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Congressional Record

PROCEEDINGS AND DEBATES OF THE 91st CONGRESS, SECOND SESSION

SENATE—*Tuesday, July 21, 1970*

The Senate met at 11 a.m. and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

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

Almighty God, Lord of creation and of all life, for this Nation born in Thy providence, cradled in Thy truth, and led by Thy free spirit, we give Thee thanks. Guide and uphold the President, Members of the Senate and House of Representatives, and all in authority, that their endeavors may be righteous altogether.

Lift all consultations for peace into the higher order of Thy kingdom until all men live under the law of love in the universal kingdom of the Prince of Peace.

Lead us through the tasks of this day with eyes fixed upon Thee. We ask not for the peace of escape or the calm which ignores conflict or for deliverance from the difficult, but for the inner sureness that Thou art the rock of ages, the spring of the water of life which never fails.

Through Jesus Christ our 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 21, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. JAMES B. ALLEN, a Senator from the State of Alabama, to perform the duties of the Chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3685) to increase the availability of mortgage credit for the financing of urgently needed housing, and for other purposes.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, July 20, 1970, be dispensed with.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, when the Senators who have special orders have completed their remarks today, there be a period for the transaction of routine morning business with a time limitation of 3 minutes therein.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

ORDER FOR RECOGNITION OF SENATOR YOUNG OF OHIO ON FRIDAY NEXT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from Ohio (Mr. YOUNG) be recognized for not to exceed 20 minutes following disposition of the Journal on Friday, July 24, 1970.

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

WILLIAM G. STONE NAVIGATION LOCK

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1037, S. 3192.

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

The ASSISTANT LEGISLATIVE CLERK. S. 3192, to designate the navigation lock on the Sacramento deepwater ship channel in the State of California as the William G. Stone navigation lock.

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. 3192

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the navigation lock on the Sacramento deepwater ship channel in the State of California which connects the Sacramento River with the Sacramento-Yolo deepwater port shall hereafter be known as the William G. Stone navigation lock, and any law, regulation, document, or record of the United States in which such lock is designated or referred to shall be held to refer to such lock under and by the name of the William G. Stone navigation lock.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 91-1032), explaining the purposes of the measure.

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

PURPOSE OF BILL

The purpose of this legislation is to designate the lock on the Sacramento deepwater ship channel in the State of California as the William G. Stone navigation lock.

GENERAL STATEMENT

The existing project provides for a deepwater ship channel between Suisun Bay and Washington Lake, construction of a harbor and turning basin at Washington Lake and a connecting canal with navigation lock from the harbor to the Sacramento River. It is this navigation lock which would be designated the William G. Stone navigation lock.

Mr. William G. Stone spent a long and active life promoting a deepwater port of Sacramento, which he had first envisioned in 1916 and helped in the preparation of enabling legislation in 1937 which was enacted into law by the act of July 24, 1946, Public Law 525, 79th Congress. In 1948 he was named port director and served as such throughout the construction phase of the project. The new channel opened in 1962, the year Mr. Stone retired as port director. He died in October of 1969. His long and close identification which this project is deemed to render the designation appropriate.

ESTIMATED COST TO THE UNITED STATES IF LEGISLATION IS ENACTED

Enactment of this legislation will not result in any cost to the United States.

VIEWS OF THE FEDERAL AGENCIES

The Department of the Army, the Department of Interior, and the Bureau of the Budget offer no objection to enactment of this legislation.

COMMITTEE RECOMMENDATION

The committee believes it fitting and proper to name the navigation lock in the

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Sacramento deepwater ship channel in the State of California in honor of the late William G. Stone, whose efforts contributed so much to development of this important project. Accordingly, early enactment of S. 3192 is recommended.

ORDER OF BUSINESS

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR RECOGNITION OF SENATOR STENNIS TODAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the remarks of the distinguished Senator from South Carolina (Mr. THURMOND) today, the distinguished Senator from Mississippi (Mr. STENNIS) be recognized for not to exceed 20 minutes.

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

ORDER FOR RECOGNITION OF SENATOR BAKER TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the remarks of the distinguished Senator from West Virginia (Mr. BYRD) on tomorrow, the distinguished Senator from Tennessee (Mr. BAKER) be recognized for not to exceed 30 minutes.

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

DEATH OF JIM G. LUCAS, JR.—MARINE COMBAT CORRESPONDENT

Mr. MANSFIELD. Mr. President, while not unexpected, it was with a sense of deep sadness that I heard this morning of the passing of an old friend, Jim G. Lucas, Jr.

Jim Lucas was a man whom I have known since the Second World War. He was then engaged as a Marine combat correspondent and he served with the greatest integrity and dedication; qualities that characterized his every endeavor wherever his outstanding talents happened to take him.

I saw Jim many times after the war and even traveled with him to Southeast Asia during difficult periods. Needless to say, I came to admire him immensely. He was a fine man.

Of course, Jim and I disagreed on some matter, but by and large I think we agreed on most matters; certainly on the great majority of the questions we discussed.

It was not without some expectation that this outstanding newsman would come to such an untimely end. He had cancer and I understand it was considered terminal.

I visited Jim at the Veterans' Hospital in Washington on several occasions and was very much impressed with his tenacity, his courage, his sense of humor, and his deep perception and understanding. These are the attributes which distinguished him throughout his highly productive life. They were exhibited to the very end.

During his career Jim's prolific pen was responsible for some outstanding writing and he was rewarded accordingly.

Jim won the Pulitzer Prize and for a good many years served with neat distinction as a member of the Scripps-Howard newspaper chain. As a reporter he covered many subjects, but his main interest perhaps concerned the welfare of the American fighting man in all the wars in which we have engaged since Jim Lucas began his newspaper career. To repeat it was a career begun as a Marine combat correspondent in World War II. It ended early this morning. It was a career filled with achievements and rewards too numerous to mention here.

I would close only by saying that to his sister, Mrs. Mary Moore, and his brother, J. Bob Lucas, I extend my deepest condolences and sympathy and those of Mrs. Mansfield as well. Jim Lucas will be sorely missed.

I ask unanimous consent that a story covering Jim Lucas appearing in today's Washington Daily News and an editorial about his passing be printed at this point in the RECORD.

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

JIM LUCAS DIES HERE

Jim G. Lucas, Pulitzer Prize-winning war correspondent for the Scripps-Howard Newspapers, died early today of abdominal cancer in the Veterans Hospital here. He was 56.

Mr. Lucas began his war reporting career as a Marine combat correspondent in the Pacific islands campaigns of World War II.

For the next quarter century, in dispatches datelined around the globe, his accounts of the heroism and agony and tedium of war gained him recognition as America's best known war reporter since Ernie Pyle, also of Scripps-Howard Newspapers and one-time managing editor of The Washington Daily News.

A versatile writer who covered many other types of stories, Mr. Lucas died three days before publication of his latest book, a biography of Vice President Spiro T. Agnew.

But the assignment he most desired was that which brought him to the frontlines, and to the side of those he respected above all others, American GIs. Mr. Lucas possibly saw more actual combat and more of the maimed and dead of war than any other newspaperman in U.S. history.

His period of front-line reporting spanned 25 years, including World War II in the Pacific, and the wars in Korea and Vietnam.

Many in his profession believed him to be the greatest since Ernie Pyle in his ability to write with compassion and understanding about the American soldier, sailor or marine in battle. He was twice the recipient of the Ernie Pyle Award for writing in the Ernie Pyle tradition, the only newspaperman to be so honored.

Only once was he wounded and that lightly by a piece of shrapnel over the eye near Da Nang in Vietnam in 1964.

He believed that the "fantastic luck" which had carried him safely thru so many battles and firefights would stand by him in his bout with cancer which began with a major intestinal operation a year ago. But such was not to be.

SCOOP IN PACIFIC

Mr. Lucas first acquired journalistic fame at the bloody and epic battle of Tarawa in the Pacific in late 1943. His story, written as a Marine combat correspondent, was the first out and for three days was the only word the outside world had. It was on Tarawa that he received a battlefield promotion from master sergeant to second lieutenant and a Bronze Star. His story produced for him the National Headliners Award for the best combat reporting of 1943. He was listed as dead for a brief time on Tarawa. The dead Marine turned out to be another combat correspondent who was wearing Jim's shirt.

In all, he made eight D-Day landings with the Marines in the Pacific in World War II. Battles in which he participated included Guadalcanal and Iwo Jima.

After VJ Day, many newspaper organizations bid for his services. He joined the Scripps-Howard Newspaper Alliance in Washington and became that bureau's military correspondent.

He covered the first atomic bomb test at Bikini and in 1947 went with the late Adm. Richard E. Byrd to the South Pole.

He went to the front lines at the start of the Korean War and spent 26 of that conflict's 36 months in Korea, being present at the end of the fighting. His reporting from Korea (which included making 17 B17 bomber runs over North Korea) won him the Pulitzer Prize in 1954, as well as his first Ernie Pyle award and a flock of other honors—including the George Polk Memorial Award, the Veterans of Foreign Wars' Omer Bradley Gold Medal and the Marine Corps Reserve Officers' Association's "Not for Self But for Country" award.

After the Korean Armistice, he then went to French Indochina to cover the French war with the Viet Minh, and was based for 18 months in Hanoi. He was in Hanoi when Ho Chi Minh's forces marched in to take over the city.

After the Indochina armistice, he went to Goa to report on hostilities between the Portuguese and Indians. He went to Lebanon when President Eisenhower sent in the Marines and Army paratroops in 1958 and liked to remember that episode as "the only war I ever covered from an air-conditioned hotel room and dressed for dinner every night."

In 1959 he spent several months in Vietnam and in January, 1964—before the big American buildup—stationed himself at Can Tho, in the Mekong Delta of South Vietnam, for the first of several tours that were to constitute coverage of his last war.

WENT ON PATROLS

When U.S. Marines poured into Da Nang, Mr. Lucas shifted the base of his operations there and continued the type of reporting which won for him his second Ernie Pyle award. Even tho then past 50, he continued to go on patrols and stay up all night when events demanded, as when the Reds overran the A Shau Valley.

He returned to the United States in the summer of 1967, hopeful of returning to Vietnam despite the fact he was 53 "and youngsters could do my job better." But health never permitted a return. A book of his Vietnam columns, "Dateline: Vietnam," was published in the summer of 1966 and sold well.

Early this spring he took vacation time to write a biography of Vice President Spiro T. Agnew. It is being published by Universal

Publishing Co. of New York and was reviewed in this newspaper last Friday.

Mr. Lucas was born June 22, 1914, in Checotah, Okla. His father died when he was young and he was forced because of lack of finances to cut short his education at the University of Missouri. His first newspaper job was with the Muskogee, Okla. Daily Phoenix. After a stint as a reporter for the Tulsa Tribune, he enlisted in the Marines in 1942.

NEVER MARRIED

He never married, but once (after World War II) was engaged to a WAVE lieutenant. The story around his home office was that the romance went on the rocks because the weekend he was to visit her parents in upstate New York an emergency assignment came up. The fiancee is supposed to have said: "It's the office or me." Mr. Lucas took the assignment.

His apartment in an Alexandria highrise was literally filled with awards, scrolls and testimonials. One picture shows one of the highlights of his life: President Lyndon Johnson in September, 1966, introducing him to 100 Congressmen. LBJ had called in for Mr. Lucas to brief on Vietnam. It was the only time President Johnson asked a newsman to give such a briefing. Mr. Lucas was given a standing ovation at the close of his remarks.

He was an excellent public speaker and made scores of addresses thruout the country over the years before groups of all kinds.

He is survived by a sister, Mrs. Mary Moore of Bowie, a brother, J. Bob Lucas, state capitol reporter in Oklahoma City for the Tulsa Tribune, a niece, Mrs. Beth Marshall of Torrance, Calif., and a nephew, Peter W. Hudson of Silver Spring.

Funeral arrangements are not yet complete.

JIM G. LUCAS

One of many amazing things about Scripps-Howard War Correspondent Jim G. Lucas was that a lifetime of witnessing and writing about the tragedy of wars left him without a trace of inner hardness or cynicism.

He was, until the end, what one speaker said of him years ago in bestowing upon him some particular medal: "A truly modest man—an old Marine with a soft heart."

And he could, and did, write with the best of the journalists of any era.

He undoubtedly saw more combat than any newspaperman in U.S. history. He seemed to be always at the front—until age and a long, losing bout with cancer caused him to return from Vietnam three years ago for the last time. When, for example, Gen. Omar Bradley at a Washington banquet in 1953 awarded Jim in glowing terms the VFW's Gold Medal for conveying the feel of the battlefield in his stories, Jim was on the frontlines in Korea. When he was awarded the 1954 Pulitzer Prize for his human interest stories from Korea, he already was in Hanoi covering still another war. (He was in Hanoi when Ho Chi Minh's troops took over North Vietnam.)

Still, 25 years of frontline reporting in three major wars never shook his belief in the worth of the individual, the value of life, or the love of country.

He never married. He loved young people and there are countless stories of his help to the young, particularly young newspapermen on their first assignment to a war zone. He could, and did, oratorically wave his country's flag at the slightest provocation.

Jim Lucas was a great reporter with a rare gift for chronicling the miseries and joys, heroism and humdrum of the life of the American soldier on the frontlines in three wars.

Thousands upon thousands of ex-GIs will long remember him from the clips of his stories they have pasted in their scrapbooks.

Scores of young newspapermen in the future, we are sure, will be studying his work and seeking to emulate it—just as has been true in the case of Jim's predecessor, Ernie Pyle.

For those of us in Scripps-Howard, it has been an exceptionally rare privilege to have worked with Jim Lucas.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order the Chair now recognizes the distinguished Senator from Ohio (Mr. YOUNG) for not to exceed 20 minutes.

UNITED STATES CANNOT DUCK "TIGER CAGE" BLAME

Mr. YOUNG of Ohio. Mr. President, the American people were shocked by the discovery earlier this month of the existence of a Devil's Island-type prison camp run by the militarist Saigon regime of General Thieu and Air Marshal Ky. The human torture chamber at Conson has imprisoned hundreds of men and women locked up in dark windowless stone cells, confined five or more together in 5-by-9 stone compartments, living in filthy conditions, suffering from malnutrition and disease and enduring physical beatings and torture. From catwalks above the cells guards frequently throw lime down on the prisoners to choke them when they beg for food or water.

Cao Nguyen Loi, a 26-year-old South Vietnamese who spent more than a year in Conson wrote:

> They threw five people into this narrow cage. On the average, each person had only about two hand breadths of space in which to lie and live. The legs were shackled and held high day and night—even while eating, sleeping, washing—fastened to a metal rod about four or five meters long. They forced us to lie in silence. We couldn't sit or stir in this hot, narrow, dark cage. Even when the latrine barrel was open and leaking all over so the floor had a pasty covering, we still had to lie quietly and endure it. We were kept there continuously for the first four months.

The revelation of the Conson concentration camp is another link in the chain of proof that we are not supporting a democracy in Saigon and never have. We have been maintaining a brutal totalitarian ruling clique of military dictators whose prime interest is remaining in power, not serving the needs of the South Vietnamese people. It may be charged by some that this is no worse than atrocities committed by the Communists. That is hardly a justification for this horror. For 6 years the American people have been told they were fighting this war to prevent such things from happening.

Mr. President, Columnists Frank Mankiewicz and Tom Braden have written an outstanding article in which they point out that the United States must accept much of the responsibiliy for the atrocities at Conson. Some of the prisoners there were captured by American soldiers and turned over to the South Vietnamese. The prison camps at Conson and elsewhere are paid for largely by money from American taxpayers and are supervised by an American official.

This is a most interesting and informative column. I ask unanimous consent that it be printed at this point in the RECORD.

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

UNITED STATES CANNOT DUCK TIGER CAGE BLAME

(By Frank Mankiewicz and Tom Braden)

WASHINGTON.—The moral justification for waging war in Vietnam grows less and less clear, and this city, despite official shrugging of shoulders about the congressional discovery of Saigon's "tiger cages," is gloomier on the war than it has ever been.

Even the evil of North Vietnam's treatment of American prisoners has lost a little of its bite. For what would we answer now to some North Vietnamese counterpart of H. Ross Perot, arriving with food parcels and requests for names?

We could only answer that we Americans don't keep any prisoners, that we do not even count those we take but turn them over immediately to the South Vietnamese, where some of them at least wind up in "tiger cages."

Officially, of course, the White House and the Pentagon are saying in effect, "We didn't know about it, but then it's not our responsibility anyhow. It's Saigon's responsibility."

But it won't really wash. Those men chained to iron bars in 5-by-9 concrete pits, doused with lime dust when they beg for water, are prisoners, some of them at least, taken on the battlefield by American soldiers.

And they are housed in jails paid for by American taxpayers—$2 million annually—supervised by an American official with the absurd title of "public safety director" who tried to deny to two inquisitive congressmen that the "tiger cages" existed.

It is essential in war to think of the enemy as evil and of "our" side as good. But as the American people have gradually discovered what "our" side is, the certainty so necessary to moral superiority has turned into a kind of shame—an aversion to the dream become nightmare.

That is why Vietnamization, which when President Nixon first produced it seemed such a handy and even noble escape route, now appears as a terrible moral reminder, destined to haunt us and taunt us until reason destroys pride.

Take, for example, two items in last week's Vietnamization news. First, we announced an additional $100 million for the South Vietnamese government as economic aid. But contrary to our usual policies in granting economic aid, this was a gift outright—no strings.

We did not ask that the Saigon government mobilize its economy for the war, collect income taxes, control prices, wages and credit. We did not even suggest that it would improve Vice President Ky's reputation in this country if his take from the Saigon race track—estimated at between $10,000 and $15,000 weekly—were used to improve prison conditions rather than delivered to him personally.

But American officials who protested on the grounds that our taxpayers were being asked to do what the Vietnamese were not, got their answer from Saigon's economic minister. He could not raise taxes, he said, because his government could not collect taxes in the countryside. Nothing could have made more of a shambles of the claim that Saigon now controls "over 80%" of the countryside.

Or take another item. We are now committed to build 20,000 houses annually in Saigon—not for civilians but for the military population. It must be counted as an irony that while mortgage money is almost

impossible at home, American taxpayers should afford a housing boom for South Vietnam.

While we are confronting the difficult moral proposition of supporting a war we don't want to fight ourselves, another moral proposition is bearing down upon us. It is called Vietnamization, and it more and more appears as a definition of support for that which is morally insupportable.

Mr. YOUNG of Ohio. Mr. President, this is a terrifying, brutal situation which has evidently been continuing for years by direction of Thieu and Ky and their militarist Saigon regime which we Americans have maintained in power. This directly concerns us and reflects upon all Americans. Are we aiding and abetting torture and unparalleled cruelty by immediately surrendering to the friendly forces of the Saigon militarist regime all prisoners taken by American GI's for them to torture and sometimes murder as was committed by General Loan? Now too late Thieu and Ky have announced that they have closed the tiger cages and will no longer permit political and other prisoners to be confined there.

Mr. President, in this connection, I ask unanimous consent that an editorial "Con Son: A Case History of Deceit" published in the Washington Post of today and a column by Washington Post Staff Writer George C. Wilson entitled "Con Son and Savaging of Truth" published on the editorial page of today's Washington Post be printed in the RECORD.

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

CONSON: A CASE HISTORY OF DECEIT

Beware of the insufficiently diligent Vietnam fact-finder, we warned the other day, in connection with the diligence of two United States congressmen in uncovering evidence of inhuman conditions at the South Vietnamese prison of Conson Island; we were referring to the difficulty the quick visitor has in getting to the truth about any particular aspect of that war. What we had in mind was the routine effort of American military men as well as civilians, when "briefing" visitors, to put the best face on things, to show progress in an enterprise in which they are wholly absorbed, and to which most of them have deep commitments.

This is normal enough and understandable when professionals are pursuing a career and obeying orders and executing a policy which, as far as they are concerned, has been approved in the usual way by the highest authority. There is a natural tendency to produce the highest possible enemy body count because that is part of the grim game of proving progress; you wouldn't expect a regular Army colonel or a career diplomate to load a progress report to his superior with emphasis on hamlets as yet unpacified, roads still unsafe for travel, enemy havens yet to be cleared or caches of Vietcong weapons yet to be destroyed. Up to a point, any serious visitor to Vietnam, official or unofficial, expects to be presented with the bright side of the war effort, and to have to dig out the worst side if he has the time and can get some help from those who are not in the business of "briefing" visitors.

