have just introduced be referred to the Committee on Finance and that it be printed in the RECORD.

The PRESIDING OFFICER (Mr. GRIFFIN). Without objection, the bill will be received and referred to the Committee on Finance; and, without objection, the bill will be printed in the RECORD.

The bill (S. 4101) to add a new title XX to the Social Security Act to establish a Federal Child Care Corporation which will have the responsibility and authority to meet the Nation's needs for adequate child care services introduced by Mr. LONG, was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

S. 4101

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Child Care Corporation Act".

AMENDMENTS TO SOCIAL SECURITY ACT

SEC. 2. (a) The Social Security Act is amended by adding after title XIX thereof the following new title:

"TITLE XX—PROVISION OF CHILD CARE SERVICES

"FINDINGS AND DECLARATION OF PURPOSE

"SEC. 2001. (a) The Congress finds and declares that—

"(1) the present lack of adequate child care services is detrimental to the welfare of families and children in that it limits opportunities of parents for employment or self-improvement, and often results in inadequate care arrangements for children whose parents are unable to find appropriate care for them;

"(2) low income families and dependent families are severely handicapped in their efforts to attain or maintain economic independence by the unavailability of adequate child care services;

"(3) many other families, especially those in which the mother is employed, have need for child care services, either on a regular basis or from time to time; and

"(4) there is presently no agency or organization, public or private, which can assume the responsibility of meeting the Nation's needs for adequate child care services.

"(b) It is therefore the purpose of this title to promote the availability of adequate child care services throughout the Nation by providing for the establishment of a Federal Child Care Corporation which shall have the responsibility and authority to meet the Nation's needs for adequate child care services, and which, in meeting such needs, will give special consideration to the needs for such services by families in which the mother is employed or preparing for employment, and will promote the well-being of all children by assuring that the child care services provided will be appropriate to the particular needs of the individuals receiving such services.

"ESTABLISHMENT AND ORGANIZATION OF CORPORATION

"SEC. 2002. (a) In order to carry out the purposes of this title, there is hereby created a body corporate to be known as the 'Federal Child Care Corporation' (hereinafter in this title referred to as the 'Corporation').

"(b) (1) The powers and duties of the Corporation shall be vested in a Board of Directors (hereinafter in this title referred to as the 'Board').

"(2) The Board shall consist of 3 members, to be appointed by the President, by and with the advice and consent of the Senate. One member of the Board shall, at the time of his appointment, be designated by the President as Chairman of the Board.

"(3) Not more than 2 members of the Board shall be members of the same political party.

"(4) Each member of the Board shall hold office for a term of 3 years, except that any member appointed to fill a vacancy which occurs prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and except that the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, one on June 30, 1972, one on June 30, 1973, and one on June 30, 1974.

"(c) Vacancies in the Board shall not impair the powers of the remaining members of the Board to exercise the powers vested in, and carry out the duties imposed upon the Corporation.

"(d) Each member of the Board shall, during his tenure in office, devote himself to the work of the Corporation and shall not during such tenure, engage in any other business or employment.

"(e) (1) The Board shall have the power to appoint (in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service) and fix the compensation (in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates) such personnel as it deems necessary to enable the Corporation to carry out its functions under this title.

"(2) The Board is authorized to obtain the services of experts and consultants on a temporary of intermittent basis in accordance with the provisions of section 3109 of title 5, United States Code, but at rates for individuals not to exceed the per diem equivalent of the rate authorized for GS–18 by section 5332 of such title.

"DUTIES OF CORPORATION

"SEC. 2003. (a) It shall be the duty and function of the Corporation to meet, to the maximum extent economically feasible, the needs of the Nation for child care services.

"(b) (1) In carrying out such duty and function, the Corporation shall, through utilization of existing facilities for child care and otherwise, provide (or arrange for the provision of) child care service in the various communities of each State. Such child care services shall include the various types of care included in the term 'child care services' (as defined in section 2018(b)) to the extent that the needs of the various communities may require.

"(2) The Corporation shall charge and collect a reasonable fee for the child care services provided by it (whether directly or through arrangements with others). The fee so charged for any particular type of child care services provided in any facility shall be uniform for all children receiving such type of services in such facility. Any such fee so charged may be paid in whole or in part by any person (including any public agency) which agrees to pay such fee or a part thereof.

"(3) The Corporation shall not enter into any arrangement with any person under which the facilities or services of such person will be utilized by the Corporation to provide child care services unless such person agrees to accept payment of all or any part of the fee imposed for such services from any public agency which shall agree to pay such fee or a part thereof from Federal funds.

"(c) In providing child care services in the various communities of the Nation, the Corporation shall accord first priority to the needs for child care services of families on behalf of whom child care services will be paid in whole or in part from funds appropriated to carry out title IV and who are in need of such services to enable a member thereof to accept or continue in employment or participate in training to prepare such member for employment.

"STANDARDS FOR CHILD CARE

"SEC. 2004. (a) The Corporation shall not provide or arrange for the provision of child care of any type or in any facility unless the applicable requirements set forth in the succeeding provisions of this section are met with respect to such care and the facility in which such care is offered.

"(b) (1) The ratio of the number of children receiving child care to the number of qualified staff members providing such care shall not normally be greater than—

"(A) 8 to 1, in case such care is provided in a home child care facility; or

"(B) 10 to 1, in case such care is provided in a day nursery facility, nursery school, child development center, play group facility, or preschool child care center.

"(2) In the case of any facility (other than a facility to which pargaraph (1) is applicable) the ratio of the number of children receiving child care therein to the number of qualified staff members providing such care shall not be greater than such ratio as the Board may determine to be appropriate to the type of child care provided and the age of the children involved, except that such ratio shall not be greater than 25 to 1.