But there is a difference between this and being deceived in a gross and calculated way that is clearly what an official of the American AID mission in Saigon was trying to do to Congressmen Anderson and Hawkins while they were actually en route to Conson Island by air. The story told by George C. Wilson elsewhere on this page today is almost as shocking, in its way, as the story of Conson. For the latter is a measure of South Vietnamese morality; Conson is their prison, however much it may benefit from American aid, and in the last analysis, their responsibility. But the so-called fact sheet which the AID mission had prepared for the visiting congressmen is a measure of *our* morality, and a measure, too, of what this war has done to us. We are in Vietnam, we are sometimes told, in the role, which has become part of our postwar foreign policy, a nation-builder in which the things we stand for are supposed to rub off on emerging nations by way of fortifying them against the appeal of an alien ideology. And instead it seems to be rubbing the wrong way; instead of uplifting, *we* are being dragged down. You can make the big case for this in the bombing of innocent bystanders, or the cynicism in our lavish support for the government of Thieu and Ky. Or you can make it in a lot of subtler, less dramatic ways. But rarely is it made more plainly than in the deliberate attempt of an important official of the AID mission, who is supposed to be teaching modern penology to the South Vietnamese, to conceal evidence from U.S. congressmen of the most repressive penal practices.

At the very least, you would figure that Mr. Frank E. Walton, director of AID's Public Safety Directorate in the Saigon mission, would have been relieved of his duties by now and sent home. That would be our first suggestion, obvious as it is. But that is not where the story ought to end, because there is an abundance of evidence that in lesser ways, not so blatant, but just as pervasive, much of the official reporting on this war is systematically colored to give us false encouragement.

So our second suggestion is that Mr. Walton's "Fact Sheet" ought to be required reading for every Washington official who must make decisions about this war—as an antidote to the easy answer that only those in government have the necessary information to make decisions on. What Mr. Walton was peddling to what he hoped were unsuspecting congressmen about Conson is, presumably, what he was also telling his own superiors, who were telling it to their superiors. And so it all moves on up to Washington, where the reports pour in, stamped Top Secret and Eyes Only and bristling with authority, and become the grist of public progress reports on the war. It isn't all as crudely wrong as Mr. Walton's report, or as consciously so, of course. But the Conson "fact sheet" is nonetheless illustrative of a larger fact of life which has had much to do with the self-perpetuating nature of the Vietnam war.

CONSON AND SAVAGING OF TRUTH

(By George C. Wilson)

The revelations about the conditions in South Vietnam's Conson prison have eclipsed another atrocity of a sort—and one which the American government cannot disavow. It is the violence done by the U.S. government, through an official of the Agency for International Development, to the truth.

The story starts inside a DC–3 flying southeastward the 140 miles from Saigon to Conson Island, 60 miles off the South Vietnamese coast. In the airplane were two congressmen, William R. Anderson (D-Tenn.) and Augustus F. Hawkins (D-Calif.), (part of a 12-member House delegation appointed by Speaker John W. McCormack to find out the facts about the Southeast Asian situation) and their AID escorts. The AID men had with them a fact sheet, prepared especially for Anderson and Hawkins by the top AID official in the party—Frank E. Walton, a former Los Angeles deputy police chief, who is now in charge of the American advisory section in Saigon for the South Vietnamese national police force.

This fact sheet was dated July 2, the day of the congressmen's visit, but it was prepared in advance of course, and on the basis of Walton's first-hand inspection of the prison camp. The full text of this document is printed for your convenience at the conclusion of this article as exhibit B in this particular atrocity. Before reading it, however, it is necessary, first, to recall to mind what might be called Exhibit A—the actual findings of the two congressmen. Only with the findings freshly in mind is it possible to get the full measure of the calculated violence done to the truth in this instance by the most responsible government officials. Bear in mind, once again, that the two congressmen were handed this document on their way to the Conson prison camp, where they were to uncover by their own initiative, and clearly against the will of their official escorts, unmistakable evidence of inhuman treatment of the prison's inmates. What follows is a brief recital of their findings which have already been widely published:

Upon arrival at Conson, the Congressmen rejected Walton's suggestion that they spend their time at the island curio shop rather than the prison—"It's more like a Boy Scout camp," Walton assured them—and proceeded to tour the compounds at Conson.

The prisoners, despite the threatening presence of the colonel commanding one camp, told the Americans in desperate terms about their hunger and sickness. But the worst was yet to come. Thanks to a diagram of Conson which a former inmate had drawn for Thomas R. Harkin, a committee staffman accompanying the congressmen, the Americans recognized Compound 4 as the site of the "tiger cages." It had been rumored in Saigon that the Thieu regime threw political opponents in the cages like animals. A guard, hearing the commotion in the vegetable garden camouflaging the approach to the tiger cages, unwittingly swung open the secret door in the high wall.

Looking down through the iron gates of the tiger cages, Anderson reported, he saw people—including teen-age girls—crammed into tiny cages more cruelly than mistreated animals; lime dust was in buckets along the catwalk so it could be thrown down on prisoners to choke off any begging for food or water; one small bucket held the waste of five people in each 10 by 5 foot fetid cage.

The prisoners risked beatings and death to tell the Americans—through an interpreter which the congressmen had provided for themselves—of their misery. All the men in the cages were lying down. They explained that they had lost the use of their legs, apparently from the paralysis of being foot-shackled for months on end to bars in the cages. A young girl said she was 18 and had been picked up during an antiwar demonstration, even though she was neither a participant nor a Communist. The prisoners talked of tuberculosis; of lack of food; of lost families. The cages had an iron-bar roof but no windows.

What the congressmen saw—the first lawmakers to bring back eyewitness testimony—backed up what five former prisoners of Conson had written in a report to the South Vietnamese Assembly. Walton and everybody else in AID had access to the report. It had been submitted on June 19, 1970—before this latest congressional delegation arrived.

Cao Nguyen Loi, a 26-year-old South Vietnamese who spent more than a year in Conson, and four fellow inmates wrote the report—risking further torture.

"They threw five people into this narrow cage," "On the average, each person had only about two hand breadths of space in which to lie and live. The legs were shackled and held high day and night—even while eating,

sleeping, washing—fastened to a metal rod about four or five meters long. They forced us to lie in silence. We couldn't sit or stir in this hot, narrow, dark cage . . . Even when the latrine barrel was open and leaking all over so the floor had a pasty covering, we still had to lie quietly and endure it . . . We were kept here continuously for the first four months . . .

So much for Exhibit A; there is more evidence available, but this should be more than enough to document the appalling conditions in Conson Prison. Now for Exhibit B, the AID Mission's carefully prepared briefing paper, which was signed by the chief American police adviser, Walton, who reportedly told the congressmen that he knew about the "tiger cages" from earlier inspections of Conson. Here is what he, and by inference the American AID mission in Saigon, would have had the congressional investigators believe were the facts.

[Fact Sheet]

JULY 2, 1970.

Subject: Conson National Correction Center.

Purpose: To provide background information relating to the Conson Correction Center and to discuss problems and accomplishments associated therewith.

Facts:

1. The Conson Island National Correction Center, located in the South China Sea approximately 140 miles southeast of Saigon, is Vietnam's largest correctional institution. Established by the French in 1862 as a penal colony, it has long held a reputation of being a "Devil's Island." This reputation still prevails in spite of an enlightened and modern administration of the facility.

2. Currently, this facility is utilized for the detention of hard-core Communist criminals who have been convicted of serious offenses.

3. The Conson Correctional colony had an inmate population of 9,916 on June 1970. There are seven correctional camps within the colony with a total capacity of 9,750 inmates. Two thousand of the currently assigned inmates are classified as trusties and live outside the camps in semi-private minimum custody homes. The trusties are permitted to raise their own food and maintain a daily routine of their own choosing, but under the eyes of supervisors.

4. Conson has one Public Health Doctor. With the assistance of inmate technicians each prisoner receives annual inoculation for plague, cholera and smallpox. Schick tests are given to detect tuberculosis. Dental care is irregular from visiting VN Navy ships and U.S. DENTCAP Teams.

5. The inmates are kept busy with work projects and vocational tasks such as woodcutting, tile making, woodworking, animal husbandry, chicken and duck production and sewing. Inmates also attend classes in literacy training and all grades of formal education. Rice, papayas, coconuts and vegetables grown on the prison farm and fish caught by the prisoners supplement the diet.

6. All trusties and 75 per cent of the inmates housed in the camps are allowed supervised swimming, mail, canteen service and Correction Industry Shop Vocational Training classes. The GVN allow selected inmates to have visitors on the monthly supply ship.

7. A pre-release community of 30 homes has been built on the beach to house 300 inmates. These inmates are assigned to the community 120 days prior to release.

8. The International Committee of the Red Cross periodically inspects the prison. Their reports have generally reflected praise for the conditions observed.

9. In the opinion of Correction Advisors with lengthy U.S. penology experience, Conson is not a "Devil Island," but on the contrary is a correctional institution worthy of higher ratings than some prisons in the United States.

FRANK E. WALTON,
Public Safety Directorate, CORDS.

THAI FOREIGN MINISTER ASSERTS UNITED STATES NEAR MENTAL BREAKDOWN

Mr. YOUNG of Ohio. Mr. President, billions of dollars of American taxpayers' money have been poured into Thailand. We maintain six airbases in that country and one huge naval base. Having visited nearly every area of Thailand, I report that our airbases and, in particular, the huge naval base have been constructed evidently on a permanent basis.

Just recently, Mr. President, the Foreign Minister of Thailand, Thanat Khoman, stated that the United States is on the verge of a national mental breakdown which has affected its reliability as an ally and friend of Thailand. The Foreign Minister stated that as a result:

It seems relations between Thailand and the United States will evolve toward a more selective basis.

This Foreign Minister had the effrontery to make his statements at an American Chamber of Commerce luncheon with U.S. Ambassador Leonard Unger in the audience.

Foreign Minister Thanat is a former Thai ambassador to the United States. In fact he is the architect of the military alliance that resulted in thousands of Americans, mostly airmen and naval personnel, being in Thailand.

Foreign Minister Thanat stated:

Of all countries in Asia and perhaps the world which have cooperated with the United States few have given so much in return for American generosity as the Thai Government and people.

He stated our Government insisted that Thailand send troops to South Vietnam and volunteered to pay all expenses. Our expenditures in Thailand have been tremendous and in this connection Thanat said he resented the statements made that the U.S. Government had hired Thai mercenaries and offered Thailand a billion-dollar bribe to send troops to Vietnam. He said further that these attacks on Thailand make his country "a scapegoat on which to revenge the American frustrations and failures" in Vietnam.

Thanat was doubtless correct in his assertion that the domestic crisis in the United States growing out of our involvement in Vietnam began with the enemy Tet offensive of February 1968. Gen. William Westmoreland, then our commanding general in South Vietnam claimed and our Army intelligence made the same claim that Communists were bringing in huge numbers of troops in the nighttime opposite Khesanh and that at the onset of the Tet Lunar holiday would seek to overrun that outpost. General Westmoreland withdrew troops from other areas in Vietnam and ordered them to deploy around Khesanh. He reported that we had encircled the encirclers around Khesanh.

Then the VC struck everywhere else except at Khesanh. They invaded Saigon, penetrating the U.S. Embassy grounds after breaching the fortresslike walls of our embassy. In Saigon they held possession of our Embassy grounds for 7 hours. Fortunately, Ambassador Ellsworth Bunker escaped with his life. The VC were more intent on invading Saigon jails and releasing 7,000 political prisoners. The VC invaded and seized 37 provincial capitals of the 44 in South Vietnam. In addition to 7,000 political prisoners released from Saigon jails, the VC forces immediately upon invading 37 of the 44 provincial capitals released all political prisoners held in jail and this totaled many thousands. It is estimated that this total exceeded 50,000. No one knows how many thousands were drafted or voluntarily joined the VC armed forces.

This was at the height of the rice season. No one knows how many tons of rice were seized by the VC forces. The VC and North Vietnamese troops captured and held Hue for a month. During that period of terror they occupied the Citadel at the center of this beautiful city. During the 30 days our marines engaged in frontal attack after frontal attack on the Citadel. During these terrible frontal attacks some of our Marine battalions were decimated. The loss of life sustained by the VC and also civilians was very great. Our bombers hurled many tons of high explosives on the Citadel. The loss of life was so terrible that civilians killed by VC terrorists and VC gunfire and by our bombers were found later to have been buried in mass graves.

Finally after 30 days the surviving VC abandoned the Citadel and slipped away in the nighttime. Our Marine officers and friendly allies had failed to surround the Citadel.

It is evident now, as it should have been evident to all Americans at the time, that General Westmoreland had been outgeneraled and outwitted by the VC. There was no attack at Khesanh which he had predicted. Probably none was ever intended by the VC or North Vietnamese forces. Instead the VC assailed Saigon and 37 provincial capitals throughout South Vietnam including attacks in the Mekong Delta and other rice producing areas.

General Westmoreland at the time stated "We were outnumbered in the south." If we were, it was no doubt due to the fact that our marines, the best trained, most intelligent, and the greatest offensive fighting men in the world and with a great tradition of spearheading amphibious landings, were deployed on the defensive at Khesanh and south of Danang and Hue.

In the American Civil War, Mr. President—or the War Between the States, as the Acting President pro tempore (Mr. ALLEN) would term it—President Lincoln dismissed generals who were defeated and outgeneraled. Not one was permitted by him to ever again command a Union Army. President Johnson did not follow President Lincoln's policy as he should have done. However, he did remove General Westmoreland from com-

mand by "kicking him upstairs" to be the Army member of the Joint Chiefs of Staff in Washington. Very peculiarly, General Westmoreland claimed the Tet Lunar offensive was a great victory for the United States. Psychiatrists have a name which is applicable to this general, or any other general, who really deludes and deceives himself.

Foreign Minister Thanat correctly stated that the Tet Lunar offensive of February 1968 was "an even greater victory for the forces of National Liberation or VC than the one they reaped at Dienbienphu. I ask unanimous consent that this statement as contained in an article in the Evening Star of July 15, 1970, be printed in the RECORD.

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

THAI MINISTER ASSERTS UNITED STATES IS NEAR MENTAL BREAKDOWN

(By Peter O'Loughlin)

BANGKOK.—Thai Foreign Minister Thanat Khoman suggested today the United States is on the verge of a national mental breakdown that has affected its reliability as an ally.

As a result "it seems relations between Thailand and the United States will evolve toward a more selective basis," he said.

Speaking at an American Chamber of Commerce luncheon with U.S. Ambassador Leonard Unger in the audience, Thanat said current upheavals in American society made it "difficult for those working closely and loyally with the United States to expect a well-reasoned and balanced reaction from their disturbed partner."

Thanat, a former ambassador to the United States and architect of the military alliance that allows large numbers of Americans to be stationed in Thailand, said this feeling was shared "along the length and breadth of Asia."

His main theme was that Thailand had been unjustifiably criticized by the American press and liberal politicians for supporting the U.S. war effort in South Vietnam with troops and by granting air bases in Thailand.

"One can say without hesitation that of all the countries in Asia and perhaps the world, which have cooperated with the United States, few have given so much in return for American generosity as the Thai government and people," he said.

He said the U.S. government insisted that Thailand send troops to South Vietnam and had offered to defray the expenses of the troops to "alleviate the burden that Thailand already had to bear."

He said this agreement had been misrepresented by politicians in Washington to mean the United States had hired Thai mercenaries and offered Thailand a billion-dollar bribe to send troops to Vietnam.

Thanat asserted that the U.S. domestic crisis began with the enemy Tet offensive in 1968. By penetrating the U.S. Embassy grounds in Saigon, he added the Vietnamese reds won "an even greater victory than the one they reaped at Dien Bien Phu."

"The American public opinion, effectively aided by a chorus of TV and radio commentators, by liberal pundits of the press, self-seeking politicians and so-called intellectuals in many campuses, foundered before the coordinated onslaughts," he said.

"At the juncture, the policy of scuttle and run, distinctly emerged."

Thanat said the same group of "immature and irresponsible elements" in the United States had turned to attack Thailand as "a scapegoat on which to revenge their frustrations and failures."

S. 4102—INTRODUCTION OF A BILL INCREASING THE INDIVIDUAL INCOME TAX EXEMPTION

Mr. YOUNG of Ohio. Mr. President, the time is long past for Congress to revise our archaic internal revenue laws and effect genuine tax reform.

Despite last year's Tax Reform Act so-called, the average American continues to bear an extremely heavy income tax burden while the ultra-rich and specially privileged escape their revenue responsibility through a series of gaping tax loopholes.

In this time of spiraling inflation and soaring cost of living, it is a tragedy that the vast majority of our citizens, those earning between $5,000 and $25,000 a year, pay a higher percentage in income tax than do those whose earnings exceed $25,000.

Mr. President, an important first step toward genuine tax reform would be to increase the individual income tax exemption. Such a step would benefit more than 100 million middle-income taxpayers.

The present internal revenue plan calling for individual exemptions of $625 in 1970, $650 in 1971, and $700 in 1972 is woefully inadequate.

Therefore, Mr. President, I am today introducing for appropriate reference, a bill to increase the personal income tax exemption to $900 for 1971 and to $1,200 for 1972.

The revenue lost can easily be recovered by plugging the atrocious tax loopholes that continue to exist. It is estimated that as much as $50 billion is lost to the Treasury through income tax gimmicks of one sort or another favoring various and sundry special interest groups in our society.

These are especially appalling when we consider that a family whose breadwinner earns $3,000 a year pays out over 30 percent in taxes. This is outrageous since a family with a $3,000 income is also classified as poverty stricken.

Mr. President, I report that for nearly 12 years as a U.S. Senator and prior to that as a member of the Ways and Means Committee of the House of Representatives, I have studied the tax structure of our country and the problem of tax loopholes.

A flagrant tax loophole is the depletion allowance for oil and gas producing companies. Last year's tax legislation reduced the depletion allowance for these companies from 27½ percent to 23 percent. This inadequate reduction does but little to relieve the burden of the average taxpayer.

This exemption privilege granted to these giant corporations continues to cost our taxpayers $3 billion annually. The fact is that oil producing corporations have been paying Federal income taxes at about one-fifth the average rate of most American wage earners. Admittedly the average American family bears an extremely heavy income tax burden and oil and gas producing corporations unfortunately have been and are exempted from paying their proper share of Federal taxes.

Last December, Mr. President, I introduced an amendment to the tax reform bill which would have eliminated the oil depletion allowance on petroleum produced outside the United States. The combination of the continued depletion allowance and the foreign tax credit has made most of the oil companies' profits tax free.

For example, in 1967, one of our greatest oil producing corporations, the Atlantic Refining Co., by reason of the then 27½ percent depletion allowance, paid no income tax whatever upon its tremendous net profits for that year. This corporation has since merged with the Richfield Oil Co. and in 1968, the Atlantic Richfield Corp. paid but approximately 6 percent of its net earnings to our Government as taxes.

The deductions granted to gentlemen farmers and loopholes favoring farm corporations deprive the Treasury of additional hundreds of millions of dollars annually. The Tax Reform Act failed to effectively plug up this loophole.

At this time more than 10,000 millionaires are enjoying the luxury and the hobby of owning farms. What have they to lose if the farm operation as reported by their managers shows a deficit year after year of many thousands of dollars? This annual loss is simply deducted by the owner or owners of the farm while, of course, the value of the farm itself increases year after year. This tax loophole works to the unfair tax advantage of owners of so-called "Gettysburg farms," and it should be reviewed and dealt with in the Senate Finance Committee. Only about 1,200 gentleman farmers were affected by the tax reform legislation of last year.

Genuine income tax reform means legislation to provide some Federal income tax on bonds issued by municipalities and States. These bonds remain totally tax exempt. They are eagerly purchased by extremely wealthy men and women of our Nation and placed in their vaults. Many individuals, although their incomes may exceed $100,000, $500,000 or a million dollars a year, pay no income taxes whatever. They enjoy cutting coupons, receiving interest checks, and banking the money.

Another serious loophole is the failure to tax capital gains passed from one generation to another. This deprives the Treasury of $2.5 billion every year.

Also, it is scandalous that special treatment has been given for stock-options, accelerated depreciation on speculative real estate and payment of estate taxes by redemption of Government bonds at par instead of at the prices quoted on the open market. In recent months Government bonds have unfortunately been selling for approximately 60 percent, or less, under their face value.

Mr. President, income taxes should be levied according to ability to pay. Genuine tax reform would eliminate altogether income taxes for families with incomes under $3,600.

Adoption of my bill would be a meaningful first step toward fairness and modernization of our revenue laws.

The ACTING PRESIDENT pro tempore (Mr. ALLEN). The bill will be received and appropriately referred.

The bill (S. 4102) to amend the Internal Revenue Code of 1954 to provide for an increase in the amount of the personal exemption, introduced by Mr. YOUNG of Ohio, was received, read twice by its title, and referred to the Committee on Finance.

OUR MAN IN NORTH VIETNAM

Mr. YOUNG of Ohio. Mr. President, Robert S. Boyd, chief of the Akron Beacon-Journal Washington Bureau, recently returned from 2 weeks' traveling in North Vietnam. Mr. Boyd is one of the foremost investigative reporters in the Nation.

I ask unanimous consent that his report which was published in the Akron Beacon-Journal of June 7, 1970, be printed in the RECORD.

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

HANOI BELIEVES NIXON INVENTED VIET WAR

(By Robert S. Boyd)

In North Vietnamese eyes, Richard Nixon is even worse than Lyndon Johnson was.

Although it was LBJ who bombed the daylights out of their country, Nixon is considered even more treacherous, stubborn and cruel than his predecessor.

They believe Nixon invented the Vietnam War.

In the Museum of the Revolution in Hanoi, which covers the 40-year struggle against French and then American intervention, there is an interesting exhibit devoted to Nixon.

It is dated 1953, and it shows him smiling and chatting with the former French puppet emperor, Bao Dai.

The caption asserts that this was when Nixon—then a freshman vice president—conceived his policy of "Using Vietnamese to fight Vietnamese."

Another display shows Nixon visiting Hanoi in the Spring of 1954, before the French defeat. He toured Dien Bien Phu on that trip.

The exhibit recalls Nixon's April 1954 speech suggesting American aid to the French—a project which President Eisenhower rejected.

In other words, Hanoi dates Nixon's "Vietnamization" plan of 1970 back 17 years—even before the French collapse.

That's how long they say the President has been trying to make South Vietnam into an American "colony" by means of Vietnamese troops.

As a general rule, American presidents are not among North Vietnam's favorite people. The last good one, in their eyes, was Abraham Lincoln, whom Ho Chi Minh admired in his youth.

It is the North Vietnam view:

Woodrow Wilson fouled up by ignoring the young Ho's plea for Vietnamese self-determination at the end of World War I.

Franklin Roosevelt showed promise, but he died before he could be of much help.

Harry Truman sold out to the French in 1946 and supported their campaign to hang on to their old colony.

Dwight Eisenhower refused to hold the promised elections to reunite Vietnam in 1956. Instead he created a tyrant, Ngo Dinh Diem, and put him in Saigon.

John Kennedy beefed up the American "advisers" and launched a "special war" of counter-insurgency against "liberation forces" in South Vietnam.

Lyndon Johnson "Americanized" the war with half a million GIs, and expanded it to North Vietnam.

And now, at the bottom of the barrel, comes Richard Nixon.

Nixon's "Vietnamization" plan is crueler than LBJ's "Americanization" of the war, said Luu Quy Ky, secretary general of the North Vietnamese Journalists Association.

"The cruelty lies in the fact that if Nixon uses the blood of other people, he will not be as economical with it as with American blood," Ky said.

Nixon is also more deceptive than LBJ, according to the North Vietnamese. Vietnamization is only a ruse to lull the American public, they argue. While cutting down U.S. casualties and costs, Nixon is actually prolonging and extending the war, they say.

The harshest indictment of Nixon I heard in my two weeks in North Vietnam came from Hoang Tung, a smiling, deceptively mild-mannered intellectual who is editor in chief of the official communist party newspaper, Nhan Dan (The People).

"Nixon has accelerated his own defeat—his political defeat at home and the defeat of his policies in Indochina," Tung said.

"Why? Because he has done things contrary to common sense. Things that even those who used to agree with him now dissent from. Things that even President Johnson dared not do."

Tung cited what he called Nixon's "escalation" of the war in Laos, the overthrow of Prince Sihanouk in Cambodia (which Hanoi claims was a CIA plot) and now the invasion of Cambodia.

Nixon even succeeded in making a Communist ally out of Cambodia's pleasure-loving Prince Sihanouk, Tung scoffed.

"We couldn't do that," he said, "but your Nixon did."

The editor noted sarcastically that Nixon undertook the Cambodian operation only days after his Secretary of State told Congress it wouldn't be done, and after a Senate committee voted against helping the Lon Nol government of Cambodia.

"Nixon acted in defiance of the Legislature," Tung said. "His acts bring much dissent. He is more unpopular than Kennedy or Johnson.

"Nixon claims his 'silent majority' supports him. But that is self-deception. The votes cast for Nixon in your last election were not meant for him to expand the war, but to end it."

Many Americans may find it poor taste for an official of a Communist dictatorship to criticize the President for failing to consult public opinion.

A number of American bomb casings that have fallen on Vietnamese soil have been derisively painted with his name.

Billboards, slogans and cartoons mock him.

And one day, in the southern part of the country, while American planes were roaring overhead on a bombing mission, a 23-year-old girl looked up and said quietly: "Nixon's airplanes."

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. In accordance with the previous order, the Senator from South Carolina is recognized for not to exceed 20 minutes.

THE OMNIBUS CRIME BILL

Mr. THURMOND. Mr. President, there can be no doubt that there is an urgent need for additional measures to combat the alarming rate of crime that is flourishing in our Nation. This is particularly true in the District of Columbia. S. 2601, the District of Columbia crime bill, provides these additional measures, and will, in my judgment, be instrumental in effecting a reduction in the number of crimes committed. However, it is unfortunate that certain provisions of this bill have been, and still are, the subject of gross misunderstanding by responsible critics and inaccurate reporting by the news media.

Mr. President, the provisions of this bill have been exhaustively studied in committee by the House and the Senate, debated on the floor and again studied by the House-Senate conference. All provisions which were deemed unconstitutional or unwise were eliminated. However, there is still controversy surrounding pretrial detention and no-knock provisions of this bill. Critics of these measures have argued that such provisions are unconstitutional and will be misused by the courts and law enforcement officials. It seems to me that a careful reading of this bill and a study of its legislative history, should dispel any doubts one could possibly have regarding its constitutionality or the fact that many safeguards were included in order that the possibility of misuse would be eliminated.

Let us first consider pretrial detention. It must be remembered that the concept of pretrial detention is not new. In 1927, a provision for pretrial detention was included in the American Law Institute's model code of criminal procedure. In the mid-1960's pretrial detention was considered by the Senate Subcommittee on Constitutional Rights and by the House Judiciary Committee. In 1966, the President's Commission on Crime in the District of Columbia recommended legislation to authorize the pretrial detention of those defendants who present "a truly high risk to the safety of the community." Since that time, other studies have been undertaken by the District of Columbia Metropolitan Police Department, the U.S. Attorney's Office, and the Judicial Council Committee To Study the Operation of the Bail Reform Act in the District of Columbia. All of these studies confirmed the fact that a system of pretrial detention was necessary to prevent dangerous criminals from committing additional crimes after being released on bail.

These studies, showing the serious problem of recidivism during bail, prompted the measure we now have before us. However, some critics argue that pretrial detention is repressive and that the courts cannot be trusted to administer its provision in a fair and impartial manner.

Section 23–1322 of the act provides in part that:

(a) Subject to the provisions of this section, a judicial officer may order pretrial detention of—

(1) a person charged with a dangerous crime . . . if the Government certifies by motion that based on such person's pattern of behavior consisting of his past and present conduct, and on the other factors set out in Section 23–1321(b), there is no condition or combination of conditions which

will reasonably assure the safety of the community;

(2) a person charged with a crime of violence . . . if (i) the person has been convicted of a crime of violence within the ten-year period immediately preceding the alleged crime of violence for which he is presently charged; or (ii) the crime of violence was allegedly committed while the person was, with respect to another crime of violence, on bail or other release or on probation, parole, or mandatory release pending completion of a sentence; or

(3) a person charged with any offense if such person, for the purpose of obstructing or attempting to obstruct justice, threatens, injures, intimidates, or attempts to threaten, injure, or intimidate any prospective witness or juror.

The act further provides that no person shall be ordered detained unless the judicial officer, who will be a judge, holds a pretrial detention hearing and finds that there is clear and convincing evidence that the person is a person meeting the requirements of section 23–1322, subsection (a), which I previously cited, and that there is no condition or combination of conditions of release which will reasonably assure the safety of any other person or the community. The judicial officer also has to issue an order of detention accompanied by written findings of fact and the reason for its entry. The accused is entitled to representation by counsel and is also entitled to testify and present witnesses in his own behalf. If pretrial detention is ordered, the accused has the right to appeal.

Mr. President, it should be evident that the rigid requirements for detention that I have just outlined are adequate to assure that misuse of this provision will not occur. I also have faith in our judiciary and sincerely believe that a judge will not sign an order for detention unless he is convinced that these requirements are met and the accused should be detained.

It has been argued that pretrial detention is unconstitutional because it is contrary to the eighth amendment of the U.S. Constitution. The language of the eighth amendment providing that "excessive bail shall not be required" does not establish a right to bail. It simply states that judges cannot require excessive bail in cases when the defendant has a statutory right to bail. In *Carlson* v. *Landon* (342 U.S. 524 (1952)), the Supreme Court stated that:

The bail clause was lifted with slight changes from the English Bill of Rights Act. In England that clause has never been thought to accord a right to bail in all cases, but merely to provide that bail shall not be excessive in those cases where it is proper to grant bail. When this clause was carried over into our Bill of Rights, nothing was said that indicated any different concept. The Eighth Amendment has not prevented Congress from defining the classes of cases in which bail shall be allowed in this country. Thus, in criminal cases where the punishment may be death, bail is not compulsory. Indeed, the very language of the Amendment fails to say all arrests must be bailable.

The case of *United States ex rel. Covington* v. *Coparo*, 297 F. Supp. 203 (S.D.N.Y. 1969) reaffirmed the Carlson case. The Court said in the Covington case that:

Congress could, without running afoul of the Eighth Amendment . . . provide . . . that persons accused of kidnaping, bank robbery with force and violence, or other serious crimes are not entitled to bail as a matter of right.

The Honorable John N. Mitchell, in an article written for the University of Virginia Law Review—Mitchell, *Bail Reform and the Constitutionality of Pretrial Detention*, 55 Va. L. Rev. 1223 (1969) states that:

Case precedent and history, therefore, belie the contention that the Eighth Amendment grants a right to pretrial release in all criminal cases, or even in all noncapital cases. When the language of the Amendment is analyzed in the historical context in which it was adopted, its ambiguity must be resolved, as in *Carlson* v. *Landon* in favor of the interpretation that although bail may never be excessive, there is no absolute right to bail.

It must also be remembered that while we are concerned about the rights of the defendant, at the same time we are concerned about the rights of society and particularly the victims of criminal acts. It is imperative that the rights of society be protected. In my opinion, this has not been the case in the past few years.

The no-knock provision in this bill has also been the object of various criticisms. The necessity and usefulness of such a provision have been questioned. It should be a well-known fact that an element of surprise is necessary in order that certain criminals be apprehended. Surprise is also essential for the seizure of condemning evidence in cases where such evidence can be easily destroyed or hidden. This provision will make it much harder for the known criminal to escape through another exit or destroy evidence needed for a conviction. It has been charged that this provision experiments with District of Columbia residents and uses them as guinea pigs before applying this law to the rest of the Nation. It has been said that this law is repressive, that it discriminates against blacks and that it resembles fascism. Mr. President, these accusations are ill-conceived, unfounded, and untrue. The facts are that a majority of the States either by case law or criminal statute have had no-knock authority for years. S. 2601 clarifies existing law and provides additional safeguards for the protection of individual privacy. For example, the probable cause standard is required before the police can enter under no-knock authority. It is also mandatory that prior judicial approval be obtained before entry without notice, when the circumstances which would justify such entry are known at the time application for a warrant is made.

Mr. President, at a time such as the present, when the crime rate is at an all-time high; when it is unsafe to walk on our streets after dark; when it is necessary to practically double the number of police in an attempt to maintain law and order, it would be easy to succumb to emotionalism and fear, and, therefore, call for measures and programs which would be unwise. I am pleased that this has not happened. The bill we have before us has been carefully considered. Safeguards have been provided which protect and balance the rights of the individual and society. The Honorable George L. Hart, Jr., judge of the U.S. District Court for the District of Columbia, succinctly stated this need for balance, in his testimony before the Senate Subcommittee on Constitutional Rights. Judge Hart stated:

Surely, it is not an easy thing to balance the interests of an individual charged with a serious crime . . . against the rights of a law-abiding citizen not to be robbed, raped or murdered in his or her home or on the streets. There are powerful and compelling arguments as to why the rights of both should be protected. I suggest a balancing is desirable which considers the rights of both, insofar as it is possible to do so. It is desirable to weigh one right against the other right, and to devise a plan, which to the greatest extent possible, will protect both.

I sometimes think that . . . we put too much stress on statistics and the rights of the person charged with a crime, and wholly ignore the human elements as they apply to the victim. In other words, we talk of the accused as a deeply concerned human being and citizen, which he is, but consider the victim only as a cold, inhuman statistic, which he is not. He, too, is a human being and a citizen deserving of consideration.

Mr. President, I urge the favorable passage of this bill through the adoption of the conference report.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. In accordance with the previous order, the distinguished Senator from Mississippi (Mr. STENNIS) is recognized for not to exceed 20 minutes.

MILITARY AUTHORIZATION, 1971

Mr. STENNIS. Mr. President, one of the two major areas in the military authorization bill which will soon be before the Senate for consideration is the research, development, test and evaluation appropriation for which $7.4 billion is requested. I believe it is the most complicated and certainly the most forward looking program of the Department of Defense. It may also be described as the spring from which flows all of the knowledge and genius that provides the United States with the most powerful and modern military forces in the world.

The Secretary of Defense and the Director of Defense Research and Engineering have called the research and development budget a "rock bottom" budget, just as they have described the entire military procurement budget. However, the committee has taken much greater pains this year in examining the many programs included under this account. The review in depth, which was conducted largely by the ad hoc Subcommittee on Research and Development, chaired by the very able Senator from New Hampshire, Senator MCINTYRE, identified specific programs in the bill which could be reduced without serious consequence. I should emphasize that these were difficult judgments which were reached after lengthy deliberation. Nonetheless, in the opinion of the committee, these reductions will have no detrimental effect on our future military capability; but to go beyond these reductions could undermine the very heart of our military technology.

REDUCTION OF ITEMS TOTALING $464.1 MILLION OR 6.3 PERCENT BELOW THE BUDGET

The committee has recommended the reduction or elimination of 52 programs

in the total amount of $464.1 million, or 6.3 percent. This was partly offset by a transfer of $79 million for two S–3A test aircraft from the Navy procurement budget which should have been included in the research and development account. The result is a reduction of $385.1 million. This will provide authorization of $7.016 billion which is $249.1 million lower than the House bill.

Mr. President, this subject matter was reviewed in great depth by an ad hoc Subcommittee on Research and Development of the Senate Armed Services Committee, ably led by the Senator from New Hampshire (Mr. McINTYRE). They identified the specific programs in this bill which, in their opinion, should be reduced.

I should emphasize that these were difficult judgments, but they were reached after lengthy deliberation. In the opinion of the committee, these reductions will have no detrimental effect on our future military capabilities.

We do believe, though, that to go beyond these reductions could undermine the very heart of our military technology. The Senator from New Hampshire will later present to this body, in as great detail as may be requested, all of the major or medium-sized items in this part of the bill.

GENERAL MISUNDERSTANDING OF RESEARCH AND DEVELOPMENT

Mr. President, there is a widespread misconception of the research and development programs which I would like to clarify as much as possible. Too often the program, all $7 billion of it, is thought to be mostly for the pay of scientists and engineers who work with test tubes and computers primarily to advance our technology. This is not so.

Of the $7 billion recommended by the committee, only 5 percent, or $0.4 billion goes to basic research. The major part of the program, involving the engineering and operational development programs totals $3.7 billion which amounts to more than 50 percent of the entire program. These programs provide for the production of development models of complete weapon systems such as the new F–14 plane for the Navy and the new F–15 plane for the Air Force, both advanced fighters, Minuteman ballistic missiles, and the Navy Poseidon, that are tested and followed later by procurement for the operating forces.

Everything, all the costs, are labeled Research and Development until the actual procurement of a weapon starts, but it is certainly an error to think of anything like a major part of those sums going into the basic research account.

Another large segment of the program, $1.2 billion or 15 percent, pays for the operation, management, and maintenance of the Defense research, development, and test organization. This includes some 88,000 civilian scientific, engineering, technical, administrative, and maintenance personnel who man the 130 Government-owned installations supported by this program.

That is a vast undertaking, Mr. President, the actual testing and evaluation, testing over and over again our vast weapons system for the air, for the sea, for under the sea, and for ground weapons of all kinds. One of our outstanding installations of that kind is Edwards Air Force Base, in California. There we have a number of test pilots who carry on every kind of conceivable testing and evaluation of these weapons before they are put into procurement. Then, as we have to make add-ons and modifications, they continue to test the weapons. It is an amazing experience to be taken through there and to be shown what a complete setup we have, and one is convinced of its necessity.

Another 32,000 military personnel who work at these activities are paid from another appropriation.

The remaining $1.8 billion provides for the exploratory development and advanced development work that bridges the gap between the knowledge gleaned from basic research and translates it into hardware that is brought together to form our complex weapon systems.

AUSTERITY OF THE AUTHORIZATION RECOMMENDED BY THE COMMITTEE

The committee recommendation is the lowest amount since fiscal year 1966, which was $6.7 billion. If inflation is taken into account, and the content of the program is put on a comparable basis, it is the lowest amount since fiscal year 1960, when it was less than $5.5 billion. I want to make the point very clear. This is the most austere program, in total dollars, in the past 10 years.

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

Mr. STENNIS. I yield.

Mr. SCOTT. I want to commend the Senator from Mississippi. I am aware of the purpose and general content of what he is discussing, and I should like to point out at this time a matter with which I am sure he will agree.

I have checked certain figures; and, whereas the budget for defense needs in 1962 was 48 percent and for human resources was 29 percent, and in 1968 the budget for defense was 44 percent and for human resources was 34 percent, now the human resources aspects of the budget have exceeded defense by 41 percent to 37 percent.

The Senator, of course, is quite right in pointing out the austerity of the budget and the fact that almost all has been squeezed out that possibly could be squeezed out. I am very glad that the distinguished chairman of the Committee on Armed Services, the man most competent to testify on these matters, is making a record as to the essential needs of the country.

We hear a great deal about the reordering of priorities, which, when translated, means, "I want what I can get for my particular crowd." Only one priority transcends all others, and that is the security and the defense of the United States—not merely this year but in this entire decade. Without protecting that No. 1 priority, no other priority will be around to enjoy.

Does the Senator agree?

Mr. STENNIS. I certainly do agree. I thank the Senator very much for his very timely remarks.

I think that this is a very austere program, as the Senator has said; but every major phase of it certainly should be fully explained and every Senator should have a chance to have it explained in such a way that it can be understood. We did not want to bring in any extra dollars. So this bill has been pursued very vigorously and very completely. I can say, on my own responsibility, that it is the most austere program in total dollars that we have had in the last 10 years.

Mr. SCOTT. I thank the Senator.

Mr. STENNIS. It is recognized generally that when military forces are being reduced and when military procurement is cut back, research and development takes on even greater importance. With fewer weapons and men, the quality of our arms must be supreme to overcome the superior numbers of our enemies. A strong and viable research and development program provides the ability to react, albeit sometimes too slowly, to this need. Nevertheless, it is the considered opinion of the committee that the reductions which we have recommended in the fact of the sober facts that I have stated before—severe financial condition of the Federal Government, priority of domestic problems, and inflation—can be sustained without jeopardy to our present or future defense posture. This opinion was reached with a full awareness of the fact that the Soviet Union is devoting more effort to military-related research and development than is the United States. We will have to examine this imbalance carefully in considering future budgets.

MAJOR PROGRAMS INCLUDED IN THE BILL

The authorization which the committee recommends will provide for a lower basic research program than in fiscal years 1969 and 1970. This is consistent with a shift in emphasis from defense to nondefense agencies, which has been recognized in the committee report. It supports the continued development of such important weapon systems as the F–14—$324 million—and F–15A—$370 million—advanced fighters, the S–3A antisubmarine warfare aircraft—$208 million—Safeguard—$365 million—B–1 advanced bomber—$50 million—Minuteman—$224 million—and Poseidon—$123 million. It provides also for initiation of development of the A–X close air support aircraft—$27.9 million.

SOME OF THE MAJOR PROGRAMS REDUCED BY THE COMMITTEE

The major reductions recommended by the Committee include such programs as the B–1 advanced bomber—from $100 to $50 million—the Subsonic Cruise Armed Decoy, called SCAD—from $33.6 million to "0"—the Short Range Air-to-Air Missile—from $37.2 million to $8.0 million—and the Cheyenne helicopter—from $17.6 million to "0".

SOVIET RESEARCH AND DEVELOPMENT EFFORT EXCEEDS THAT OF UNITED STATES

We must recognize that there are certain risks which we must assume in reducing the research and development program. There is the ominous picture of a constantly increasing Soviet research and development program. During the past few years, total Soviet R. & D. has been growing by about 10 percent per year while ours has essentially

leveled off. The comparison is even more dramatic for R. & D. devoted to military, atomic energy, and space. For example, during the 1960's the Soviet military R. & D. increased by about 60 percent while U.S. military R. & D. increased by roughly 30 percent. In absolute dollars, estimates for 1970 show the Soviets ahead of the U.S. by more than 20 percent. The simple fact is that we have been overtaken by the Soviets in total R. & D. effort expended for military, atomic energy, and space; and the gap appears to be widening. This situation cannot be tolerated for long, since our technological superiority is in danger. As I have stated before, we will have to watch this item very closely in the future.