"(3) As used in this subsection, the term 'qualified staff member' means an individual

who has received training in, or demonstrated ability in, the care of children.

"(c) (1) Any facility in which the Corporation provides child care (whether directly or through arrangements with others) must—

"(A) Meet such provisions of the Life Safety Code of the National Fire Protection Association (21st Edition, 1967) as are applicable to the type of facility; except that the Corporation may waive for such periods as it deems appropriate, specific provisions of such code which, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the Corporation makes a determination (and keeps a written record setting forth the basis of such determination) that such waiver will not adversely affect the health and safety of the children receiving care in such facility;

"(B) contain (or have available to it for use) adequate indoor and outdoor space for children for the number and ages of the children served by such facility; and must have separate rooms or areas for cooking, toilets, and other purposes;

"(C) have floors and walls of a type which can be thoroughly cleaned and maintained and which contain or are covered with no substance which is hazardous to the health or clothing of children;

"(D) have such ventilation and temperature control facilities as may be necessary to assure the safety and comfort of each child receiving care therein;

"(E) provide safe and comfortable facilities for naps for young children receiving care therein;

"(F) provide special accommodations, for children who become ill, which are designed to provide rest and quiet for ill children while protecting other children from the risk of infection or contagion; and

"(G) make available to children receiving care therein such toys, games, books, equipment, and other material as are appropriate to the type of facility involved and the ages of the children receiving care therein.

"(2) The Board, in determining whether any particular facility meets minimum requirements imposed by paragraph (1) of this subsection, shall evaluate such facility separately and shall make a determination with respect to such facility after taking into account the location and type of care provided by such facility as well as the age group served by it.

"(d) The Corporation shall not provide (directly or through arrangements with other persons) child care in a child care facility or home child care facility unless—

"(1) such facility requires that, in order to receive child care provided by such facility, a child must have been determined by a physician (after a physical examination) to be in good health and must have been immunized against such diseases and within such prior period as the Board may prescribe in order adequately to protect the children receiving care in such facility from communicable disease;

"(2) such facility provides for the daily evaluation of each child receiving care therein for indications of illness;

"(3) such facility provides adequate and nutritious (though not necessarily hot) meals and snacks, which are prepared in a safe and sanitary manner;

"(4) such facility has in effect procedures designed to assure that each staff member thereof is fully advised of the hazards to children of infection and accidents and is instructed with respect to measures designed to avoid or reduce the incidence or severity of such hazards;

"(5) such facility has in effect procedures under which the staff members of such facility (including voluntary and part-time staff members) are required to undergo periodic assessments of their physical and mental competance to provide child care;

"(6) such facility keeps and maintains adequate health records on each child receiving care in such facility and on each staff member (including any voluntary or part-time staff member) of such facility who has contact with children receiving care in such facility; and

"(7) such facility has in effect, for the children receiving child care services provided by such facility, a program under which emergency medical care or first aid will be provided to any such child who sustains injury or becomes ill while receiving such services from such facility, the parent of such child (or other proper person) will be promptly notified of such injury or illness, and other children receiving such serivces in such facility will be adequately protected from contagious disease.

"PHYSICAL STRUCTURE AND LOCATION OF CHILD CARE FACILITIES

"SEC. 2005. (a) There may be utilized, to provide child care authorized by this title, new buildings especially constructed as child care facilities, as well as existing buildings which are appropriate for such purpose (including, but not limited to, schools, churches, social centers, apartment houses, public housing units, office buildings, and factories).

"(b) The Board, in selecting the location of any facility to provide child care under this title, shall, to the maximum extent feasible, approve only a site which—

"(1) is conveniently accessible to the children to be served by such facility, in terms of distance from the homes of such children as well as the length of travel time (on the part of such children and their parents) involved;

"(2) is sufficiently accessible from the place of employment of the parents of such children so as to enable such parents to participate in such programs, if any, as are offered to parents by such facility; and

"(3) is conveniently accessible to other facilities, programs, or resources which are related to, or beneficial in, the development of the children of the age group served by such facility.

"EXCLUSIVENESS OF FEDERAL STANDARDS

"SEC. 2006. Any facility in which child care services are provided by the Corporation (whether directly or through arrangements with other persons) shall not be subject to any licensing or similar requirements imposed by any State (or political subdivision thereof), and shall not be subject to any health, fire, safety, sanitary, or other requirements imposed by any State (or political subdivision thereof) with respect to facilities providing child cart.

"GENERAL POWERS OF CORPORATION

"SEC. 2007. (a) The Corporation shall have power—

"(1) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

"(2) to adopt, amend, and repeal bylaws designed to enable it to carry out the duties and functions imposed on it by this title;

"(3) in its corporate name, to sue and be sued and to complain and to defend, in any court of competent jurisdiction (State or Federal), but not attachment, injunction, or similar process, mesne or final, shall be issued against the property of the Corporation or against the Corporation with respect to its property;

"(4) to conduct its business in any State of the United States and in the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

"(5) to enter into and perform contracts, leases, cooperative agreements, or other transactions, on such terms as it may deem appropriate, with (i) any agency or instrumentality of the United States, (ii) any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam, (or any agency, instrumentality, or political subdivision thereof), or (iii) any person or agency;

"(6) to execute, in accordance with its bylaws, all instruments necessary or appropriate to the exercise of its powers;

"(7) to acquire (by purchase, gift, devise, lease, or sublease), and to accept jurisdiction over and to hold and own, and dispose of by sale, lease or sublease, real or personal property, including but not limited to a facility for child care, or any interest therein for its corporate purposes;