I have been at this long enough not to be frightened by some new story about what the Soviets may be doing or what they are planning to do. We have certain ideas about what their capacity is and what they are doing, and it would be the height of folly if we did not weigh those the best we could and make certain that we are on the alert.

With respect to the research and development program, I hope Senators are close enough to it to realize that even though we might spend $100 million on a weapon that did not develop, that is not lost money, it is not waste, and certainly it does not mean that it was even in calculation. That has to be charged to the profit and loss of experimentation, the concept of finding out what will work; and you will always go forward knowing what will work when you find out that certain things will not work. That costs money, also, as Thomas A. Edison learned when he was trying to perfect the first incandescent lamp. So even though we have prospective weapons that do not work out, at the same time much is learned and much good comes from experiments we have made.

My purpose in making this short speech today on research and development is to touch upon some of the highlights and to give some idea of the percentage of this large sum of money that goes for actual basic research, how much for engineering, how much for the development of the pilot models, as they might be called, and how much for the actual testing, which is a tremendous part of putting any weapon in the field.

CONCLUSION

In conclusion, the committee believes that its recommendation will provide an austere level of funds to support only the most essential research and development programs. Measured against a rigid time frame, which averages about 7 years from the initiation of development to the delivery of fully tested weapon systems in quantity for operational use, the need for an adequate level of funds to insure a stable program each year cannot be argued. If significant changes occur in the annual authorization for research and development, the disruption of major development programs would be extremely costly, and result in undue program delays. The order of national priorities and the serious economic outlook demand the utmost prudence in the selection of those programs and weapons systems which offer the greatest promise for improving our future military capability.

Mr. President, as a final thought, I would emphasize that the heavy burden of examining the entire research and development program of the Department of Defense has been borne by the Research and Development Subcommittee under the able chairmanship of Senator McINTYRE. Senator McINTYRE will cover the research and development program in great depth in a separate statement to be presented during the course of debate on the bill. The purpose of my remarks has been to summarize and cover some of the significant aspects of this program.

Mr. President, the Senator from New Hampshire (Mr. McINTYRE) will also be here to answer questions, as will other members of the subcommittee. They will be prepared to go into any of these programs in depth. They have heard the testimony and have the facts taken from responsible witnesses to back up their conclusions and will be able to discuss the most difficult part of the bill.

We must make some allowances in there for experiments, as I said before, which do not always turn out. We have also got to make allowances for certain basic research which must go on all the time.

People have asked me many questions, such as, "Here is a weapon that is 10 years old. Why do you spend so much money to continue research and development on it?"

Because, there is continuous, progressive development to any weapon which lasts for any length of time and if we do not bring it up to date and add on the newest developments, provided the weapon can take it, it quickly becomes obsolete.

I refer to the F–4 Phantom jet, which has proven to be one of the finest airplanes and the most useful airplanes the Air Force and the Navy have ever used. They are delighted to have it. I believe that the first one came off the assembly line about 12 years ago and is still one of the workhorses for the Air Force and Navy. It is a plane which has been kept up to date and on which a small research and development program is still being carried on up until now.

The same is true with the Polaris submarine. A number of these are being converted to the Poseidon program which will carry the new missile.

I can give a simpler illustration. I remember from childhood that the Remington Arms Co. made shotguns. So did the Winchester people. They kept experimenting, experimenting, and improving. I believe that Winchester sold out and is not known by that name any more; but I am fortunate enough to possess one of the modern Remington automatics. We are all indebted to the research and development carried on by private enterprise in the relatively simple development of that weapon.

Other illustrations can be made of the Ford Motor Co., General Motors, Chrysler, and other corporations with their tremendous research and development programs which go on all the time. They cost a great deal of money.

In the case of this one department of Government, research and development does cost a great deal of money, but if we had to hire a company to do all of this for us and we had to bear the cost of creating such an organization, and so forth, it would cost us, in this instance, even more.

Mr. President, I yield the floor.

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. GRAVEL). Under the previous order, the Senate will now proceed to the transaction of routine morning business.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. 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.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON PROPOSED ARMY NATIONAL GUARD FACILITIES

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), transmitting, pursuant to law, a report on the location, nature, and estimated cost of certain facilities projects proposed to be undertaken for the Army National Guard (with an accompanying report); to the Committee on Armed Services.

REPORT OF SMALL BUSINESS ADMINISTRATION

A letter from the Administrator, Small Business Administration, reporting, pursuant to law, on the disbursements made to small business firms, dated July 20, 1970; to the Committee on Banking and Currency.

REPORT ON SERVICES TO FAMILIES RECEIVING AID TO FAMILIES WITH DEPENDENT CHILDREN

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on services to families receiving aid to families with dependent children, dated July, 1970 (with an accompanying report); to the Committee on Finance.

REPORT ON CLOSED BASIN DIVISION, SAN LUIS VALLEY PROJECT, COLO.

A letter from the Assistant Secretary of the Interior, transmitting, pursuant to law, a report on the Closed Basin Division, San Luis Valley Project, Colo. (with an accompanying report); to the Committee on Interior and Insular Affairs.

PROPOSED EXPLOSIVES CONTROL ACT OF 1970

A letter from the Secretary of the Interior, transmitting a draft of proposed legislation to regulate the importation, manufacture, distribution, storage and possession of explosives, blasting agents and detonators and for other purposes (with accompanying papers); to the Committee on the Judiciary.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A joint resolution of the Legislature of the State of California; to the Committee on Labor and Public Welfare:

"ASSEMBLY JOINT RESOLUTION NO. 20—RELATIVE TO TEACHERS' RETIREMENT

"Whereas, The California Legislature passed teachers' retirement bills in the 1967 Regular

Session and in the 1969 Regular Session. which were not enacted into law, to grant retirement credit for out-of-state service to the mobile teacher; and

"Whereas, Approximately 50 percent of the California teachers have out-of-state service credit for which they will be penalized during their retirement years; and

"Whereas, The retirement problems of the mobile teacher are long standing in California as well as in other states; and

"Whereas, The joint NEA-NCTR task force has presented a proposal to alleviate a significant long standing problem; and

"Whereas, After due and careful consideration of the public interest, legislation has been introduced in Congress which provides for improvement of education by increasing the freedom of the nation's teachers to change employment across state lines without substantial loss of retirement benefits, through establishing of a federal-state program allowing covered teachers at least 10 years of credit for public teaching service not covered by the system; and

"Whereas, This federal legislation provides that the federal government shall provide 40 percent of the cost for funding, with the remaining 60 percent to be shared by the state or local system, or both, and individual teacher; and provides an additional amount for administration; and

"Whereas, The legislation has been referred to the Education and Labor Committee of the 91st Congress for hearing and action; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to support and enact legislation to provide for a federal-state program allowing covered teachers at least 10 years of credit for public teaching service not covered by their present retirement system; and be it further

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

A resolution adopted by the Tamagusuku Village Assembly, Okinawa, praying for the removal of poison gas weapons from Okinawa; to the Committee on Armed Services.

ENROLLED BILLS SIGNED

The ACTING PRESIDENT pro tempore (Mr. ALLEN) announced that on today, July 21, 1970, he signed the following enrolled bills, which has previously been signed by the Speaker of the House of Representatives:

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.

BILLS INTRODUCED

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

By Mr. YOUNG of Ohio:

S. 4102. A bill to amend the Internal Revenue Code of 1954 to provide for an increase in the amount of the personal exemption; to the Committee on Finance.

(The remarks of Mr. YOUNG of Ohio when he introduced the bill appear earlier in the RECORD under the appropriate heading.)

By Mr. STEVENS:

S. 4103. A bill to amend the Act of March 3, 1899, relating to penalties for wrongful deposit of certain refuse, injury to harbor improvements, and obstruction of navigable waters; to the Committee on Public Works.

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

By Mr. JAVITS (for himself, Mr. MCGOVERN, Mr. BROOKE, Mr. GOODELL, Mr. HART, Mr. HOLLINGS, Mr. KENNEDY, Mr. PELL, Mr. SCOTT, and Mr. SCHWEIKER):

S. 4104. A bill to amend the Child Nutrition Act of 1966 to strengthen and improve the school breakfast program for children carried out under such act, and for other purposes; to the Committee on Agriculture and Forestry.

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

By Mr. MAGNUSON:

S. 4105. A bill to amend the Federal Water Pollution Control Act in order to authorize the Secretary of the Interior to incur obligations for construction grants under section 8 of such act, and for other purposes; to the Committee on Public Works.

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

By Mr. MAGNUSON (for himself, Mr. JACKSON, Mr. CRANSTON, Mr. HUGHES, Mr. KENNEDY, Mr. NELSON, Mr. RANDOLPH, and Mr. WILLIAMS of New Jersey):

S. 4106. A bill to amend the Public Health Service Act in order to provide for the establishment of a National Health Service Corps; to the Committee on Labor and Public Welfare.

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

By Mr. HRUSKA:

S. 4107. A bill to regulate the importation, manufacture, distribution, storage, and possession of explosives, blasting agents, and detonators, and for other purposes; to the Committee on the Judiciary.

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

By Mr. PROXMIRE:

S. 4108. A bill to amend the Truth in Lending Act to protect consumers against careless and erroneous billings; to the Committee on Banking and Currency.

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

S. 4103—INTRODUCTION OF A BILL RELATING TO PENALTIES FOR OBSTRUCTION OF NAVIGABLE WATERS

Mr. STEVENS. Mr. President, I am introducing legislation today which will increase the penalties for violations of the Refuse Act of 1899. This venerable law is an important part of the effort to halt abuse of the Nation's waterways.

Alaskans have witnessed the ineffectiveness of laws whose penalties are less than the value of the violation. Foreign fishermen have repeatedly penetrated American waters secure in the knowledge that fines imposed on them will be far less than the profits of their expeditions.

The Refuse Act of 1899 penalizes a different abuse of our waterways—chemical abuse. With a maximum penalty of $2,500, the act is ineffective against large-scale violators who find it profitable to break the law when the penalties are small.

About 27,000 Alaskans participate in the commercial fishing industry. Thousands more enjoy Alaska's coastline and inland waterways. Every Alaskan feels a strong commitment to keeping the Nation's waters clean. With this bill the maximum penalty will be raised to $100,000, and repeated infractions will be treated as separate violations each day they continue. For those who carelessly contaminate our waters, we must up the ante.

The PRESIDING OFFICER (Mr. FANNIN). The bill will be received and appropriately referred.

The bill (S. 4103) to amend the act of March 3, 1899, relating to penalties for wrongful deposit of certain refuse, injury to harbor improvements, and obstruction of navigable waters; introduced by Mr. STEVENS, was received, read twice by its title, and referred to the Committee on Public Works.

S. 4104 — INTRODUCTION OF THE SCHOOL BREAKFAST ACT OF 1970

Mr. JAVITS. Mr. President, for myself and Senators MCGOVERN, BROOKE, GOODELL, HART, HOLLINGS, KENNEDY, PELL, SCOTT, and SCHWEIKER, I introduce a bill entitled "The School Breakfast Act of 1970."

This bill would expand the school breakfast program by:

First, establishing the same national eligibility standards for free and reduced price breakfasts as the Congress recently enacted for the school lunch program in H.R. 515—all children at poverty level would receive free or reduced-cost breakfasts. In addition, the bill also would require that free or reduced-price breakfast be served to children from families eligible for financial assistance under Federal or State welfare programs;

Second, making the program permanent—it is due to expire at the end of fiscal year 1971 unless the authority is extended;

Third, directing all schools having a school lunch program to participate in the breakfast program after July 1, 1972, unless the Secretary determines that such participation is not possible or is not necessary to meet the nutritional needs of children in the school;

Fourth, increasing the authorization in fiscal 1971 from the current $25 million to $100 million, and to $200 million in fiscal year 1972, and such amounts as necessary for each succeeding fiscal year. Such an increase would provide a fund-

ing authorization to feed approximately 2.2 million children by fiscal year 1971 and 4 million by the end of fiscal year 1972—at present only approximately 450,000 children are receiving breakfasts and there are at least 6 million needy children in the United States;

Fifth, empowering the Government to pay the full cost of breakfast programs in the neediest schools;

Sixth, directing the Secretary of Agriculture, after consultation with the Secretary of Health, Education, and Welfare, to utilize fortified and enriched foods in the breakfast program where necessary to meet known nutritional deficiencies of children.

Seventh, requiring schools to report to State education agencies each month the average number of recipients of free and reduced-cost breakfasts during the immediately preceding month as well as provide twice a year estimates of the number of children eligible for free or reduced-cost breakfasts; and require State education agencies to report to the Secretary of Agriculture each month the average number of children who received free and reduced-cost breakfasts during the immediately preceding month in the State as well as require a statewide estimate twice a year of the number of children eligible for free or reduced-cost breakfasts—same reporting as in recently enacted school lunch bill, H.R. 515.

Eighth, directing the Secretary of Agriculture, in consultation with the Secretary of Health, Education, and Welfare and Director of the Office of Economic Opportunity, to conduct nutrition education programs utilizing mass media and audiovisual systems.

The President recently signed into law Public Law 91–248 which greatly expands the school lunch program and requires that all needy children shall receive free or reduced-price lunches. This law will go a long way toward fulfilling the President's commitment to feed 6.6 million needy children free or reduced-price meals by the end of this year.

However, I believe that we must not stop with expansion of the lunch program alone; we must continue with significant expansion of our school breakfast program, as well. A lunch alone is not sufficient for the poor child who in many instances has no breakfast at home and must go from dinner in the evening until lunch at school before he has a nourishing meal. This 18-hour timespan is unsatisfactory, even for an adult.

We must not tell the hungry child he must wait until lunch. He cannot learn, cannot be responsive, and is often apathetic when he is hungry. Also, he may often be disruptive in the classroom and classified as a "problem child" when the only problem is an empty stomach.

Therefore, I believe it is essential that both breakfast and lunch be provided to needy children. Preliminary findings of studies currently being conducted at the Tulane University Medical School in New Orleans suggest that feeding both breakfast and lunch to children provides benefits and yields responsiveness in the classroom to a significantly higher degree than does either meal alone.

It is my belief that just providing one meal to the needy child serves only as a "holding action" and only sustains him without any significant gains and improvements. We cannot hope to correct any problems of nutritional deficiencies in children as pointed out so vividly in the National Nutrition Survey by providing only a lunch—that is, only five meals a week instead of a possible and necessary 10. We must do all that we can to see that needy children get what is necessary to better their nutritional status and thereby improve their capability as students and future citizens. We are only deluding ourselves if we continuously provide funds for education when malnutrition remains a constant impediment to the successful use of those funds for improving the education of poor children. We must concurrently provide funds and programs to eliminate the crippling and devastating problem of hunger and malnutrition. This bill will go a long way toward meeting that objective so that our most precious resource—our children—will be guaranteed at least a firm nutritional foundation on which to make of themselves whatever their ambition, character, and vision will allow.

Mr. President, I feel that expansion of the school breakfast program is the next essential step in the fight against hunger in America which has seen so many advances during the past year.

I see the distinguished Senator from South Dakota (Mr. McGOVERN) in the Chamber. As chairman of the Select Committee on Nutriton and Human Needs, on which I serve as the ranking minority member, he is to be commended for his many outstanding efforts to eliminate hunger from our Nation and I am pleased that he is a cosponsor of this bill.

Mr. President, I ask unanimous consent to have the bill printed in the RECORD and I hope very much that it will have early sympathetic consideration by the Senate.

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

The bill (S. 4104) to amend the Child Nutrition Act of 1966 to strengthen and improve the school breakfast program for children carried out under such act, and for other purposes, introduced by Mr. JAVITS (for himself and other Senators), was received, read twice by its title, referred to the Committee on Agriculture and Forestry, and ordered to be printed in the RECORD, as follows:

S. 4104

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

SCHOOL BREAKFAST PROGRAM AMENDMENTS

SEC. 2. Section 4 of the Child Nutrition Act of 1966 is amended to read as follows:

"SCHOOL BREAKFAST PROGRAM AUTHORIZATIONS

"SEC. 4. (a) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, $100,000,000; for the fiscal year ending June 30, 1972, $200,000,000; and such sums as may be necessary in each succeeding fiscal year to enable schools to initiate, maintain, or expand nonprofit breakfast programs for school children.

"APPORTIONMENT TO STATES

"(b) The Secretary shall apportion the funds appropriated pursuant to this section for any fiscal year in accordance with the apportionment formula contained in section 11 of the National School Lunch Act, as amended.

"STATE DISBURSEMENT TO SCHOOLS

"(c) Funds apportioned and paid to any State for the purpose of this section shall be disbursed by the State educational agency to schools selected by it to assist such schools in financing all or part of the operating costs of the school breakfast program in such schools, including the cost of obtaining, preparing, and serving food. The amounts of funds that each school shall from time to time receive shall be based on the need of the school for assistance in meeting the requirements of subsection (d) concerning the service of breakfasts to children unable to pay the full cost of such breakfasts. In selecting schools for participation in the program, the State educational agency shall give first consideration to those schools with high numbers of children from low-income families and to those schools to which a substantial proportion of the children enrolled must travel long distances daily.

"NUTRITIONAL AND OTHER PROGRAM REQUIREMENTS

"(d) Breakfasts served by schools participating in the school breakfast program under this section shall consist of a combination of foods and shall meet minimum nutritional requirements prescribed by the Secretary, after consultation with the Secretary of Health, Education, and Welfare, on the basis of tested nutritional research. Such breakfasts shall also include such enriched and fortified foods as the Secretary determines, after consultation with the Secretary of Health, Education, and Welfare, appropriate to meet known nutritional deficiencies of the children receiving such breakfasts, without regard to whether such foods are in surplus supply. Such breakfasts shall be served without cost or at a reduced cost only to children who are determined by local school authorities to be unable to pay the full costs of the breakfast. Such determination shall be made by local school authorities in accordance with a publicly announced policy and plan applied equitably on the basis of criteria which, as a minimum, shall include the level of family income, including welfare grants the number in the family unit, and the number of children in the family unit attending school or service institutions; but by January 1, 1971, any child who is a member of a household which either (1) has an annual income not above the applicable family size income level set forth in the income poverty guidelines, or (2) is eligible for financial assistance under a Federal or State public welfare assistance program shall be served meals free or at a reduced cost. The income poverty guidelines to be used for any fiscal year shall be those prescribed by the Secretary as of July 1 of such year. In providing meals free or at reduced cost to needy children, first priority shall be given to providing free meals to the neediest children. Determination with respect to the annual income of any household shall be made solely on the basis of an affidavit executed in such form as the Secretary may prescribe by an adult member of such household.

"NONPROFIT PRIVATE SCHOOLS

"(e) The withholding of funds for and disbursement to nonprofit private schools will be effected in accordance with section 10 of the National School Lunch Act, as amended, exclusive of the matching provisions thereof.

"BREAKFAST PROGRAM PARTICIPATION

"(f) After July 1, 1972, any school participating in the school lunch program under the National School Lunch Act shall be required to participate in the school breakfast program provided for under this Act unless the Secretary determines that the participation of such school in the school breakfast program is not possible or is not necessary in order to meet the nutritional needs of the children attending such school.

"REPORTS

"(g) (1) Each school participating in the school breakfast program under this Act shall report each month to its State educational agency the average number of children in the school who received free breakfasts and the average number of children who received reduced price breakfasts during the immediately preceding month. Each participating school shall provide an estimate, as of October 1 and March 1 of each year, of the number of children who are eligible for a free or reduced price breakfast.

"(2) The State educational agency of each State shall report to the Secretary each month the average number of children in the State who received free breakfasts and the average number of children in the State who received reduced price breakfasts during the immediately preceding month. Each State educational agency shall provide an estimate as of October 1 and March 1 of each year, of the number of children who are eligible for a free or reduced price breakfast."

NUTRITION EDUCATION PROGRAMS

SEC. 3. The Secretary of Agriculture, in consultation with the Secretary of Health, Education, and Welfare and the Director of the Office of Economic Opportunity, shall conduct programs of nutrition education by mass media and audio visual systems. There is hereby authorized to be appropriated for the conduct of such program $2,500,000 for the year ending June 30, 1971, and such amounts as may be necesary for each succeeding fiscal year.

S. 4105—INTRODUCTION OF A BILL TO AMEND THE FEDERAL WATER POLLUTION CONTROL ACT

Mr. MAGNUSON. Mr. President, I introduce, for appropriate reference, a bill which would amend the Federal Water Pollution Control Act.