"(8) to accept gifts or donations of services, or of property (whether real, personal, or mixed, or whether tangible or intangible), in aid of any of the purposes of this title;

"(9) to operate, manage, superintend, and control any facility for child care under its jurisdiction and to repair, maintain, and otherwise keep up any such facility; and to establish and collect fees, rentals or other charges, for the use of such facility or the receipt of child care services provided therein;

"(10) to provide child care services for the public directly or by agreement or lease with any person, agency, or organization, through and in the facilities for child care of the Corporation and to make rules and regulations concerning the handling of referrals and applications for the admission of children to receive such services; and to establish and collect fees and other charges, including reimbursement allowances, for the provision of child care services;

"(11) to provide advice and technical assistance to persons desiring to enter into an arrangement with the Corporation for the provision of child care services to assist them in developing their capabilities to provide such services under such an arrangement;

"(12) to prepare, or cause to be prepared, plans, specifications, designs and estimates of costs for the construction and equipment of facilities for child care services in which the Corporation provides child care directly;

"(13) to construct and equip, or by contract cause to be constructed and equipped, facilities (other than home child care facilities) for child care services;

"(14) to invest any funds held in reserves or sinking funds, or any funds not required for immediate use or disbursement, at the discretion of the Board, in obligations of the United States or obligations the principal and interest on which are guaranteed by the United States;

"(15) to procure insurance, or obtain indemnification, against any loss in connection with the assets of the Corporation or any liability in connection with the activities of the Corporation, such insurance or indemnification to be procured or obtained in such amounts, and from such sources, as the Board deems to be appropriate;

"(16) to cooperate with any organization, public or private, the objectives of which are similar to the purposes of this title; and

"(17) to do any and all things necessary, convenient, or desirable to carry out the purposes of this title, and for the exercise of the powers conferred upon the Corporation in this title.

"(b) Funds of the Corporation shall not be invested in any obligation or security other than obligations of the United States or obligations the principal and interest on which are guaranteed by the United States; and any obligations or securities (other than obligations of the United States or obligations the principal and interest on which are guaranteed by the United States) acquired by the Corporation by way of gift or otherwise shall be sold at the earliest practicable date after they are so acquired.

"REVOLVING FUND

"SEC. 2008. (a) There is hereby established in the Treasury a revolving fund to be known as the 'Federal Child Care Corporation Fund' (hereinafter in this title referred to as the 'Fund'), which shall be available to the Corporation without fiscal year limitation to carry out the purposes, functions, and powers of the Corporation under this title.

"(b) There shall be deposited in the Fund—

"(1) funds loaned to the Corporation by the Treasury pursuant to subsection (d); and

"(2) the proceeds of all fees, rentals, charges, interest, or other receipts (including gifts) received by the Corporation.

"(c) Except for expenditures from the Federal child care corporation capital fund (established by section 2009 (d)) and expenditures from appropriated funds, all expenses of the Corporation (including salaries and other personnel expenses) shall be paid from the Fund.

"(d) The Secretary of the Treasury shall, from time to time, in accordance with requests submitted to him by the Board, deposit, as a loan to the Corporation, in the Fund such amounts (the aggregate of which shall not exceed $500,000,000). Beginning with the fiscal year ending June 30, 1975, the principal on such loan shall be repaid by the Corporation in annual installments of $10,000,000. The Corporation shall pay interest on any moneys so deposited in the Fund for periods, during any fiscal year, that such moneys have been in such Fund. Interest on such moneys for any fiscal year shall be paid on July 1 following the close of such fiscal year and shall be paid at a rate equal to the average rate of interest paid by the Treasury on long-term obligations during such fiscal year.

"(e) If the Corporation determines that the moneys in the Fund are in excess of current needs, it may invest such amounts therefrom as it deems advisable in obligations of the United States or obligations the payment of principal and interest of which is guaranteed by the United States.

"REVENUE BONDS OF CORPORATION

"SEC. 2009. (a) The Corporation is authorized (after consultation with the Secretary of the Treasury) to issue and sell bonds, notes, and other evidences of indebtedness (hereinafter in this section collectively referred to as 'bonds') whenever the Board determines that the proceeds of such bonds are necessary, together with other moneys available to the Corporation from the Federal Child Care Corporation Fund, to provide funds sufficient to enable the Corporation to carry out its purposes and functions under this title with respect to the acquisition, planning, construction, remodeling, or renovation of facilities for child care or sites for such facilities; except that (1) no such bonds shall be sold prior to July 1, 1973, (2) not more than $50,000,000 of such bonds shall be issued and sold during any fiscal year, and (3) the outstanding balance of all bonds so issued and sold shall not at any one time exceed $250,000,000.

"(b) Any such bonds may be secured by assets of the Corporation, including, but not limited to, fees, rentals, or other charges which the Corporation receives for the use of any facility for child care which the Corporation owns or in which the Corporation has an interest. Any such bonds are not, and shall not for any purpose be regarded as, obligations of the United States.

"(c) Any such bonds shall bear such rate of interest, have such dates of maturity, be in such denominations, be in such form, carry such registration privileges, be executed in such manner, be payable on such terms, conditions and at such place or places, and be subject to such other terms and conditions, as the Board may prescribe.

"(d) (1) There is hereby established in the Treasury a fund to be known as the 'Federal Child Care Corporation Capital Fund' (hereinafter in this title referred to as the 'Capital Fund'), which shall be available to the Corporation without fiscal year limitation to carry out the purposes and functions of the Corporation with respect to the acquisition, planning, construction, remodeling, renovation, or initial equipping of facilities for child care services, or sites for such facilities.

"(2) The proceeds of any bonds issued and sold pursuant to this section shall be deposited in the Capital Fund and shall be available only for the purposes and functions referred to in paragraph (1) of this subsection.

"CORPORATE OFFICES

"SEC. 2010. (a) The principal office of the Corporation shall be in the District of Columbia. For purposes of venue in civil actions, the Corporation shall be deemed to be a resident of the District of Columbia.

"(b) The Corporation shall establish offices in each major urban area and in such other areas as it deems necessary to carry out its duties as set forth in section 2003.

"TAXATION

"SEC. 2011. The Corporation, its property, assets, and income shall be exempt from taxation in any manner or form by the United States, a State (or political subdivision thereof).

"REPORTS TO CONGRESS

"SEC. 2012. The Corporation shall not later than January 30 following the close of the second session of each Congress (commencing with January 30, 1973), submit to the Congress a written report on its activities during the period ending with the close of the session of Congress last preceding the submission of the report and beginning, in the case of the first such report so submitted, with the date of enactment of this title, and in the case of any such report thereafter, with the day after the last day covered by the last preceding report so submitted. As a separate part of any such report, there shall be included such data and information as may be required fully to apprise the Congress of the actions which the Corporation has taken to improve the quality of child care services, together with a statement regarding the future plans (if any) of the Corporation to improve the quality of such services.

"APPLICABILITY OF OTHER LAWS

"SEC. 2013. (a) Except as otherwise provided by this title, the Corporation, as a wholly-owned Government corporation, shall be subject to the Government Corporation Control Act (31 U.S.C. 841–871).

"(b) The provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529), relating to advances of public moneys and certain other payments, shall not be applicable to the Corporation.

"(c) The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), or other provisions of law relating to competitive bidding, shall not be applicable to the Corporation.

"(d) Except as otherwise provided in this title, all Federal laws dealing generally with agencies of the United States shall be deemed to be applicable to the Corporation, and all laws dealing generally with officers and employees of the United States shall be deemed to be applicable to officers and employees of the Corporation.

"(e) The provisions of the Public Buildings Act of 1959 (40 U.S.C. 601–615) shall not apply to the acquisition, construction, remodeling, renovation, alteration, or repair of any building of the Corporation or to the acquisition of any site for any such building.

"(f) All general Federal penal statutes relating to the larceny, embezzlement, conversion, or to the improper handling, retention, use, or disposal of moneys or property of the United States shall apply to the moneys and property of the Corporation.

"COLLECTION AND PUBLICATION OF STATISTICAL DATA

"SEC. 2014. The Corporation shall collect, classify, and publish, on a monthly and annual basis, statistical data relating to its operations and child care provided (directly or indirectly) by the Corporation together with such other data as may be relevant to the purposes and functions of the Corporation.

"RESEARCH AND TRAINING

"SEC. 2015. (a) The Secretary, in the administration of section 426, shall consult with and cooperate with the Corporation with a view to providing for the conduct of research and training which will be applicable to child care services.

"(b) The Secretary of Labor, in the administration of part C of title IV, shall consult with and cooperate with the Corporation with a view to providing for the conduct of training which will be applicable to child care services.

"(c) The Corporation shall have the authority to conduct directly or by way of contract programs of in-service training in day care services.

"NATIONAL ADVISORY COUNCIL ON CHILD CARE

"SEC. 2016. (a) (1) For the purpose of providing advice and recommendations for the consideration of the Board in matters of general policy in carrying out the purposes and functions of the Corporation, and with respect to improvements in the administration by the Corporation of its purposes and functions, there is hereby created a National Advisory Council on Child Care (hereinafter in this section referred to as the 'Council').

"(2) The Council shall be composed of the Secretary of Health, Education, and Welfare, the Secretary of Labor, the Secretary of Housing and Urban Development, and 12 individuals, who shall be appointed by the Board (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service), and who are not otherwise in the employ of the United States.

"(3) Of the appointed members of the Council, not more than 3 shall be selected from individuals who are representatives of social workers or child welfare workers, or are from the field of education, and the remaining appointed members shall be selected from individuals who are representatives of consumers of child care (but not including more than one individual who is either a recipient of public assistance or a representative of any organization which is composed of or represents recipients of such assistance).

"(b) Each appointed member of the Council shall hold office for a term of 3 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his successor was appointed shall be appointed for the remainder of such term, and except that the terms of office of the appointed members first taking office shall expire, as designated by the Board at the time of appointment, 4 on June 30, 1972, 4 on June 30, 1973, and 4 on June 30, 1974.

"(c) The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Board shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by the Corporation as the Council may require to carry out its functions.

"(d) Appointed members of the Council shall, while serving on the business of the Council, be entitled to receive compensation at the rate of $100 per day, including travel time; and while so serving away from their homes or regular places of business, they shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(e) There are hereby authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

"COOPERATION WITH OTHER AGENCIES

"SEC. 2017. (a) The Corporation is authorized to enter into agreements with public and other nonprofit agencies or organizations whereby children receiving child care provided by the Corporation (whether directly or through arrangements with other persons) will be provided other services conducive to their health, education, recreation, or development.

"(b) Any such agreement with any such agency or organization shall provide that such agency or organization shall pay the Corporation in advance or by way of reimbursement, for any expenses incurred by it in providing any services pursuant to such agreement.

"DEFINITIONS

"SEC. 2018. For purposes of this title—

"(a) The term 'Corporation' means the Federal Child Care Corporation established pursuant to section 2002.