This year, Congress is considering the most far-reaching amendments to the Federal Water Pollution Control Act since the Water Quality Act of 1965 and the Clean Water Restoration Act of 1966. On April 28, I appeared before the Subcommittee on Air and Water Pollution and described the progress that Metropolitan Seattle has been able to make in improving water quality. The results from a plan approved in 1958 have been dramatic, but Seattle, like every other major metropolitan area in this country, has a long, long way to go to achieve and maintain consistently high water quality standards. To achieve this goal a number of significant improvements will have to be made in the statutory base underlying our water pollution control programs. Among these will be "contract authority" or some similar precommitment technique which will permit and encourage planning for the use of funds over a period of several years. This will provide a much sounder and more efficient approach for our metropolitan areas. There will have to be, also, more money. Fiscal 1971 is the last year of the 5-year program approved by Congress in 1966 and an appropriation of $1.25 billion is authorized. The full authorized amount must be appropriated and at the same time we must legislatively lay new goals for the next several years.

The first section of the bill introduced today is the authorization section for funding of the Federal assistance for the construction of municipal waste treatment facilities. The range of proposals pending before the subcommittee at the moment is from the administration's 4-year $1 billion program—for a total of $4 billion in Federal funds—to Senator MUSKIE's proposal in S. 3687 for a 5-year $2.5 billion program—for a total of $12.5 billion in Federal funds. Last year the Senate voted to appropriate $1 billion for waste treatment facilities. This figure finally had to be compromised with the House at $800 million.

This year, fiscal 1971, an appropriation of $1.25 billion is authorized. It is clear to me, and I think to each one of us who has followed the fight against pollution that we must appropriate the full $1.25 billion. At the same time, in all future years we must meet, if not exceed, $1.25 billion annually. It is my judgment that Senator MUSKIE's proposed figure of $2.5 billion is realistic, but I left the figure open in my proposal so that I would have a chance to more carefully review other alternatives that will be before the committee and which will be presented shortly to the Senate.

My testimony on April 28 before the subcommittee was also for the purpose of introducing Mr. C. V. "Tom" Gibbs, executive director of the municipality of Metropolitan Seattle and chairman of the Steering Committee of the Association of Metropolitan Sewerage Agencies—AMSA. Mr. Gibbs' very excellent statement proposed two major changes in the Federal Water Pollution Control Act.

The first of these is an amendment to subsection (f) of section 8 of the Federal Water Pollution Control Act. It would authorize a special 20 percent incentive grant for new construction of pollution abatement works by any municipality which has built sewerage projects since 1956 that qualified for Federal assistance at the time they were built but did not in fact receive the 30 percent Federal grant then authorized. The total of these incentive grants for new construction would be limited to the total amount of Federal grants for which such municipalities were short-changed over the period since 1956.

There is, of course, something basically unfair about penalizing those communities—for the most part large metropolitan areas requiring tremendous expenditures—which responded at an early stage to their local community needs and the concept underlying the Federal supporting program. Those communities did not receive the full Federal incentive grants due them under the program; this was not because of any failure on their part but, rather, because of the lack of full funding for the authorized program and the additional dollar ceiling imposed on all projects grants—an obvious discrimination against the major metropolitan areas. Those cities which have, therefore, committed their resources and in effect mortgaged their bonding and financing ability for the future in order to initiate a program of water pollution control should, in my view, be given an opportunity to continue their efforts on the same scale available for those communities which did not respond and which did not take the initiative under the early Federal programs. Such a provision would not be supportable—and it certainly would not be incorporated in the bill that I introduce today—if the proposed incentive grants were to be paid into the general funds of the community. But, under the amendment that I proposed, the incentive grants would redress the discrimination and the past failure to fund the program adequately for facilitating the future construction of authorized facilities. Under the proposed amendment, the supplemental grant could not exceed 20 percent of any new project.

Cutoff dates always create difficulties; but where, as here, participants in a Federal program have been discriminated against through no fault of their own, I think it is imperative that we find a fair, equitable, and constructive way of redressing the situation. The amendment suggested by the Association of Metropolitan Sewerage Agencies and incorporated in my bill provides a proper way of doing so.

The second change is an amendment to subsection (c) of section 23 and would permit Federal funding of projects directed toward the solution of the combined sewer problem. Large cities will only be able to deal effectively with the problem of raw sewage overflows if they can either separate the combined flows of sanitary and storm sewers so that all of the sanitary sewage can flow to treatment plants, or provide for storage of heavy combined sewer flows during rain storms which can then be spread out for orderly delivery to disposal plants.

Recent research by AMSA indicates that 27 large metropolitan complexes—most of which exceed 500,000 in population—in the United States need almost $11.7 billion in the next 10 years for waste treatment works alone. These same 27 metropolitan areas serve 32 percent of the Nation's sewered population and have performed 24 percent of the Nation's pollution control work. Unfortunately, as of last September they had received only 6 percent of the Federal funds distributed for that type of work. Another fact included in the AMSA statement is that from 1956 to 1969, municipalities of over 250,000 population, which contain more than 35 percent of the sewered population of the United States, received less than 8 percent of all Federal grant dollars for waste treatment. During the same period, cities under 50,000 population, with less than 35 percent of the sewered population of the United States, received more than 70 percent of all Federal waste treatment dollars. It is clear that a game of catch-up has to be played by the Federal Government to enable large metropolitan areas to clean up some of the Nation's dirtiest waters. The bill introduced to-

day, along with prompt funding and wise administration, will go a long way toward effective corrective action.

Finally, Mr. President, a word about two important matters which are currently being considered by the Department of Interior, Federal Water Quality Administration, and the Subcommittee on Air and Water Pollution. Mr. Gibbs, on behalf of AMSA, testified in support of river basin planning and a charge to waste dischargers for the cost of pollution abatement. These are important concepts and one which I hope the committee and the Senate will be able to give the administration guidance on handling. It is my judgment that a payment in proportion to pollution would rationalize our pricing structure and improve the efficiency of many operations. Sewer service charges, it seems to me, can make two major contributions: First, sewerage charges are capable of raising substantial funds; and, second, sewerage charges based on the volume of waste delivered will discourage the amount of waste production.

The concept of river basin planning integrates pollution control and abatement plans into a much broader perspective and will help identify priorities and include such necessary dimensions as the political, social, and economic realities of a broader area.

S. 3687, introduced by Senator MUSKIE and four of his colleagues from the subcommittee, establishes an incentive program which will encourage the development of river basin planning and the utilization of user charges. This is an appropriate means of achieving these goals.

Mr. President, AMSA's testimony helps redirect much of our energies and resources to the major metropolitan areas, which is where the problem of water quality really has to be fought and won. It is my privilege to have worked with them in developing this legislative program and to introduce it today. I urge all my colleagues to consider this measure carefully and specifically urge the Public Works Committee to include in its overall program the two major proposals envisioned by this measure.

One final word: Senator MUSKIE, Senator COOPER, and their colleagues on the Air and Water Pollution Subcommittee are to be congratulated on the comprehensive and thorough job they are doing. Controlling water pollution and improving water quality involves difficult decisions based on complex and sometimes conflicting values. It takes time and extensive homework to sort through the facts, issues, and priorities involved in achieving high water quality. The subcommittee has given this kind of time and done this kind of work and deserves the gratitude of all of us.

The PRESIDING OFFICER (Mr. SAXBE). The bill will be received and appropriately referred.

The bill (S. 4105) to amend the Federal Water Pollution Control Act in order to authorize the Secretary of the Interior to incur obligations for construction grants under section 8 of such act, and for other purposes, introduced by Mr. MAGNUSON, was received, read twice by its title, and referred to the Committee on Public Works.

S. 4106—INTRODUCTION OF THE NATIONAL HEALTH SERVICE CORPS ACT OF 1970

Mr. MAGNUSON. Mr. President, my distinguished junior colleague from the State of Washington (Mr. JACKSON) and I introduce today the National Health Service Corps Act of 1970, on behalf of ourselves, the Senator from California (Mr. CRANSTON), the Senator from Iowa (Mr. HUGHES), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Wisconsin (Mr. NELSON), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from New Jersey (Mr. WILLIAMS). Companion legislation is being introduced simultaneously in the House of Representatives by the gentleman from Florida (Mr. ROGERS) and several cosponsors, including the gentleman from Washington (Mr. ADAMS).

This legislation will establish a National Health Service Corps within the Public Health Service, in order to improve the delivery of health services to areas of urban and rural poverty where health services are now inadequate. The Corps will be comprised of selected commissioned officers of the Public Health Service and of other health professionals under civil service. Supervision of the Corps' activity will be provided by a Director, to be nominated by the President with the advice and consent of the Senate. Assisting the Director will be a National Advisory Council of 12 members. Council members will include Federal health officials, private citizens, members of the Corps itself, and recipients of health services provided by the Corps. A complete analysis of the structure and functions of the Corps will appear later in my remarks.

Mr. President, the National Health Service Corps Act is an important piece of legislation for many reasons. In offering it, Senator JACKSON and I have three basic purposes in mind. First, we want to increase the quantity and quality of health services in those areas of the country, and among those segments of the population, that need such services the most. Second, we want to revitalize the Public Health Service generally and the commissioned corps specifically by providing them with a mission to match their proud tradition. Finally, we hope in offering the National Health Service Corps Act to provide a framework within which the idealism and social commitment of our young health professionals and medical school students can be put to work, serving the most disadvantaged people in the Nation.

In introducing this legislation, I will comment individually on these three purposes, and then proceed to an analysis of the legislation itself.

I. THE DISTRIBUTION OF MEDICAL MANPOWER IN THE UNITED STATES

Mr. President, anyone who is even remotely familiar with health care programs and services here in the United States recognizes that we are in the midst of a severe manpower shortage in the health professions. The first aspect of this manpower shortage is an absolute shortage in the number of trained doctors, dentists, nurses, and other health professionals. The Appropriations Subcommittee on the Departments of Labor and Health, Education, and Welfare, of which I am chairman, has listened to the staggering statistics of this absolute shortage during our hearings over the past month. The subcommittee, the full Appropriations Committee, and the Senate as a whole will act, I hope, to provide a level of funding for the current fiscal year that will help to alleviate this shortage.

But the manpower shortage among health professionals has another facet, one that cannot be solved simply by increasing our appropriations for existing programs. This second facet involves the maldistribution of the health professionals that we do have. Physicians, dentists, and all other forms of medical personnel simply are not distributed in relation to the health needs of the United States. And so, while the Nation as a whole faces a doctor shortage, the shortages in areas of urban and rural poverty are particularly acute.

It is virtually impossible for poor communities to attract and retain sufficient health professionals to meet even their most basic health needs. Senator JACKSON and I have seen this over and over again in our home State of Washington, where isolated rural communities and the core areas of our larger cities simply do not receive a level of health care that most middle-class individuals would consider adequate. The causes of this maldistribution are no mystery—poorer communities have few attractive features for a young doctor or dentist with a family to raise—yet the consequences of inadequate health care in these communities are physically, socially, and economically crippling to our poorer citizens, and shameful for our Nation as a whole.

Many health problems that would appear routine or even trivial in more affluent communities become serious or near-fatal in those areas where access to health care is severely restricted. The diseases of poverty—high infant mortality, short life expectancies, malnutrition, anemia, and so on—are exacerbated greatly when they go untreated, and contribute substantially to the vicious circle of poverty and low economic productivity.

The National Health Service Corps will not eliminate these diseases, nor will it solve completely the massive problem of maldistribution in the health professions. At the level of funding provided in this act—about $5 million—fewer than a dozen communities across the Nation will receive care from Corps members. But this pilot project phase, if it proves successful in more adequately meeting the health needs of the poor, can be expanded easily simply by increasing the authorization provided in this act and the appropriations to match.

What the Corps will do is provide substantial infusions of medical manpower in areas with ongoing federally funded

health care programs. In some instances, the Secretary of Health, Education, and Welfare may choose to deploy Corps personnel in areas without existing health care programs, and authority is provided in the act to meet this eventuality. At this stage, however, and at this level of funding, the purpose of the act will be to demonstrate that the health care needs of the poor can be substantially met through a redistribution of health manpower.

A long-range solution to the maldistribution of health professionals will require more than a Federal program of this type, of course, and it is our hope in offering this legislation that doctors, dentists, nurses, and other health professionals who serve in the Corps will wish to continue practicing in poverty areas after their tour of duty with the Corps has been completed. One of the factors to be taken into account in assigning Corps members, in fact, will be the prospects for continued service to the community after completion of the 25 to 50 month term of service in the Corps.

The National Health Service Corps thus will help meet the problem of maldistribution of health professionals in two ways: First, it will provide an infusion of health personnel into Federal health care programs in physician-deficient areas, and second, it will provide a program whereby health professionals can serve for a time in poverty areas and determine whether or not continued service in such areas would be worthwhile as a career.

II. REVITALIZING THE PUBLIC HEALTH SERVICE AND THE COMMISSIONED OFFICER CORPS

The National Health Service Corps established in this act is to be set up within the Public Health Service. The health professionals in the Corps will be drawn primarily from the commissioned officer corps of the Public Health Service. These two facts make the Corps, even at this pilot project level of funding, an extremely significant development for both the Public Health Service and the commissioned corps.

The Public Health Service and the commissioned corps have a long and proud tradition. Founded in 1873—for the purpose of protecting our seaports from importation of communicable disease—they have undergone many protean changes during their century of existence. The Public Health Service and the commissioned corps currently do not provide direct health services except to special population groups—American Indians, merchant seamen and the Coast Guard, and Federal prisoners. These programs are worthy ones, but being limited to such programs makes the direct health care services of the Public Health Service relatively minor in comparison with the other health care programs in which the Federal Government has become involved.

Technically, of course, the Public Health Service and the Surgeon General are charged with the responsibility for administering the National Institutes of Health—NIH—the Food and Drug Administration—FDA—and the Environmental Health Service—EHS. I use the word "technically" because the de facto control of these organizations, insofar as there is centralized control and direction of their activities, lies with the Assistant Secretary of HEW for Health and Scientific Affairs. As a result, there is a great deal of confusion about what the Public Health Service is, what it is doing, what it could be doing, and why it continues in existence at all.

These doubts surrounding the role and functions of the Public Health Service have contributed substantially to a lowering of morale within the commissioned corps. Proposals have been made, from time to time, to abolish the commissioned corps entirely or to transfer its functions to other, more logical, agencies. At the present time, most commissioned corps members who do not work in the direct health services programs for Indians, seamen or prisoners spend their tour of duty in the corps performing research or administrative tasks. This conflicts with the desire of many commissioned officers to be active in providing health care commensurate with their training and interests.

The sponsors of this legislation do not believe that the commissioned corps and the Public Health Service should be allowed to wither on the vine. Neither do we feel that we can afford to wait until one study after another is undertaken to determine the future of the commissioned corps and the PHS. We feel, rather, that the commissioned corps and the PHS should be rejuvenated by assuming new responsibilities in keeping with their abilities and their proud traditions.

There is a unique camaraderie and feeling of mission among the commissioned corps that sets it aside from regular civil service. Even if this spirit is currently at a low ebb, there is ample reason—and more than ample need—to energize the commissioned corps and the PHS once again and to take advantage of these unique characteristics. This spirit should be redirected toward meeting the most challenging health problems of this Nation, not dissipated during this period of great social need.

The National Health Service Corps will not displace the other functions of the PHS, nor will it absorb an inordinate number of PHS personnel, at least during this experimental phase. But it will provide an additional mission, that of providing health care directly to those segments of the population who need it most and who are being inadequately served today. This challenging new mission can raise the morale of the commissioned corps and the PHS at the same time it benefits the people of this Nation.

III. THE NATIONAL HEALTH SERVICE CORPS AND THE "NEW" GENERATION OF HEALTH PROFESSIONALS

The National Health Service Corps has a third purpose, and that is the utilization of the idealism and social commitment that characterize so many of our young health professionals and medical school students. I have met and talked with literally dozens of these fine young men and women, as I know the other sponsors of this legislation have. Like so many other young adults with fine minds and excellent training, they are less than enthusiastic about the opportunities for social service within the established institutions of their profession. They desire instead to serve the poor, the hungry, and the needy who simply are not receiving adequate health care today, and they are wiling to sacrifice more lucrative opportunities in order to perform this service.

The National Health Service Corps will provide a framework within which these men and women can achieve the service to society that they seek. It is upon the social commitment of these young men and women, in fact, that we will be relying to produce the personnel the Corps will need. Knowing that service in the Corps is an opportunity available to them should raise the morale of these health professionals during the time they are in their professional schools as well.

Ultimately, if the Corps proves to be a successful concept in improving the delivery of health care, it is not too much to anticipate that the experiences of the Corps will be drawn upon in the evaluation and planning of both Government and nongovernmental health care programs. In this sense, the young men and women who enter the Corps will know that their performance is important for the future of health care in the United States. The knowledge that they may be aiding in the redirection of Federal and private health efforts, combined with the satisfaction of actually serving those in greatest need, will be the prime reward for Corps members and the prime incentive for those who wish to serve in the Corps.

IV. ANALYSIS OF SECTIONS OF THE NATIONAL HEALTH SERVICE CORPS ACT

In drafting the National Health Service Corps Act, an attempt has been made to allow the Department of HEW some discretion and flexibility in administering the Corps. Passage of the act should provide the Department with an opportunity as well as a directive, and its experimental nature necessitates a somewhat broad piece of legislation. The reasoning behind some of the sections of the act may not be clear on first reading, so I would like to take this opportunity to clarify exactly what we had in mind in drafting the act.

Section 399h establishes the Corps within the Public Health Service—for reasons outlined in part II of my remarks—and defines the mission of the Corps, "to improve the delivery of health services to persons living in communities or areas of the United States where health personnel, facilities, and services are inadequate to meet the health needs of the residents of such communities and areas." The same section further states that priority shall be given to those urban and rural areas where poverty conditions exist. As I explained above, poverty and physician deficiency tend to go hand in hand in such areas.

Section 399i deals with the staffing of the Corps. As I noted earlier, the Corps will be composed of both commissioned officers of the Public Health Service and other civil service personnel. All Corps members will serve for a period of 25 months, with the option of extending their tours of duty for a period not to exceed another 25 months. The purpose of having a 25-month tour of duty is to allow a 1-month transition period within which incoming personnel can work with

outgoing personnel in order to facilitate a continuity in patient care and other duties. For those members of the Corps who wish to follow their tour of duty with more schooling, this section provides the right to petition for release from the Corps at the end of 24 months. The purpose of not allowing Corps members to serve more than 50 months is to provide an incentive to Corps personnel and to the agencies or communities within which they serve to find positions outside the Corps that will allow them to continue serving the poor. Part of the purpose for the Corps itself, after all, is to encourage health professionals to locate permanently in areas with inadequate health care. We assume that a Corps member may serve in more than one community during a 50-month tour of duty, but that by the end of that period both the Corps member and a community within which he has served should be in a position to determine whether or not the individual is willing and able to undertake a long-range commitment to a needy community.

Section 399j provides that the Director of the Corps shall be appointed by the President, subject to the advice and consent of the Senate. Establishing the Corps under a Director will give the Corps a stature similar to other Federal health agencies, and will serve to emphasize the importance that Congress attaches to this program even in its pilot project phase.

Section 399k establishes the manner in which Corps personnel may be utilized. Under part 1 of this section, Corps members may be used to supplement manpower in ongoing direct health care programs of the Public Health Service, meaning all programs within the Department of Health, Education, and Welfare. Part 2 specifies that Corps personnel may also be used in any direct health care program of other Government agencies, such as the Office of Economic Opportunity's programs or those of the Department of Housing and Urban Development, or direct health care programs whose costs are underwritten by Federal funds. The practical effect of these two parts is to allow the Secretary to deploy Corps personnel to any direct health care program that is ongoing and funded, in whole or in part, from the Federal Treasury.

Part 3 of section 399k authorizes the Secretary to utilize Corps personnel "in any other health care activity, in furtherance of the purposes of this act." The purpose of this part is to allow the establishment of health care programs where none presently exist, should this be something that the Director of the Corps and the Council feel to be of value. The applicability of this section would undoubtedly arise in rural areas where no federally funded program currently provides health services, yet where the Director and Council feel a pilot project would be useful. This part provides that the Secretary will establish some fee-for-service mechanism in the event a project is established under this part, such revenues as may be collected being used to partially defray the cost of the Corps operations. Under the other two parts of this section, no fees will be collected by the Corps, as Corps members will be serving in programs with fee mechanisms of their own. Insofar as the activities of Corps members under these two parts may contribute to more fees being paid into the program within which they are serving, such fees will continue to be paid into the general revenue of those programs. The purpose of the Corps is to provide health services, not to collect fees, but under each of these parts a built-in precaution exists against the diversion of fees that might otherwise go to private practitioners.

Section 399 establishes the National Health Corps Advisory Council. The composition of this 12-member Council is, in my opinion, one of the most exciting features of this legislation. Not only will the Council have three HEW officials and three private citizens, but it will also include three members of the Corps itself and three recipients of health care services provided by the Corps. This will insure the representation, at the highest level of decisionmaking, of both those individuals who serve in the Corps and those individuals who will be served by it. In addition, the Secretary conceivably might choose to appoint some or all of the private citizens from the ranks of the poor. As I will mention in a moment, this mechanism insures a double representation of the poor, both on the Council and on the 314(b) planning agency whose recommendations will be taken into account in assigning Corps personnel.

Subsection (b) of section 399 provides that members of the Council shall serve for 3 years, shall be eligible for reappointment, and shall not be removed except for cause.

Subsection (c) outlines the functions of the Council. These include the establishment of guidelines with respect to utilization of the Corps, and the directive to advise and consult with the Director generally concerning the operation of the Corps. The Council may also assist the Surgeon General in the selection of Corps personnel, and will be responsible for approving all assignments of Corps personnel.

Under this same subsection, the Council is assigned the responsibility of establishing criteria to determine which areas or communities are to receive assistance from the Corps. In establishing such criteria, the act directs the Council to take into account at least five factors. The first of these factors is the community's need for health services. The second is the willingness of the community—including the program within which the Corps will serve—to assist and cooperate with the Corps and its mission; this provision will insure that administrative restrictions—such as hospital visiting privileges—from various sources in the community will not impede the Corps' operations. A third factor to be taken into account in establishing criteria for utilization of the Corps is the prospect for utilizing Corps personnel within a community after their tours of duty are complete. This is necessary to provide an incentive for the community, and the program within which the Corps member may serve, to facilitate the retention in the community of those Corps personnel who may desire to continue serving the community following completion of their tour of duty. The knowledge that assignment of Corps personnel to the program and the community in the future may hinge in part on the postservice opportunities provided for Corps personnel who have served the community in the past should encourage communities who desire Corps assistance to take positive steps toward finding permanent positions for Corps members.

A fourth factor in establishing these guidelines will be the recommendations of the 314(b) comprehensive health planning agency responsible for the area or community under consideration. These agencies not only have responsibility for the planning of health programs within their areas of jurisdiction, but through their heavy representation of poor people, insure that all health programs are consistent with the needs of those who are to receive services from them.

Finally, the recommendations of all medical personnel in the community or area under consideration for assignment of Corps personnel will also be taken into account. This insures that private practioners, State medical societies, and other relevant organizations and individuals will not be ignored in the making of decisions affecting utilization of the Corps.

Section 399m (a) waives the manpower ceilings on both the commissioned corps and the Department of HEW, to the extent that the number of individuals in the Corps exceeds either of these ceilings. Section 399m (b) waives the restriction on the utilization of Public Health Service facilities and personnel for the provision of direct health care, provided the waiver is exercised only for Corps activities. This provision will allow the use of Public Health Service hospital facilities for pilot projects, if the Director and Council wish to do so. The subsection also provides that the Corps may lease or purchase facilities in order to provide health care; this is to allow some flexibility in the event that the Council approves assignment of Corps personnel to a program or community whose facilities would be unable to accommodate the personnel assigned.

Finally, section 399n authorizes the appropriation of $5,000,000 annually to carry out the purposes of this act. This sum might be spent to provide, for example, for 75 commissioned officers and 150 civil service personnel within the Corps—at a cost of $3.8 to $4 million—and for some minor leasing arrangement with respect to facilities and supplies. This sum is hardly sufficient to effect any sweeping changes in the health of our Nation's poor, but if spent judiciously, could provide sufficient care in selected pilot project areas to allow some determination as to the feasibility and desirability of the National Health Service Corps concept.

V. CONCLUSION

The purposes of the National Health Service Corps, and the manner in which it will function, have now been described in some detail. Further explanations will be forthcoming from other sponsors of this legislation here and in the House of Representatives.

In closing, I wish to make an appeal for the objective and openminded consideration of this legislation both within Congress and beyond. At first reading, some individuals or groups may perceive in this legislation a threat to established institutions or a barrier to future innovations. Closer inspection of the bill and its provisions will reveal that nothing of the sort is intended or contained within it. The National Health Service Corps is, frankly, an experimental concept, and one that may lead to many different conclusions about the nature of health care in the future. In and of itself, however, the National Health Service Corps is not incompatible with any current or potential national policy on the delivery of health care; it is not a threat to the manpower needs of the Department of Defense; it will not hamper, nor be hampered by, abolition of the doctor draft or the introduction of national health insurance. The National Health Service Corps is not an attempt to structure the health policies of the U.S. Government, nor need it be subjected to a public-against-private debate that inevitably occurs whenever innovations in health care are suggested. Its only purpose is to serve the health needs of the poor, and to provide us with a body of knowledge from which we may find more effective ways to serve those needs on a major scale in the future.

Let us not judge the Corps in advance. Let us create it, fund it, and observe its performance. Then let us draw our independent conclusions about its value and what it tells us about the future. At the very worst, by creating the Corps and setting it in operation we will have provided some health care to those who need it most, and we will have demonstrated to the poor that we truly are concerned about improving their condition. And if the Corps should fare better than this—as I hope and believe it will—its creation will have been a major step in meeting the crisis in health care that we face as a Nation today.

Mr. President, I ask unanimous consent that the complete text of the National Health Service Corps Act be printed in full at the conclusion of my remarks.

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

The bill (S. 4106) to amend the Public Health Service Act in order to provide for the establishment of a National Health Service Corps, introduced by Mr. MAGNUSON (for himself and other Senators), was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

S. 4106

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

SEC. 2. Title III of the Public Health Service Act is amended by adding at the end thereof a new part as follows:

"Part J—NATIONAL HEALTH SERVICE CORPS

"ESTABLISHMENT OF NATIONAL HEALTH SERVICE CORPS; FUNCTIONS

"SEC. 399h. (a) There is established in the Service a National Health Service Corps (hereinafter in this part referred to as the 'Corps') which shall be under the direction and supervision of the Surgeon General.

"(b) It shall be the function of the Corps to improve the delivery of health services to persons living in communities and areas of the United States where health personnel, facilities, and services are inadequate to meet the health needs of the residents of such communities and areas. Priority under this part shall be given to those urban and rural areas of the United States where poverty conditions exist and the health facilities are inadequate to meet the needs of the persons living in such areas.

"STAFFING; TERM OF SERVICE

"SEC. 3991. (a) The Surgeon General shall assign selected commissioned officers of the Service and such other personnel as may be necessary to staff the Corps and to carry out the functions of the Corps under this part.

"(b) Commissioned officers of the Service in the Corps, and other Corps personnel shall be detailed for service in the Corps for a period of 25 months. An individual detailed to the Corps may voluntarily extend his service in the Corps for a period not to exceed an additional 25 months. An individual shall have the right to petition the Director (appointed pursuant to section 399j of this part) for early release from service in the Corps at the end of 24 months of service therein.

"DIRECTOR OF THE NATIONAL HEALTH SERVICE CORPS

"SEC. 399j. The Corps shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate. It shall be the responsibility of the Director to direct the operations of the Corps, subject to the supervision and control of the Surgeon General.

"AUTHORITY OF SECRETARY TO UTILIZE CORPS PERSONNEL

"SEC. 399k. The Secretary is authorized, whenever he deems such action appropriate, to utilize commissioned officers of the Service and other personnel detailed to duty with the Corps to—

"(1) perform services in connection with direct health care programs carried out by the Service;

"(2) perform services in connection with any direct health care program carried out in whole or in part with the Department of Health, Education, and Welfare funds or the funds of any other department or agency of the Federal Government; or

"(3) perform services in connection with any other health care activity, in furtherance of the purposes of this act. Should services provided under this subsection require the establishment of health care programs not otherwise authorized by law, the Secretary is authorized and directed to establish mechanisms whereby recipients of such services shall pay, to the extent practicable, for services received. Any funds collected in this manner shall be used to defray in part the operating expenses of the Corps.

"NATIONAL HEALTH CORPS ADVISORY COUNCIL

"SEC. 3991. (a) There is established a council to be known as the National Health Corps Advisory Council (hereinafter in this section referred to as the 'Council'). The Council shall be composed of twelve members appointed as follows:

"(1) three members from the Department of Health, Education, and Welfare, serving outside the Corps, to be appointed by the Secretary;

"(2) three members appointed by the Secretary from private life;

"(3) three members detailed to duty with the Corps, at least two of whom shall be commissioned officers of the Service, to be appointed by the Secretary; and

"(4) three persons who have received more than minimal health care services from the Corps, to be appointed by the Secretary after the Corps has been in operation for a period of at least 120 days and to be appointed from geographically dispersed areas to the extent practicable.

"(b) Members of the Council shall be appointed for a term of three years and shall not be removed, except for cause. Members may be reappointed to the Council.

"(c) It shall be the function of the Council—

"(1) to establish guidelines with respect to how the Corps shall be utilized and to consult with and advise the Director generally regarding the operation of the Corps;

"(2) to assist the Surgeon General, at his request, in the selection of commissioned officers of the Service and other personnel for assignment to the Corps, and to approve all assignments of Corps members;

"(3) to establish criteria for determining which communities or areas will receive assistance from the Corps, taking into consideration—

"(A) the need of any community or area for health services provided under this part;

"(B) the willingness of the community or area and the appropriate governmental agencies therein to assist and cooperate with the Corps in providing effective health services to residents of the community or area;

"(C) the prospects of the community or area for utilizing Corps personnel after their tour of duty with the Corps;

"(D) the recommendations of any agency or organization which may be responsible for the development, under section 314(b), of a comprehensive plan covering all or any part of the area or community involved; and

"(E) recommendations from the medical, dental, and other medical personnel of any community or area considered for assistance under this part.

"MANPOWER LIMITATION SUSPENSION

"SEC. 399m. (a) Commissioned officers of the Service detailed to service with the Corps and other personnel employed in the Corps shall not be included in determining any limitation on the number of personnel which may be employed by the Department of Health, Education, and Welfare.

"(b) Notwithstanding any other provision of law, the Corps may, to the extent the Secretary determines such action to be feasible, utilize the facilities and personnel of hospitals and other health care facilities of the Service in providing health care to individuals as authorized under this part, and to lease or purchase such other facilities as may be required to carry out the purposes of this act.

"AUTHORIZATION FOR APPROPRIATIONS

"SEC. 399n. There is authorized to be appropriated the sum of $5,000,000 annually to carry out the provisions of this part, for the fiscal years of 1971, 1972, and 1973."

Mr. JACKSON. Mr. President, I wish to commend my colleague from the State of Washington (Mr. MAGNUSON) for his explanation of the bill that he and I have jointly introduced today.

We have worked closely on this National Health Service Corps concept for months. We have discussed our ideas with officials from the Department of HEW, members of the commissioned corps of the Public Health Service, senior officers of the Service, doctors, and medical school students. We know from these discussions that there is support for our proposals.

More importantly, we know that there is a great need for our proposal—a need that is not being met today and a need that will not be met in the future unless action is taken. Senator MAGNUSON and I have seen this need, not merely in a mass of statistics, but face to face in our own State of Washington. From the small logging towns and the tiny Indian fishing communities to the crowded neighborhoods of our inner cities, we have seen the need for this legislation. Even in our relatively affluent State, we have seen vast areas with little or no health services available, and we have seen hundreds of our constituents wracked by malnutrition and the diseases of poverty.

The poor and the isolated in our State are not unique in their need for health care; similar and even worse conditions exist in nearly every county in this Nation. In every corner of the land, poverty breeds ill health and ill health perpetuates poverty. Most Americans never see the diseases of poverty—malnutrition, anemia, high infant mortality, and low life expectancies—in their immediate communities, but this low visibility cannot obscure the statistical facts.

Fifty percent of the poor children in America have never had a polio shot or any other form of vaccination to protect them against this dreaded disease.

Two-thirds of our poor children have never seen a dentist during their lifetime.

At least half of the mothers who give birth in poor or isolated areas receive no prenatal care whatsoever.

The statistics go on and on; so does the subculture of poverty in America and the ill health that attends it. Those who speak of the need to make the poor productive, of taking them off the welfare rolls and getting them on the payrolls, must realize that little or no progress can be made in this respect until the poor and the isolated are provided a decent standard of medical care.

If a child's growth is stunted, if he cannot stay awake in class or if he is constantly ill, he cannot be expected to get ahead in life, or even to keep up. If a grown man is crippled unnecessarily by a disease that could easily have been cured, he cannot earn an adequate living for his family. If a mother is overly susceptible to illness, she cannot meet the demands of raising a family. To those without an adequate standard of health care, the promise of equal opportunity is a hollow one indeed. As President Nixon has said:

> Many of the problems of the poor are the product of ill health and many have serious medical consequences. We have already begun to develop new mechanisms for helping the poor pay medical costs, but now we must further improve our methods for delivering health services (to them) . . .

The National Health Service Corps is an experimental attempt to deliver those health services to the segment of our population that need health care most desperately. The Corps will not be operating on a huge scale, nor will it solve this health care distribution problem by itself. What the Corps will do is to provide us with greater practical experience in meeting the health care needs of the poor. It is on this experience that we will have to draw in the years ahead, whether the ultimate answer lies in the governmental or private sector, or somewhere in between.

THE NATIONAL HEALTH SERVICE CORPS AND THE MEDICAL MANPOWER NEEDS OF THE DEPARTMENT OF DEFENSE

Senator MAGNUSON has described, in his remarks, the purpose and functions of the National Health Service Corps. He has stated that the Corps will not conflict with the medical manpower needs of the Department of Defense, and it is to this point that I will address the next portion of my remarks.

The Department of Defense needs a substantial number of health professionals. At the present time, for example, approximately 16,000 physicians are serving this Nation in the military. About 6,000 of the 9,000 doctors graduating from medical school each year are absorbed by the Defense Department, and most doctors are certain to serve in the military at some stage in their careers.

Even with these great needs, however, the Department of Defense has assented to, and Congress has authorized, alternative service for a limited number of health professionals. More than 700 doctors, dentists, and other health professionals satisfy their military obligation each through service in the commissioned corps of the Public Health Service. Commissioned officers of the Service serve for at least 2 years and are part of, not exempt from, the doctor draft. The functions these commissioned officers normally perform have been detailed in Senator MAGNUSON's remarks.

During the middle 1960's, the medical manpower needs of the Defense Department grew considerably on account of the war in Vietnam. Many doctors were wrenched from private practice and their growing families in order to meet this need. As one method of minimizing the disruption to the medical community caused by the war, Congress in 1967 amended the Selective Service Act to limit the assignments of commissoned officers of the Public Health Service. This amendment, section 6(a)(2) of the Selective Service Act of 1967, insured that commissioned officers would serve only in the areas of greatest need; in previous times they had been assigned a variety of posts that clearly rated less priority than service in the military or in those areas specifically designated by Congress.

The National Health Service Corps Act is consistent with both the letter and spirit of section 6(a)(2). It is also consistent with the criteria for selective service satisfaction laid down by the Acting Surgeon General in October of 1967, which stated in part that assignments satisfying military obligation in the Service must be:

> a. (. . .) located organizationally within an office or bureau of the Public Health Service . . . under its supervision, and . . . paid from Public Health Service operating funds.
>
> b. (. . . those requiring) the performance of functions which carry out a responsibility vested in the Public Health Service by law.

The National Health Service Corps meets these criteria, although the responsibility to be vested in the Public Health Service will come from this law itself.

Legally, then, the Corps is consistent with the military manpower requirements of the Department of Defense. Even more importantly, the number of health professionals within the Corps will not detract from the military's needs. Even if we ignore the fact that the military's medical manpower needs are declining and may decline more precipitously in the near future, the absolute number of commissioned officers who could be detailed to the Corps at the $5 million level of funding is approximately one-half of 1 percent of the total number of physicians in the military at the present time. Moreover, some of these officers would be ineligible for service in the military—women and those who had previously satisfied their military commitment—and others would come from a reshuffling of officers already in other service assignments. The number of health professionals serving in the Corps who might otherwise serve directly in the Department of Defense would not be more than 80 or 100 at any one time, and probably not more than 30 or 40. Since service in the Corps is for a minimum period of 25 months, the annual diversion from the military might thus be as low as 15 to 20 doctors and dentists. At a time when abolition of the doctor draft and a volunteer army are under consideration, and when proposals have been made to transfer care of military dependents to private health service facilities, these few doctors seem a small price to pay for creation of the National Health Service Corps.

CONCLUSION

The National Health Service Corps is thus consistent with, and no threat to, the medical manpower needs of the Department of Defense. As Senator MAGNUSON has pointed out, it need not be a threat to any other institution, policy, or program.

The Corps can and should be described in more positive terms, however, and this can be done quite simply. The Corps will provide health services to those in greatest need. It will represent a challenging new mission for the Public Health Service. It will offer an opportunity to those upcoming health professionals who truly desire to serve their country. If for these reasons alone, the Corps is more than worthy of congressional approval. The prospect that the Corps may teach us how to redirect our health efforts, both public and private, is an even more exciting and compelling reason for acting swiftly on this proposal.

Mr. KENNEDY. Mr. President, I am pleased to cosponsor the National Health Service Corps Act of 1970, introduced today by the distinguished Senator from Washington (Mr. MAGNUSON). As chairman of the Appropriations Subcommittee on the Departments of Labor and Health, Education, and Welfare, Senator MAGNUSON has been one of the foremost advocates of better and more adequately funded health programs in the Nation, especially in the area of health manpower. The legislation introduced today is a tribute to his leadership in the field of health, and I hope that it will receive early action by Congress.

A National Health Service Corps will be an important step forward toward alleviating what is perhaps the most serious aspect of our overall health crisis—the worsening shortage of health manpower. Indeed, at bottom, our crisis in health is essentially a crisis in manpower. The need is urgent for more physicians, more dentists, more nurses, and more allied health professional and technical workers. We must develop new types of health professionals and paraprofessionals. We must make far more efficient utilization of our existing health manpower. Only if we succeed in these efforts will we be able to free our physicians and other highly trained health experts to carry out the skills for which they have been trained. In far too many cases, highly trained physicians spend the overwhelming majority of their working day in tasks that do not require their specialized medical skills.

One of the most promising methods of easing the shortage of doctors is to train new types of health workers to perform nonspecialized tasks, thereby freeing physicians for other, more urgent needs. We must develop a broad new range of allied health professionals, such as paramedical aides, pediatric assistants, community service health officers, and family health workers.

At a number of our universities, imaginative new programs are under way to train medical corpsmen from Vietnam as physicians' assistants. In Senator MAGNUSON'S own State of Washington, for example, hospital corpsmen are being trained for 3 months in the medical school and then sent into the field for 9 months further training in the offices of private physicians. A similar program now exists at Duke University. These programs are unique in their emphasis on combined training in the classroom and in the field. They are programs that must be greatly expanded if we are to meet the urgent demand for more and better trained health manpower.

The need is especially clear in the case of the shortage of doctors. Our low physician-population ratio means that unsatisfactory medical care is a way of life for large numbers of our people in many parts of our Nation. The family doctor—the general practitioner—is fast disappearing, and is on the verge of becoming an extinct species. At the present time, only one out of four of the Nation's physicians is engaged in the general practice of medicine. Three out of four are specialists, most of whom accept patients only on a referral basis. Simply to meet the demand that exists today, it is widely known that we need 50,000 more doctors, and 150,000 more nurses.

To make matters worse, the geographic and social distribution of our doctors is highly uneven. This is the area where the National Health Service Corps will make its greatest contribution. Two-thirds of the physicians in America serve the more affluent half of our population. In some States, to be sure, the physician-population ratio is higher than the national average of 130 doctors per 100,000 population. In Washington, D.C., for example, the ratio is 318. In New York it is 199; in Massachusetts, 181.

In 16 States, however, the physician-population ratio is far below the national average. In Alaska and Mississippi, the ratio is an abysmal 69, or about one-half the national average. In Alabama, it is 75. Even in Texas, it is only 106. Clearly, therefore, extremely large groups of our population are receiving seriously inadequate medical care because of the shortage of physicians.

The problem is especially critical with respect to the health needs of our urban and rural poor. For too many of the poor, the only doctor they know is the cold and impersonal emergency ward of the municipal or county hospital. For too many of our citizens, the family physician has disappeared, to be replaced by the endless and depressing waiting rooms of hospitals built at the turn of the century.

Nowhere are the inequalities of our society more obvious than in the sickness of our poor. We know that our affluent few can buy the world's best medical care. But all too often it is care provided in modern medical towers looking out on urban landscapes condemning thousands of citizens to a lifetime of disease, under some of the worst medical care anywhere in the world.

In the United States today—the wealthiest Nation in the history of man—millions of our citizens are sick. And they are sick because they are poor. Their sickness is the shame of America. Of all the faces of poverty, the sickness of the poor is the ugliest. Of all the effects of poverty, it is the sickness of the poor that we could attack most easily, had we the will.

In areas of urban and rural proverty in the United States, medical care is available but only if one travels far enough, waits long enough, and endures the crowds, the inconvenient hours, the understaffed facilities.