"(b) The term 'child care services' means the provision, by the person undertaking to care for any child, of such personal care, protection, and supervision of each child receiving such care as may be required to meet the child care needs of such child, including services provided by—

"(1) a child care facility;

"(2) a home child care facility;

"(3) a temporary child care facility;

"(4) an individual as a provider of at-home child care;

"(5) a night care facility; or

"(6) a boarding facility.

"(c) The term 'child care facility' means any of the following facilities:

"(1) day nursery facility;

"(2) nursery school;

"(3) kindergarten;

"(4) child development center;

"(5) play group facility;

"(6) preschool child care center;

"(7) school-age child care center;

"(8) summer day care program facility; but only if such facility offers child care services to not less than 6 children; and in the case of a kindergarten, nursery school, or other daytime program, such facility is not a facility which is operated by a public school system, and the services of which are generally available without charge throughout a school district of such system;

"(d) The term 'home child care facility' means—

"(1) a family day care home;

"(2) a group day care home;

"(3) a family school age day care home; or

"(4) a group school age day care home.

"(e) The term 'temporary child care facility' means—

"(1) a temporary child care home;

"(2) a temporary child care center; or

"(3) other facility (including a family home, or extended or modified family home) which provides care, on a temporary basis, to transient children.

"(f) The term 'at-home child care' means the provision, to a child in his own home, of child care services, by an individual, who is not a member of such child's family or a relative of such child, while such child's parents are absent from the home.

"(g) The term 'night care facility' means—

"(1) a night care home;

"(2) a night care center; or

"(3) other facility (including a family home, or extended or modified home) which provides child care, during the night, of children whose parents are absent from their home and who need supervision during sleeping hours in order for their parents to be gainfully employed.

"(h) The term 'boarding facility' means a facility (including a boarding home, a boarding center, family home, or extended or modified family home) which provides child care for children on a 24 hour per day basis (except for periods when the children are attending school) for periods, in the case of any child, not longer than one month.

"(i) The term 'day nursery' means a facility which, during not less than 5 days each week, provides child care to children of preschool age.

"(j) The term 'nursery school' means a school, which accepts for enrollment therein only children between 2 and 6 years of age, which is established and operated primarily for educational purposes to meet the developmental needs of the children enrolled therein.

"(k) The term 'kindergarten' means a facility which accepts for enrollment therein only children between 4 and 6 years of age, which is established and operated primarily for educational purposes to meet the developmental needs of the children enrolled therein.

"(l) The term 'child development center' means a facility, which accepts for enrollment therein only children of preschool age, which is established and operated primarily for educational purposes to meet the developmental needs of the children enrolled therein, and which provides for the children enrolled therein care, services, or instruction for not less than 5 days each week.

"(m) The term 'play group facility' means a facility, which accepts as members thereof children of preschool age, which provides care or services to the members thereof for not more than 3 hours in any day, and which is established and operated primarily for recreational purposes.

"(n) The term 'preschool child care center' means a facility, which accepts for enrollment therein children of preschool age, and which provides child care to children enrolled therein on a full-day basis for at least 5 days each week.

"(o) The term 'school age child care center' means a facility, which accepts for enrollment therein only children of school age, and which provides child care for the children enrolled therein during the portion of the day when they are not attending school for at least 5 days each week.

"(p) The term 'summer day care program' means a facility, which provides child care for children during summer vacation periods, and which is established and operated primarily for recreational purposes; but such term does not include any program which is operated by any public agency, if participation in such program is without charge and is generally available to residents of any political subdivision.

"(q) The term 'family day care home' means a family home in which child care is provided, during the day, for not more than 8 children (including any children under age 14 who are members of the family living in such home or who reside in such home on a full-time basis).

"(r) The term 'group day care home' means an extended or modified family residence which offers, during all or part of the day, child care for not less than 7 children (not including any child or children who are members of the family, if any, offering such services).

"(s) The term 'family school age day care home' means a family home which offers child care for not more than 8 children, all of school age, during portions of the day when such children are not attending school.

"(t) The term 'group school age day care home' means an extended or modified family residence which offers family-like child care for not less than 7 children (not counting any child or children who are members of the family, if any, offering such services) during portions of the day when such children are not attending school.

"(u) The term 'temporary child care home' means a family home which offers child care, on a temporary basis, for not more than 8 children (including any children under age 14 who are members of the family, if any, offering such care).

"(v) The term 'temporary child care center' means a facility (other than a family home) which offers child care, on a temporary basis, to not less than 7 children.

"(w) The term 'night care home' means a family home which offers child care, during the night, for not more than 8 children (including any children under age 14 who are members of the family offering such care).

"(x) The term 'boarding home' means a family home which provides child care (including room and board) to not more than 6 children (including any children under age 14 who are members of the family offering such care).

"(y) The term 'boarding center' means a summer camp or other facility (other than a family home) which offers child care (including room and board) to not less than 7 children."

(b)(1) Section 402(a)(15)(B)(i) of the Social Security Act is amended by striking out "is furnished child-care services" and inserting in lieu thereof "is referred to the Federal Child Care Corporation for needed child care services".

(2) Section 422(a)(1) of such Act is amended by striking out subparagraph (C) thereof.

(3) Section 425 of such Act is amended by striking out "or day-care or other child-care facilities".

(4) The amendments made by this section shall take effect July 1, 1972.

(c) Section 1101(a)(1) of the Social Security Act is amended by striking out "and XIX" and inserting in lieu thereof "XIX, and XX".

AMENDMENTS TO TITLE 5, UNITED STATES CODE

SEC. 3. (a) Section 5316 of title 5, United States Code (relating to executive schedule pay rates at level V) is amended by adding at the end thereof—

"(130) Chairman of the Board of Directors of the Federal Child Care Corporation.

"(131) Member of Board of Directors of the Federal Child Care Corporation."

COST INCREASES OF MAJOR WEAPONS SYSTEMS

Mr. PROXMIRE. Mr. President, I am unhappy to report that our major weapons programs are continuing to overrun the planned costs. A pundit stated not too long ago that while weapons programs performance is poor and deliveries are late, costs are overrunning on schedule. The latest data indicate that the cost overruns are not only on schedule, they are ahead of schedule.

The costs of 38 selected major weapons systems are now $23.8 billion above the planning estimates for those programs. This total represents a $3.6 billion net increase for the 38 systems between June 30, 1969, and March 31, 1970.

The major cost increases occurred on four programs—Safeguard ABM, the P–3–C aircraft, Minuteman II, and Minuteman III. A list of the programs and the corresponding increases follow:

[In millions]

Safeguard ABM	$1,754.0
P–3–C	291.1
Minuteman II	464.4
Minuteman III	1,142.8

In only one of these four systems, Minuteman III, was the cost overrun attributable to any extent to an increase in the number of units purchased. Even in the case of that program, a major portion of the added costs was caused by reasons unrelated to the change of the number of units.

Substantial cost increases for several

other programs also occurred between June 1969 and March 1970. There was an almost $2 billion increase for the F–14 program and increases of over $1 billion for two missile programs—the Sparrow F and Phoenix. However, in these cases, the purchase of an increased quantity of units explains the high costs, according to the Department of Defense.

Significant as are the cost overruns indicated by these figures, they would have been much higher were it not for almost $3 billion in decreased costs for five programs. But in every case, the decreases were attributable to reductions in the quantity of units to be purchased. For example, the Pentagon states that the costs of the F–111 decreased by over $1 billion. This decrease is entirely the result of a decision to cut back on the number of F–111's. The cutback itself, it will be recalled, was caused by cost overruns in the program and pressures to reduce F–111 funds.

Similarly, a $521.9 million decrease is being attributed to the C–5A. This decrease was brought about by huge overruns, resulting in the decision to cut back the program from 120 to 81 planes.

Had the Department of Defense not reduced the numbers of weapons it is buying, cost increases for the 38 programs would have totaled over $26.5 billion—in other words, a $3.6 billion increase in the last 9 months alone.

What these disturbing figures indicate to me is that the Department of Defense has not yet learned how to control the costs of major weapons programs. In my judgment, the cost overruns in these programs are largely the result of waste and mismanagement. They represent public funds that are being used foolishly and that probably ought not to be spent by the Department of Defense at all.

The figures I have recited were taken from a report by the Comptroller General of the United States requested by me in hearings held by the Subcommittee on Economy in Government on May 26, 1970. As chairman of the Subcommittee on Economy in Government, I can assure my colleagues in the Senate that we will continue to inquire into military procurement and problems such as cost overruns.

I ask unanimous consent to have printed in the RECORD a complete schedule of program data for the 38 weapons systems included in the General Accounting Office's review, and a summary of the estimated cost data as of March 31, 1970.

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

SUMMARY OF ESTIMATED COST DATA AS OF MARCH 31, 1970

[Dollars in millions]

Number of systems	Planning estimate	Contract definition estimate	Earlier estimates adjusted for quantity changes (note a)	Current estimate through program completion
Army (8)	$5,933.2	$6,087.2	$7,206.5	$9,654.0
Navy (22)	18,278.4	21,998.8	26,245.8	31,948.1
Air Force (8)	18,479.0	22,136.9	17,386.8	24,877.2
Total (38)	42,690.6	50,222.9	50,839.1	66,479.3

SCHEDULE OF PROGRAM COST DATA APPEARING ON MAR. 31, 1970, SARs FOR 38 SYSTEMS [1] INCLUDED IN GAO REPORT ON STATUS OF THE ACQUISITION OF SELECTED MAJOR WEAPON SYSTEMS, B–163058 DATED FEB. 6, 1970

[Dollars in millions]

	Planning estimates	Contract definition cost estimates	Earlier estimates adjusted for quantity changes	Current estimates through program completion
ARMY				
Dragon	$382.2	$425.4	$191.7	$284.2
Shillelagh	357.4	357.4	332.7	495.8
AH–10 [1]	49.8	70.7	466.2	561.0
Safeguard	4,185.0	4,185.0	4,185.0	5,939.0
Gama Goat [2]	69.1	173.5	368.4	438.7
Sheridan Tank	422.5	408.0	395.7	498.1
Cheyenne [3]	125.9	125.9	125.9	201.8
UH–1H [1]	341.3	341.3	1,140.9	1,235.4
NAVY				
P–3C	1,294.2	1,294.2	2,265.3	2,552.8
AN/BQQ2 [1]	126.9	179.0	178.5	269.9
Sparrow E	687.2	740.7	280.9	290.7
Sparrow F	139.8	453.6	680.1	1,002.5
Phoenix	370.8	677.4	903.4	1 501.0
Mark 46–Mod 1 [1]	347.0	1,033.6	1,021.6	1,039.9
Mark 48–Mod 0	682.4	642.4	678.5	3,570.0
EA6B	689.7	817.7	767.0	1,058.6
Walleye II	345.3	345.0	337.1	271.6
F–14	6,166.0	6,166.0	8,492.0	8,279.1
Standard Arm	180.3	241.6	200.2	223.7
S–3A	1,763.8	2,891.1	2,891.1	2,931.7
AN/SQQ–23	157.1	170.5	89.1	230.8
A–7E	1,465.6	1,465.6	1,080.3	1,569.6
Mark 48–Mod 1	70.7	71.6	64.9	185.4
Condor	356.3	441.0	220.1	351.4
F–4J [1]	770.0	770.0	2,509.6	2,743.7
AN/SQS–26CX	95.7	83.8	88.3	119.6
CH46 E/F helicopter [3]	323.6	589.0	577.1	550.6
LHA	651.0	1,380.3	1,380.3	1,427.8
DE–1052	1,285.0	1,259.7	1,259.9	1,469.9
CVA–67 [1]	310.0	280.0	280.0	307.8
AIR FORCE [4]				
Minuteman II	$3,223.4	$4,515.1	$4,519.1	$4,745.1
Minuteman III	2,752.7	4,413.6	4,375.9	5,368.8
C–5A	3,466.6	3,413.2	2,677.0	4,310.1
Maverick	257.9	383.4	310.4	337.5
A–7D	1,378.1	1,379.1	1,096.5	1,397.5
Titan III [1]	932.2	745.5	745.5	1,130.5
F–111A/C/D/E	4,686.6	5,505.5	2,924.2	6,380.8
FB–111A	1,781.5	1,781.5	738.2	1,206.9