The National Health Service Corps will help to solve these serious problems. I believe it is one of the most important steps we can take if we are to meet the critical need for health manpower in depressed areas. Once young Corps physicians are exposed to the problems of health care in poverty areas, I believe that a significant number of them will be encouraged to remain and dedicate their careers to this service, to the lasting benefit of the health of America.

Mr. NELSON. Mr. President, I am very pleased to sponsor this legislation establishing a National Health Service Corps with my distinguished colleagues.

Under this plan, teams of medical professionals and paraprofessionals would be sent into city and rural poverty areas to upgrade the medical care now available there.

It is loosely patterned after the National Teacher Corps program, which Senator KENNEDY and I originally proposed in 1965. It is my firm belief that this health care program is destined to meet with the same overall acceptance by professionals in the medical field as well as the people to be served as the Teacher Corps has enjoyed over the past 5 years of its operation.

Despite dramatic medical advances and the investment of billions of Federal dollars, we are on the brink of a national health crisis with thousands of families in urban ghettos and residents in poverty stricken rural areas unable to obtain adequate health and medical care.

The health resources of the Nation have been badly misallowed. Highly trained personnel and highly specialized medical equipment have been clustered in shiny new medical centers, isolated from the needs of many citizens in the inner city and rural towns.

The National Health Service Corps could substantially correct the present maldistribution of medical manpower by using local volunteers, paraprofessionals, and professionals in community clinics and other facilities serving the citizens of urban and rural regions.

Physicians serving in the program would become members of the U.S. Public Health Service as commissioned officers and would fulfill their military obligation. Nurses and other health care personnel would be recruited by the Public Health Service for assignment by the U.S. Surgeon General to serve in various areas of the country.

A National Health Corps Advisory Council, comprised of Government representatives, private citizens, and recipients of service by the Health Corps, would develop the policy governing the selection of personnel and their assignment to areas inhabited by medically needy.

In addition to projects in city ghettos, the Corps personnel could be used in health care programs serving Indians, migrant workers, Headstart children, people in model cities neighborhoods and expanded programs based in Public Health Service hospitals, neighborhoods health clinics, and community mental health clinics.

Our young doctors, nurses, and other medical personnel should be given the opportunity to share in the satisfaction of public service through participation in a National Health Corps. Their counterparts in the educational and legal professions have already displayed their social consciousness by flocking to work in the National Teacher Corps and neighborhood legal services program.

Implicit with this manpower plan is the need for expansion of neighborhood health clinics and hospital satellite centers, the development of improved means to transfer patients to facilities with better medical resources and a reassessment of priorities in government health programs.

Local community residents, trained by medical personnel in local hospitals, could be mobilized as health workers to inform their neighbors about family health practices, preventive medicine, and the accessibility of health care while others could prepare for new career positions in the health field.

Without a comprehensive revision of the organization and delivery of health and medical care, millions of citizens will continue to receive no care at all or very marginal care at best.

As medicine becomes more and more specialized, there are fewer and fewer general practioners available to serve the

routine medical needs of the public. Less than 2 percent of today's medical graduates enter general practice.

When confronted with a relatively minor ailment, such as a cold or sprained ankle which could be normally treated at a doctor's office, many city residents must travel to the emergency room of a city hospital to receive medical attention.

These noncritical cases clog the emergency facilities and become a wasteful burden on the efficiency of the hospital's operation.

While this program will improve the allocation of the medical manpower we have available in our Nation, we cannot avoid confronting the overall physical shortage problem in the United States. It seems to me that Congress should consider the establishment of a National Public Health Academy as a source of trained personnel to serve the medical and health needs of our Nation.

Such an institution could aim its efforts at recruiting promising students from low-income families, who would be mostly likely to return and serve the medically needy after their training. Students at the academy would receive a full Government-financed medical education in exchange for an established term of service in regions faced with acute medical needs.

S. 4107—INTRODUCTION OF BILL TO REGULATE THE IMPORTATION, MANUFACTURE, DISTRIBUTION, STORAGE, AND POSSESSION OF EXPLOSIVES, BLASTING AGENTS, AND DETONATORS AND FOR OTHER PURPOSES

Mr. HRUSKA. Mr. President, on March 26, 1970, I introduced, on behalf of the Attorney General, S. 3650, a bill designed to strengthen the Federal criminal laws concerning the illegal use, transportation, and possession of explosives.

As I reported to the Senate on June 17, 1970, S. 3650 is before the Senate Judiciary Subcommittee on Criminal Laws and Procedures, which, under the leadership of Senator MCCLELLAN, is processing the legislation promptly and expeditiously. Enactment of this legislation is important to the success of the efforts of the law-enforcement agencies who are trying to cope with the rash of bombing incidents which the country is suffering.

The Senate Government Operations Permanent Subcommittee on Investigations, which is also chaired by the distinguished Senator from Arkansas, has been holding hearings concerning the wave of bombings and terrorism throughout the United States. I am informed that witnesses have described in vivid and sometimes gory detail the results of the atrocious and intolerable activities of the terrorists who are responsible for most of the incidents. The magnitude of the problem is demonstrated by the results of a survey of bombing incidents reported to the Treasury Department by law-enforcement agencies throughout the country. During the period of the survey, January 1969 to April 1970, more than 4,000 bombings resulted in deaths of 43 persons and in property damage totaling $22.6 million. In all there were more than 40,000 bombings, attempted bombings and bomb threats during the period of the survey.

Today, on behalf of the Secretary of the Interior I introduce a bill which complements S. 3650 by controlling the distribution of explosives and thus making it more difficult to obtain explosive materials.

The bill would require all importers, manufacturers, and dealers in explosives to be licensed by the Secretary of the Interior. It would require commercial users of explosives to obtain permits from the Secretary, while at the same time it would permit the casual user to purchase explosives within his own State or a contiguous State. However, the bill would require positive identification of all purchasers of explosives.

Other features of the legislation would prohibit the sale of explosives to minors, felons, fugitives from justice, drug addicts, and mental defectives; would provide for strict regulations on the safe storage of explosives; and would provide penalties of up to 10 years imprisonment for violations of the provisions of the bill.

I ask unanimous consent that a copy of the letter of transmittal from the Secretary of the Interior to the Vice President be printed in the RECORD along with the text of the bill and a section-by-section analysis.

The PRESIDING OFFICER (Mr. SAXBE). The bill will be received and appropriately referred; and, without objection, the bill, letter, and the section-by-section analysis will be printed in the RECORD.

The bill (S. 4107) to regulate the importation, manufacture, distribution, storage, and possession of explosives, blasting agents, and detonators, and for other purposes, introduced by Mr. HRUSKA, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

S. 4107

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

FINDINGS AND PURPOSE

The Congress finds that the manufacture and distribution of explosive materials has a significant effect on interstate or foreign commerce and that the misuse of explosive materials significantly interferes with the normal flow of such commerce. The Congress hereby declares that the purpose of this Act is to reduce the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. It is not the purpose of this Act to place any undue or unnecessary Federal restrictions or burdens on law abiding citizens with respect to the acquisition, possession, storage or use of explosive materials for industrial, mining, agricultural or other lawful purposes, or to provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this Act.

SEC. 2. Title 18, United States Code, is amended by adding after Chapter 39 the following chapter:

"CHAPTER 40. IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS

"Sec. 841. Definitions.
"Sec. 842. Unlawful acts.
"Sec. 843. Licensing.
"Sec. 844. Penalties.
"Sec. 845. Exceptions: Relief from disabilities.
"Sec. 846. Additional powers of the Secretary.
"Sec. 847. Rules and regulations.
"Sec. 848. Effect on State law.
"Sec. 849. Separability clause.

"DEFINITIONS

"SEC. 841. As used in this chapter—

"(a) 'Person' means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

"(b) 'Interstate or foreign commerce' means commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State. 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

"(c) 'Explosive materials' means explosives and blasting agents.

"(d) 'Explosives' means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters, and any explosives as shall be listed by the Secretary in a list he shall publish and revise at least annually in the Federal Register.

"(e) 'Blasting agent' means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive and in which none of the ingredients is defined as an explosive, provided that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined.

"(f) 'Detonator' means any device containing a small detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

"(g) 'Importer' means any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

"(h) 'Manufacturer' means any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

"(i) 'Dealer' means any person engaged in the business of distributing explosive materials at wholesale or retail.

"(j) 'Permittee' means any user of explosives for a lawful purpose, who has obtained a user permit under the provisions of this chapter.

"(k) 'Secretary' means the Secretary of the Interior or his delegate.

"(l) 'Published ordinance' means a published law of any political subdivision of a State, which the Secretary determines to be relevant to the enforcement of this chapter.

"(m) 'Crime punishable by imprisonment for a term exceeding one year' shall not mean (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Secretary may by regulation designate, or (B) any State offense classified

by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

"(n) 'Licensee' means any importer, manufacturer or dealer licensed under the provisions of this chapter.

"(o) 'Distribute' means sell, issue, give, transfer or otherwise dispose of.

"UNLAWFUL ACTS

"SEC. 842. (a) It shall be unlawful for any person—

"(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter.

"(2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption or relief from disability under the provisions of this chapter.

"(3) other than a licensee or permittee knowingly—

"(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a state contiguous to the state in which the purchaser resides may ship, transport or cause to be transported such explosive materials to the state in which he resides and may receive such explosive materials in the state in which he resides.

"(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the state in which the distributor resides.

"(b) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except—

"(1) a licensee,

"(2) a permittee, or

"(3) a resident of the state where distribution is made or a state contiguous thereto.

"(c) It shall be unlawful for any licensee to distribute explosive materials to any person, who the licensee has reason to believe intends to transport such explosive materials into a state where purchase of such explosive materials is prohibited.

"(d) It shall be unlawful for any licensee knowingly to distribute explosive materials to any individual who:

"(1) is under twenty-one years of age,

"(2) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year,

"(3) is under indictment for a crime punishable by imprisonment for a term exceeding one year.

"(4) is a fugitive from justice,

"(5) is an unlawful user of marijuana (as defined in section 4761 of the Internal Revenue Code of 1954) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4721 (a) of the Internal Revenue Code of 1954), or

"(6) has been adjudicated a mental defective.

"(e) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person in any state where the purchase or possession by such person of such explosive materials would be in violation of any state law or any published ordinance applicable at the place of distribution.

"(f) It shall be unlawful for any licensee or permittee willfully to produce, distribute, or receive explosive materials without making such records as the Secretary may by regulation require, including, but not limited to, a statement of intended use, the name, date, place of birth, social security number or taxpayer identification number, and place of residence of any natural person to whom explosive materials are distributed. If explosive materials are distributed to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date, place of birth and place of residence of the natural person acting as agent of the corporation or other business entity in arranging the distribution.

"(g) It shall be unlawful for any licensee or permittee knowingly to make any false entry in any record which he is required to keep pursuant to this section or regulations promulgated hereunder.

"(h) It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen.

"(i) It shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated hereunder by the Secretary. In promulgating such regulations, the Secretary shall take into consideration the class, type and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.

"(j) It shall be unlawful for any person who has knowledge of the theft or loss of any explosive materials from his stock, to fail to report such theft or loss within 24 hours of discovery thereof, to the Secretary and to appropriate local authorities.

"LICENSES AND USER PERMITS

"SEC. 843. (a) An application for a user permit or a license to import, manufacture or deal in explosive materials shall be in such form and contain such information as the Secretary shall by regulation prescribe. Each applicant for a license or permit shall pay a fee to be charged as set by the Secretary, said fee not to exceed $200 for each license or permit. Each license or permit shall be valid for not longer than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.

"(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Secretary shall issue to such applicant the appropriate license or permit if—

"(1) the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 842(d) of this chapter;

"(2) the applicant has not willfully violated any of the provisions of this chapter or regulations issued hereunder;

"(3) the applicant has in a State premises from which he conducts or intends to conduct business;

"(4) the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Secretary by regulation shall prescribe; and

"(5) the applicant has demonstrated and certified in writing that he is familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business.

"(c) The Secretary shall approve or deny an application within a period of forty-five days beginning on the date such application is received by the Secretary.

"(d) The Secretary may revoke any license or permit issued under this section if in the opinion of the Secretary the holder thereof has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter, or has become ineligible to acquire explosive materials under section 842(d). The Secretary's action under this subsection may be reviewed only as provided in subsection (e)(2) of this section.

"(e)(1) Any person whose application is denied or whose license or permit is revoked shall receive a written notice from the Secretary stating the specific grounds upon which such denial or revocation was based. Any notice of a revocation of a license or permit shall be given to the holder of such license or permit prior to or concurrently with the effective date of the revocation.

"(2) If the Secretary denies an application for, or revokes a license, or permit, he shall, upon request by the aggrieved party, promptly hold a hearing to review his denial or revocation. In the case of a revocation, the Secretary may upon a request of the holder stay the effective date of the revocation. A hearing under this paragraph shall be at a location convenient to the aggrieved party. The Secretary shall give written notice of his decision to the aggrieved party within a reasonable time after the hearing. The aggrieved party may, within sixty days after receipt of the Secretary's written decision, file a petition with the United States Court of Appeals for the district in which he resides or has his principal place of business for a judicial review of such denial or revocation, pursuant to title 5, U.S.C. 701–706.

"(f) Licensees and permittees shall make available for inspection at all reasonable times their records kept pursuant to this chapter or the regulations issued hereunder, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any licensee or permittee, for the purpose of inspecting or examining (1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and (2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any state or any political subdivision thereof, the Secretary may make available to such state or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such state or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.

"(g) Licenses and permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.

"PENALTIES

"SEC. 844. (a) Any person who violates subsections (a) through (h) of section 842 of this chapter shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"(b) Any person woh violates any other provision of section 842 of this chapter shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(c) Any explosive materials involved in or used or intended to be used in, any violation of the provisions of this chapter, or any other rule or regulation promulgated thereunder, or any violation of any criminal law of the United States, shall be subject to seizure and forfeiture and all provisions of the Internal Revnue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend

to seizures and forfeitures under the provisions of this chapter.

"EXCEPTIONS; RELIEF FROM DISABILITIES

"SEC. 845. (a) This Act shall not apply to:

"(1) the transportation of explosive materials via railroad, water, highway, or air when such transportation is regulated by the United States Department of Transportation and agencies thereof;

"(2) the use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopeia, or the National Formulary;

"(3) the transportation, shipment, receipt or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof;

"(4) small arms ammunition and components thereof;

"(5) black powder in quantities not to exceed five pounds; and

"(6) the manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States; or to arsenals, navy yards, depots or other establishments owned by, or operated by or on behalf of, the United States.

"(b) A person who has been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year may make application to the Secretary for relief from the disabilities imposed by this chapter with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason of such indictment or conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the indictment or conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason of indictment or conviction, shall not be barred by such indictment or conviction from further operations under his license or permit pending final action on an application for relief filed pursuant to this section.

"ADDITIONAL POWERS OF THE SECRETARY

"SEC. 846. The Secretary is authorized to inspect the site of any accident, or fire, in which there is reason to believe that explosive materials were involved, in order that if any such incident has been brought about by accidental means, precautions may be taken to prevent similar accidents from occurring. In order to carry out the purpose of this subsection, the Secretary is authorized to enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location. Nothing in this chapter shall be construed as modifying or otherwise affecting in any way the investigative authority of any other Federal agency.

"RULES AND REGULATIONS

"SEC. 847. The administration of this chapter shall be vested in the Secretary. The Secretary may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter. The Secretary shall give reasonable public notice, and afford to interested parties opportunity for hearing, prior to prescribing such rules and regulations.

"EFFECT ON STATE LAW

"SEC. 848. No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any state on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the state so that the two cannot be reconciled or consistently stand together.

"SEPARABILITY CLAUSE

"SEC. 849. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby."

SEC. 3. Nothing in this Act shall be construed as modifying or affecting any provision of—

(a) The National Firearms Act (chapter 53 of the Internal Revenue Code of 1954);

(b) Section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), as amended, relating to munitions control;

(c) Section 1716 of title 18, United States Code, relating to nonmailable materials;

(d) Chapter 39 of title 18, United States Code; or

(e) Chapter 44 of title 18, United States Code.

SEC. 4. The Secretary shall, within ninety days of the date of enactment, publish the proposed regulations required by the provisions hereof and shall begin enforcement of such act and regulations after the expiration of one hundred and twenty days from the date of enactment.

SEC. 5. The Federal Explosives Act of October 6, 1917, 40 Stat. 385, as amended (50 U.S.C. 121–143) and as extended by Act of July 1, 1948, 40 Stat. 671 (50 U.S.C. 144), and all regulations adopted thereunder are hereby repealed.

SEC. 6. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title.

The letter presented by Mr. HRUSKA is as follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 20, 1970.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft of a proposed bill, "To regulate the importation, manufacture, distribution, storage and possession of explosives, blasting agents and detonators and for other purposes."

We recommend that this bill be referred to the appropriate committee for consideration, and we recommend that it be enacted.

The ease of access to explosive materials have been a definite factor in the recent destructive bombings and bomb threats which have disturbed the peace and tranquility of the country and interfered with commerce between the States. Today, the United States of America is one of the few industrial nations of the world which does not control explosives at the Federal level. The Department of the Interior has determined from a recent survey that, in at least 35 of the 50 States, regulation of explosive materials is either weak or nonexistent. Therefore, this legislation is vital to protect the public interest.

This legislation will provide effective checks on the procurement of explosive materials for illegal use throughout all the 50 States. Additionally, it would supersede the Federal Explosives Act, December 26, 1941 (55 Stat. 863), which is operative only in time of war or national emergency, and which, in the light of present technology, is inadequate.

The proposed legislation operates through a system of licenses and permits. Licenses will be required of all manufacturers, importers and dealers. Permits will be required of all users who depend on interstate commerce to obtain explosives. An exception is made for the user who can satisfy his demand by purchase within the State or a contiguous State.

The proposed bill requires positive identification in all transactions of explosives, and requires both licensees and permittees to keep certain records. Persons under 21 years of age, drug addicts, mental defectives, fugitives from justice or persons indicted for or convicted of certain crimes cannot lawfully acquire explosives.

The storage of explosives will be regulated and all persons with explosives must report loss or theft within 24 hours.

The proposed bill makes it a Federal offense to falsify records, or make false statements to obtain explosives, to sell explosives in violation of State law and to traffic in stolen explosives.

This legislation will, we believe, significantly reduce the hazard presented by the misuse, both deliberate and inadvertent, of explosives, while assuring controlled access by lawful users.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

WALTER HICKEL,
Secretary of the Interior.

The section-by-section analysis presented by Mr. HRUSKA is as follows:

SECTION-BY-SECTION ANALYSIS

Section 1 states that the manufacture and distribution of explosives significantly affect interstate commerce and that the purpose of the Act is to reduce the hazard from misuse and improper storage of explosives.

Section 2 amends title 18 U.S.C. by adding a new chapter 40 containing sections 841 through 849.

Section 841 contains definitions. The critical definitions are: "explosive materials" which means, briefly, any chemical compound the primary or common purpose of which is to function by explosion; [This definition will be periodically construed by the Secretary of the Interior in a list published in the *Federal Register,*] "licensee" which means a manufacturer, importer or leader licensed under the Act; and "permittee" which means a user holding a permit issued under the Act.

Section 842 sets forth, in subsections (a) through (j), the following unlawful acts:

Subsection (a) prohibits any person from dealing in explosives without a license, from making false statements to obtain explosives, and if the person is not a "licensee" or "permittee" from transporting explosives in interstate commerce except from States contiguous to his State of residence, or to transfer explosives to a non-resident of the State in which he resides.

Subsection (b) prohibits any licensee from distributing any explosives to any person except 1) a licensee, 2) a permittee, or 3) a resident of the State of distribution or a contiguous State.

Subsection (c) prohibits licensees from distributing explosives to any person who the licensee has reason to believe intends to transport them into a State where their purchase is prohibited.

Subsection (d) prohibits distribution of explosives to any individual who is under 21, has been convicted or indicted for a crime punishable by imprisonment for a term exceeding one year, is a fugitive from justice, a drug addict, or a mental defective.

Subsection (e) prohibits distributing explosives to any person where the purchase or possession by such person of such explosives violates any local law or ordinance.

Subsection (f) requires licensees and permittees to keep records of transactions involving explosives.

Subsection (g) prohibits deliberate falsification of such records.

Subsection (h) prohibits traffic in explosives known or believed to have been stolen.

Subsection (i) requires storage of explosives in compliance with regulations issued by the Secretary of the Interior.

Subsection (j) requires reporting theft of explosives within 24 hours after discovery.

Section 843 provides conditions for the issuance of licenses and permits. It prohibits their issuance to persons 1) prohibited from buying explosives, 2) who have willfully violated any provisions of this chapter, 3) who do not have a business premises, 4) who do not have adequate storage facilities, or 5) who are not certified as being familiar with applicable State laws and local ordinances. The Secretary may revoke any license or permit immediately upon violation of any of the above conditions. The section provides for a hearing procedure and judicial review upon the denial or revocation of a license or permit. The section also provides for the inspection by the Secretary of records and storage facilities and for the posting of licenses and permits.