[1] These systems are not on the SAR system. The figures appearing in this schedule are therefore the June 30, 1969, figures prepared on a one time basis for GAO by the Department of Defense.

[2] These estimates represent those reported as of Dec. 31, 1969, due to the fact that the Mar. 31, 1970, SAR was not approved as of the time this schedule was prepared.

[3] These estimates represent development costs only. Due to pending litigation, the Army's production liability is unknown.

[4] The Mar. 31, 1970, Air Force SAR's did not reflect the planning estimates. These figures were obtained for comparison purposes from the June 30, 1969, SAR's. The planning estimates for the Minutemen II, Minuteman III, and the C–5A were increased to include the military construction costs not originally reported.

STILL NO ACTION FROM JUSTICE DEPARTMENT ON THE FITZGERALD CASE—239 DAYS

Mr. PROXMIRE. Mr. President, 239 days ago, I wrote to Attorney General General Mitchell asking the Justice Department to investigate the intimidation and firing of A. Ernest Fitzgerald. The United States Code makes it a crime, punishable by up to 5 years in jail, to "injure," to "intimidate," or to "impede" a witness who appears before a congressional committee.

Ernest Fitzgerald testified before the Joint Economic Committee in November of 1968. He told us of the vest overruns occurring on the C–5A transport plane. Perhaps more than any other individual, he has made it possible for Congress to take a close look at military weapons procurement, and to begin making cuts which were long overdue.

Mr. President, Ernest Fitzgerald has done a great service to his country. For this service, Fitzgerald was rewarded with threats, intimidation, reprisals, and ultimately, loss of his job. If this does not constitute "injury" within the terms of the statute, I do not know what would.

But the Justice Department keeps dragging its feet. Perhaps if they wait another 2½ years, we will have a different administration in Washington, and the present leadership at the Justice Department can wash their hands of the whole affair.

Is this how long the Justice Department intends to wait?

ORDER OF BUSINESS

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

The PRESIDING OFFICER (Mr. GRIFFIN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

ORDER FOR ADJOURNMENT FROM TOMORROW UNTIL WEDNESDAY, JULY 22, 1970, AT 11 A.M.

Mr. LONG. Mr. President, I ask unanimous consent that, when the Senate has concluded its business tomorrow, it stand in adjournment until 11 a.m. on Wednesday.

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

ORDER FOR RECOGNITION OF SENATOR BYRD OF WEST VIRGINIA ON WEDNESDAY NEXT

Mr. LONG. Mr. President, I ask unanimous consent that on Wednesday morning next, immediately after the disposition of the Journal, the Senator from West Virginia (Mr. BYRD) be recognized for not to exceed 1 hour.

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

ADJOURNMENT TO 11 A.M. TOMORROW

Mr. LONG. Mr. President, if there be no further business to come before the Senate, I move, under the previous order, that the Senate stand in adjournment until 11 a.m. tomorrow.

The motion was agreed to and (at 5 o'clock and 2 minutes p.m.) the Senate adjourned until tomorrow, July 21, 1970, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate July 20, 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. James F. Calvert, 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. Raymond E. Peet, U.S. Navy, for appointment to the grade of vice admiral while so serving.

CONFIRMATION

Executive nominations confirmed by the Senate July 20, 1970:

ATOMIC ENERGY COMMISSION

Glenn T. Seaborg, of California, to be a member of the Atomic Energy Commission for a term of 5 years expiring June 30, 1975.

EXTENSIONS OF REMARKS

CONTINUATION OF HIGHWAY TRUST FUND

HON. HARRY F. BYRD, JR.

OF VIRGINIA

IN THE SENATE OF THE UNITED STATES

Monday, July 20, 1970

Mr. BYRD of Virginia. Mr. President, the Board of Directors of the Virginia Dairy Products Association at Virginia Beach, Va., on July 10 adopted a resolution endorsing the continuation of the Highway Trust Fund concept as a means of financing an adequate highway program.

I ask unanimous consent that the resolution be printed in the Extensions of Remarks.

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

RESOLUTION

Whereas, high quality and economical highway transportation is the essential factor to modern economic progress, especially as it relates to the dairy industry and the dairy distribution segment of the industry, and;

Whereas, the Interstate Highway program has proven that modern highway design is one of the most effective means of reducing the death toll on the highway, and;

Whereas, in 1956 Congress established the Highway Trust Fund as a means of financing the Federal-aid highway program including the System of Interstate and Defense Highways and the primary and secondary urban programs, and;

Whereas, said Fund is entirely self-liquidating, debt-free and has as its source of revenue only special taxes levied on motor vehicle owners and users thereby affecting no other federal program in any adverse way, and;

Whereas, proposals have been advanced in Congress that would terminate the trust fund concept of highway financing and permit the diversion of federal highway user taxes to non-highway purposes after the legal expiration of the present Highway Trust Fund in 1972;

Now therefore be it resolved, that the Virginia Dairy Products Association, Inc. is vigorously opposed to the use of highway funds for any non-highway purpose, and;

Be it further resolved, it heartily endorses the highway trust fund concept as a proven means of funding a balanced and adequate highway program, and that we urge Congress to enact legislation that would establish a Highway Trust Fund in its present form as a permanent instrument of financing the federal portion of our National highway program, and;

Be it further resolved, that copies of this resolution be sent to members of Congress from Virginia and the Governor of the Commonwealth.

I certify the above resolution is a true and accurate excerpt from the minutes of the Board of Directors Meeting of Virginia Dairy Products Association, Inc., held July 10, 1970

W. M. GAUNT, JR.,
Executive V. P. and Secretary.

THE FOURTH GENERATION: INTIMATIONS OF REALITY

HON. BROCK ADAMS

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Monday, July 20, 1970

Mr. ADAMS. Mr. Speaker, on June 23–26, the 1970 International Data Processing Conference and Business Exposition was held at the Seattle Center in Seattle, Wash. The sessions featured 12 separate seminar series covering areas of wide-ranging technical and general management interest. Topics covered a broad spectrum, from "The Human Element in the Information Processing Community" to "Computing Equipment—Today and Tomorrow."

At the latter session, a paper was delivered by Robert L. Chartrand, the specialist in information sciences for the legislative reference service at the Library of Congress. Mr. Chartrand, in his presentation on "The Fourth Generation: Intimations of Reality," noted the impact of yet more powerful computer and microform tools and techniques on management. Many of his comments are germane at a time when the House of Representatives has undertaken a study of its information requirements, and has contracted to have a design prepared for an improved information handling system. I would like to have his remarks included in the RECORD at this time:

THE FOURTH GENERATION: INTIMATIONS OF REALITY

THE CONTEMPORARY CONTEXT

Computer technology occupies a prominent position in the pageantry of American scientific achievement, and all indications point to an enhancement of this posture during the remainder of the twentieth century. In our time we are accustomed to lauding or blaspheming the impact of automatic data processing (ADP) on all aspects of our lives: political, cultural, economic, private. And yet man's insatiable need for—and generation of—information has created an unprecedented crisis! This must be viewed and responded to as a challenge of the highest priority, for the mechanisms by which our civilization functions are threatened by the inexorable deluge of information media.

Within the span of its brief existence, the computer has emerged from its tentative, experimental beginnings to an impressive and often essential role. As one computer "generation" has succeeded another, with a fanfare usually reserved for coronations and cinematic colossus, man has begun to ascribe superhuman attributes to his creation. Such is the vanity of those who innovate, and while today's logic circuits do react 2½ million times faster than human nerve cells, the "beast" does not possess an artificial intelligence. There are, of course, numerous well-proven areas where its massive manipulative power has proven to be of inestimable value but all too often the more imaginative uses of the computer has been ignored or deprecated. The Data Process Management Association has both the opportunity and the responsibility to seize the initiative and hasten the intellectual development of those who use the computer in functions pedestrian or exotic.

The evidence of growth in the data processing field is more than ample, and allows some perception of certain key trends:

The number of computers in operation fast approaches the 100,000 mark (based on an annual increase of more than 15%).

The emphasis on quick-time access in an on-line mode is reflected in the spectacular growth in numbers of various types of terminals: time-sharing terminals increased from 500 in 1966 to more than 20,000 in 1970; CRT devices are experiencing a projected growth that will raise the total from 17,000 in 1969 to an estimated ten-fold figure in 1975.

A question has been raised which merits our consideration: are we unduly hastening the obsolescence of equipment and software long before it has mastered and gainfully utilized? The companion query must be: is a fourth generation really necessary; and can we successfully synchronize our development of the requisite technological elements?

The significance of these questions should not be taken lightly, and will be discussed hereafter within the context of three major areas:

1. The responsibility of management in responding to the more stringent demands on its time and judgment, as imposed by the ever more sophisticated technology.

2. The role of microform in the information systems of the future, and in particular its promising integration with computer technology.

3. The continuing evolution of ADP machinery and software, and the advent of a "fourth generation."

THE MANAGEMENT RESPONSE SYNDROME

The ubiquitous presence of the computer is changing man's intellectual interface with his environment, with the foreseeable result that he must rethink virtually every aspect of his day-to-day existence. Management groups, striving to cope with problems of unequalled complexity and broad-ranging consequence, continue to search for those tools and techniques which will abet the analysis-decision function.

The ability of American management to raise its performance in order to meet any challenge is a hallowed tradition in the annals of our private enterprise system. In this day and age, management has recognized that there are critical matters which must be addressed, and positive reforms which must be instituted:

Management has accepted and begun to refine the role of cybernetics in controlling the operation of an office or plant; in particular, the manager should be receiving both positive and negative feedback concerning corporate operations.

The imaginative use of computer technology and systems analysis can allow the manager to examine in detail management information reports; access to selective "cuts" of data can allow the manager to more effectively utilize his time.

A willingness on the part of management to depart from the mundane use of computers—inventory, payroll, accounts payable and