Section 844 provides a maximum penalty of $10,000 and 10 years in jail and for confiscation of any explosives used in violation of law.

Section 845 exempts transportation of explosives subject to Department of Transportation regulations, medicinal use of explosive materials, Government and military use, and small arms ammunition and small quantities of black powder. This section also provides that the Secretary may relieve persons indicted for or convicted of crimes from disabilities imposed by the Act.

Section 846 authorizes the Secretary to investigate fires resulting from explosives.

Section 847 confers administrative responsibility on the Secretary of the Interior and authorizes him to prescribe necessary rules and regulations after public notice and opportunity for hearing.

Section 848 makes it clear that State laws regulating explosives are not preempted unless they are in direct conflict with the Federal law.

Section 849 provides for severance of any provision held invalid.

Section 3 makes it clear that the Act does not affect certain other specified laws.

Section 4 provides 90 days for the publication of proposed regulations and 120 days before enforcement begins.

Section 5 repeals the Federal Explosives Act of 1917.

Section 6 authorizes appropriations.

S. 4108—INTRODUCTION OF FAIR CREDIT BILLING BILL

Mr. PROXMIRE. Mr. President, in the last two sessions Congress has taken the side of the consumer in demanding fair credit practices. The 90th Congress insured the full disclosure of the cost of credit when it passed the Truth-in-Lending Act which I introduced. More recently the Senate passed two bills I sponsored, S. 823 and S. 721, which will extend the provisions of truth in lending.

When passed by the House, S. 823 will establish certain Federal safeguards over the activities of credit reporting agencies in order to protect against arbitrary, erroneous and malicious credit information. S. 721 will prohibit the unsolicited mailing of credit cards and limit the liability of consumers on cards which are lost or stolen.

However, there remains one large area of lending abuses—credit billing. Two credit billing problems have become increasingly bothersome in recent years. The first problem concerns those companies which have demonstrated that their systems are completely incapable of correcting even the most simple billing errors. The second problem concerns "the shrinking billing period" or the practice of those creditors who send periodic billing statements to consumers just a few days before or even after the payment due date. This practice causes the placing of unfair finance charges on the consumers' account balance.

It is time, Mr. President, that Congress insist both that companies give prompt and efficient service upon receiving notices of errors in consumer accounts and that companies mail their billing statements well in advance of the payment due date. To this end I am today introducing the fair credit billing bill. This bill would amend the Truth-in-Lending Act to protect the consumer against careless and erroneous billings and the unfair harrassment which can accompany them.

Mr. President, I, like many of my colleagues, have received hundreds of complaints from consumers who have had to spend months and even years trying to correct companies' billing mistakes. Many consumers have had to spend many times the amount of the error in their account attempting to get it corrected. They have had to spend dozens of hours writing letters and telegrams and talking on the phone. Is this fair? Is it fair for the consumers to have to pay for the errors of the company?

Companies claim that errors are extremely rare. Well, Mr. President, I have found few people who have not had a problem with a credit misbilling. And just a sampling of my mail for the last few days is enough proof that the problem is not so rare as to be insignificant.

One gentleman wrote to ask me to help him get his name off a national "stop charge" list. His name was placed there a month ago after a computer added an erroneous $1 charge to the man's account. But the most frightening thing about the gentleman's story is that the only item he ever had charged to this account was a $5.39 gas bill. For charging $5.39 and asking the company to correct a dollar overcharge this gentleman's credit privileges are in severe danger. As he said in pleading with the company to correct their error:

> How can I be assured that due to your actions, my name will not be left hanging on a perhaps then obsolete "stop charge list" posted in a small isolated service station in Bar Harbor, Maine or Monck's Corner, South Carolina, which in turn could logically refuse my family service and/or cause untold embarrassment.

One Wisconsin housewife wrote to ask my help in straightening out her clothing store account. Three months ago she asked the company to correct an overcharge in her account. They said they would issue her credit for the amount in error. But since then she has received two other erroneous statements and one "reminder notice." She is rightfully afraid that her credit standing may be endangered by the company's inefficiency in correcting their error. She wrote the company noting:

> I think a lot more good will be achieved if your computers could credit figures to an account as fast as it can charge figures to an account.

One businessman wrote to me to ask my help in getting his credit card account canceled. Since February he has been writing and phoning the company, one of this country's largest, with no results. The company continues to add an extra 50 cents on to the man's account every month as a late charge on the very membership fee the man refused. The man wrote to the company:

> Since your computer will not take note of this fact, my dog with apparently more sense and more wit, has taken the matter in her own mouth. If this does not make your keypunch aware, nothing will.

So far the company has not shown any more awareness.

A western food production consultant wrote to tell me how he is still trying to correct an error that occurred in his account in November of 1968 when he paid a deferred charge in advance. His payment was credited to someone else's account and despite dozens of phone calls and letters the company has failed to correct their mistake.

Mr. President, these are just a few of the letters I have received in the last week from consumers who have been troubled by their inability to get satisfactory adjustments on their credit accounts. I cannot help wonder how many other consumers are blackmailed by the pay up or else notices into paying the disputed amounts on their accounts. Recently, I testified before the National Commission on Consumer Affairs on the subject of computerized billing practices and the failure of companies to respond to notices of error in their accounts. I ask unanimous consent that that testimony be printed in the RECORD.

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

STATEMENT OF SENATOR WILLIAM PROXMIRE

Mr. Chairman, it is an honor to testify before this Commission during its important hearings on the consumer credit industry.

In the last two sessions, Congress has made giant strides toward correcting unfair credit practices. The 90th Congress passed the truth in lending bill which I introduced. That bill insures the full disclosure of the cost of credit. In recent months I have sponsored two bills which have passed the Senate and which are major extensions of the truth in lending act. Bill S. 823 would establish certain Federal safeguards over the activities of credit reporting agencies in order to protect against arbitrary, erroneous, and malicious credit information. Bill S. 721 would prohibit the unsolicited mailings of credit cards and limit the consumer's liability on cards that are lost or stolen.

An additional area in which the consumer is being victimized and upon which the Congress has taken no action is the area of credit billing.

Mr. Chairman, I'm sure that many of us have a favorite anecdote we like to tell about a run-in we've had with a computerized misbilling. Because of our positions, most of us have probably been rather fortunate in having the billing error quickly corrected. However, for the average American consumer who is not a public official, a computer misbilling can turn into an unbelievable nightmare of past due notices, calls from collection

agencies, long waits on the telephone and threats of bad credit ratings.

Many of this country's largest and most prestigious credit card companies have shown themselves to be completely incapable of correcting even the most simple billing error. Many consumers have had to spend months and even years to clear up the companies mistakes.

A New York businessman spent over 15 months trying to correct a charge he received for six flights for one flight he had cancelled.

A Milwaukee advertiser spent five months trying to convince American Express to cancel his card.

A Washington State doctor spent six months trying to correct an error on a billing involving a truck rental.

And an award for persistence certainly should go to the man from Virginia who battled for 21 months to have a $14 mistake corrected. His is a story so unbelievable, Mr. Chairman, I ask that it be included in the record of this hearing.

Of course, the companies claim they give prompt and personal attention to all replies—that only in a rare instance do they let customer inquiries slip by. One company official has been quoted as saying "Sometimes of course we make mistakes. A $90 a-week clerk gets under pressure and gets in a hurry. There are controls, and it shouldn't happen but it does." However, some of the cases that people have come to me with are so fantastic as to suggest that either firms have no systematic procedures for handling errors or are attempting to blackmail consumers into paying debts they did not incur.

As one consumer asked me "Does it not seem unfair that American Express had made the error and remains penalty free, while I am forced to expend money and time to correct their errors? Obviously American Express does not care."

I'd like to give this Commission just one of the many incredible accounts I have received of unresponsive conduct by large American companies in replying to consumer complaints of an incorrect billing.

Mr. James Kurtz, a member of a prestigious national law firm, received a statement from the Diners Club on November 15, 1968. Noting that the bill contained a $207 charge for an airline ticket he had never purchased, Mr. Kurtz paid the total of the bill minus the $207 dollar error and wrote Diners of their error on December 4.

On January 3, 1969, Kutz received a computer notice that his account was past due. Four days later a form letter came in the mail thanking Kurtz for his recent payment but telling him he had to pay the full amount of each monthly bill.

Undismayed and still confident the matter could be settled with a minimum of inconvenience, Kurtz wrote his second letter to Diners on January 13. He told Diners that because he had been on vacation he had been unable to respond to their latest bill dated December 18 or the computer past due notice of the 3rd of January. He also told Diners that his December bill compounded the error by adding still another extra $207 charge and that he was paying all the charges on his account but those which were in dispute.

Three days later he received a telegram to contact the Diners collection department. This was followed immediately by another form notice advising him to deduct the amount in question until he heard from Diners. In a telephone call and a confirming letter Kurtz told Diners he was paying all but the amount in question on his December bill and Diners agreed this was satisfactory.

However, the January bill arrived immediately thereafter and contained a third extra airline charge for $207. Kurtz wrote back to tell of the rapidly growing error by a computer which was apparently out of control. The Diner's computer was now claiming some $621 in debts that Kurtz had not incurred.

Diners replied with another form letter thanking Kurtz for his recent payments but warning his card might be cancelled if he did not pay the full bill. Immediately Kurtz placed a collect call to Diners. The gentleman at Diners who took the call said he was sympathetic, termed the whole story "fantastic" and agreed to straighten it out as soon as possible. But, the call was followed by yet another past due notice from the relentless and seemingly vindictive computer.

The February bill came and to Kurtz's surprise was only $414 in error. Once again Kurtz took the time to send a letter off to Diners pleading they correct the error. His plea was met by another past due notice.

Several weeks later another computer "pay up or else" notice came in the mail. Kurtz responded with still another letter of explanation.

Finally on May 2nd Diners sent a letter telling the tired Mr. Kurtz that the company was checking with Braniff and American Airlines to find out who was responsible for the erroneous billing. A little over a month later Braniff sent Kurtz a letter affirming that the billings Kurtz had received were in error. A copy of this letter was sent to Diners and Kurtz himself sent a letter to Diners just to make sure they understood the Braniff position.

However, when Diners gave Kurtz a credit on his account it only did so to cover one of the remaining two $207 charges still in question. Enclosing a copy of all previous correspondence to date Kurtz sent off another letter to Diners. Diners responded by calling Kurtz's wife and explaining that Kurtz did owe the Club the remaining $207 in question. Furious Kurtz replied to Diners in a letter and once again sent copies of all his previous correspondence. No response came back from Diners.

Getting desperate Kurtz decided to call Braniff. Braniff confirmed both in that call and a subsequent letter to Diners that the mistake was not Kurtz's and that a disagreement between Braniff and American over the ticket charges had been settled. That letter from Braniff to Diners was dated November 18, 1969, one year from the original error. However in all bills since November Kurtz has received the erroneous charges and furthermore Diners has refused to send his 1970 Diners card renewal.

Finally on May 22 of this year Kurtz, after writing several Congressmen, received a letter from Diners apologizing and explaining that a credit would be issued for the remaining $207 error and the $66 service charge that had accrued on that error. It took Mr. Kurtz 18 months and a mountain of correspondence to straighten out a simple computer mistake. Today Kurtz is still anxiously waiting for both the cerdit and his 1970 Diners card.

In reply to his latest request for a new card Kurtz received a form letter which read "Thank you for your recent inquiry. We will give it our prompt attention."

This experience, which bears a close resemblance to a Kafka novel, is by no means untypical. I and other members of Congress have received numerous complaints of a similar nature.

Is it fair to expect the consumer to have the patience of Job, the legal skill of Edward Bennett Williams, and the resources of General Motors in order to get a bill corrected? Mr. Kurtz's experience is not the rare occurence the Credit Card Companies would have us believe. In at least one respect Mr. Kurtz was lucky. Many consumers find their credit cards cancelled on the basis of mistaken billings. Others find that their credit ratings have been seriously damaged by the companies' mistakes. When S. 823 passes, consumers will have the right to correct their adverse credit ratings but this should not keep up from shifting some of the responsibility for computer mistakes where it rightfully belongs—with the credit card companies.

Mr. Chairman, there are over 50 million people in this country buying on credit. The companies can say that they have only one percent or five percent or even one tenth of one percent error and that would be too much. One percent error rate would still be half a million errors. Can we expect a half a million or even 50,000 people a year to have to pay for the carelessness of credit companies?

There are those who point to the problem and say that the computer is the source of the error—that all the good the computer does more than makes up for its errors. But, Mr. Chairman, would we tolerate a one percent of one-tenth percent error rate in the computers that manage air traffic or that guide moon rockets or that prescribe drug amounts in hospitals? If the computer system is at fault we have the technology to correct the system. I think the consumer has a right to demand that companies improve their computer systems.

Another possible explanation is that the managements of these companies are hiding behind their computers. They might be unwilling to employ additional staff to handle the large volume of complaints. For example, one large credit card company receives over 40,000 inquiries a week from its customers and admits it is running far behind in answering this mail. It seems to be easier for companies to deny service which is rightfully due their customers—by explaining away the errors (if they explain them at all) as the result of the "computer billing cycle," or "system errors" or "coding mistakes." Besides, after months of fighting many customers give up and pay the amount in dispute rather than risk destroying their credit rating or continue a tiring and expensive campaign of phone calls, letters and telegrams. Why should the companies want to change their bad billing practices when they might be making a handsome profit off of them?

Last Tuesday morning a member of my staff attempted to reach the gentleman who had signed one of the past due notices for one of my constituents. For over half an hour he searched for Mr. S. Finkelman. He was asked numerous times for an account number but that seemed not to get him any closer to Mr. Finkelman.

I think that this commission should request testimony from S. Finkelman, and all those other infamous people who sign past due notices, including B. Jeffries, M. Brown, L. Fowler, J. King, L. Bush and a host of others. It might reassure the public to know that there are people who are at least supposed to be correcting their billing errors—assuming of course that Mr. S. Finkelman and his counterparts are real live human beings and not computer parts. Certainly not the least objectionable part of current billing practice is the failure of companies to reassure customers that if the machine can't handle their problems a good old fashioned human being will. Companies are treating there customers almost as if they were a part of the computer billing system.

Mr. Chairman, it is time that companies begin treating their customers if not with some respect then at least with a semblance of efficiency. What do I think can be done to correct current billing practices—especially as they relate to the use of computers?

I have hoped, Mr. Chairman, that the industry would devise controls that would insure responsible conduct. There are those in the computer industry who have made moves in this direction. The American Federation of Information Processing Societies in a recent conference under the chairmanship of William Wirtz called for a broad national certification program for computer personnel and a code of ethics and public responsibility. They further proposed the for-

mation of a special body to help enforce the code and assist the public. I endorse these proposals and would hope the computer industry pushes ahead rapidly toward their implementation.

However, Mr. Chairman, I do not believe this to be nearly enough. It is time the Congress stepped in on behalf of the consumer to demand responsible conduct on the part of credit billing companies. To this end I will in the near future introduce legislation that will shift the responsibility and cost of credit billing errors from the consumer to the industry. It is time that American companies be made to pay for their mistakes.

In the last two years the Federal Government has sided with the consumer in demanding responsible credit practices. The truth in lending act was indeed a major landmark. But we must now act to protect consumers who are harrassed and/or ignored by credit billing companies. As Mr. Kurtz discovered, one small error can turn into a punishment rivaling that of Prometheus. Congress owes it to the American consumer to demand more of credit lenders. It is not super human efficiency we are demanding—just a bit of public responsibility.

We need to borrow a phrase from these credit companies and say to them, on behalf of the American consumer, "Do not fold, bend, or mutilate."

Mr. PROXMIRE. The bill I am introducing today is aimed at insuring that consumers can get prompt corrections on their credit accounts. The fair credit billing bill would require that within 10 days after receipt of a notice of error in a consumer account a company would have to acknowledge receipt of the notice. This notice would give the consumer proof that the company was attempting to correct the error. If a consumer failed to get the 10-day acknowledgment he could then take such measures as would be necessary to insure that the company received his notice of error, such as sending the notice by registered mail.

The fair credit billing bill would further require the company to either make the correction and send a corrected statement to the consumer or explain why the original statement was correct within 60 days of receipt of the original notice of error.

If the creditor failed to send the 10-day acknowledgment or failed to adjust the account within 60 days, he would forfeit the right to collect the amount the consumer stated to be in error. Furthermore, if the consumer could then prove that an error had taken place, the creditor would be liable for actual damages, treble punitive damages, and reasonable attorneys fees.

In order to insure that consumers are aware of their rights under the fair credit billing bill, companies would be required to notify consumers of these rights on their monthly billing statements as well as when the account is initially opened.

Now there are those who will ask—why do we need such legislation when the consumer is not now legally responsible for any amount in error on his account? Well, Mr. President, those of us who have been faced with a computerized billing error know that while the consumer is in the right and not legally responsible, he is still subject to severe harassment. Companies will threaten his credit rating and even wrongfully damage it. They will cancel his credit card and send numerous "pay up or else" notices.

A contested billing quite often becomes a contest in perseverance between creditor and consumer with the resources strongly favoring the creditor. It is time the Federal Government insisted the credit billing companies promptly reply to customers' billing error notices or else be made to pay for their inefficiency. This is what the fair credit billing bill will do.

The other unfair credit practice I feel must be dealt with immediately is the problem of the "shrinking billing period." Normally creditors allow a customer 30 days from the billing date to pay the full "new balance" owed and thereby avoid any additional finance charge. However, when creditors do not send billing statements promptly the effect is to reduce the time the consumer has to pay the bill without incurring any extra finance charges. Some companies have even been sending the bill after the date due. Others have reduced the payment period to 25 days even though the billing cycle runs 30 days and the annual percentage rate is computed on a 30-day period.

Two States have recently passed laws requiring companies to send statements a certain number of days before the end of the billing cycle, and the FTC has taken notice of the growing problem of the shrinking billing period. In a consumer credit policy statement it notes that:

> The Truth in Lending Act and implementing Regulation Z do not now set forth any specific time within which creditors are required to send period billing statements to their customers. However, the Commission feels that the law contemplates that the periodic billing statement should be mailed in time to give customers a reasonable opportunity to have the payment posted before the end of the period within which finance charges may be avoided. . . .
>
> Continued abuses in connection with this problem could result in formal Commission action in individual instances, as well as the Commission's recommendation for strong corrective legislation.

Mr. President, I feel this problem demands strong corrective legislation. So in the fair credit billing bill I am hoping to make mandatory what truth in lending already contemplates—that companies give open end credit account customers time to pay their accounts without incurring a finance charge. The bill provides that statements must be mailed by companies 21 days prior to the date by which payment must be made in order to avoid the imposition of a finance charge. It is time that the Federal Government stretched the shrinking billing period.

These two problems—the shrinking billing period and the failure to respond to notice of error are two serious injustices facing the American consumer. They have been allowed to go on too long—while the companies promised that their systems were being corrected and perfected. These systems, most of them computer systems, cannot be allowed to become a permanent excuse behind which the creditor can hide from his responsibilities. Mr. President, I am introducing the fair credit billing bill with the hope that Congress can press the American credit companies into treating the consumer less like a computer and more like a human being. As I said before the National Commission on Consumer Finance, we need to borrow a phrase from these credit companies and say to them, on behalf of the American consumer, "Do not fold, bend, or mutilate."

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD and that the bill be received and appropriately referred.

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

The bill (S. 4108) to amend the Truth-in-Lending Act to protect consumers against careless and erroneous billings, introduced by Mr. PROXMIRE, was received, read twice by its title, referred to the Committee on Banking and Currency, and orderd to be printed in the RECORD, as follows:

S. 4108

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

SEC. 2. Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended—

(1) by adding at the end of subsection (a) a new paragraph as follows:

"(8) The protection provided by chapter 4 to an obligor under any such account in the event of an erroneous billing.";

(2) by adding at the end of subsection (b) a new paragraph as follows:

"(11) The rights of the obligor and the obligations of the creditor under chapter 4 in the event the obligor believes there is an error in the statement of his account and gives written notice thereof to the creditor."; and

(3) by adding at the end of such section a new subsection as follows:

"(d) A finance charge may not be imposed under an open end credit plan for any period unless a statement of the outstanding balance upon which the finance charge for that period is based is mailed at least twenty-one days prior to the date by which payment must be made in order to avoid imposition of that finance charge."

SEC. 3. The Truth in Lending Act (15 U.S.C. 1601–1665) is amended by adding at the end thereof a new chapter as follows:

"CHAPTER 4—CREDIT BILLING

"SEC. 161. Notice of error.
"SEC. 162. Liability of creditor.

"NOTICE OF ERROR

"SEC. 161. If a creditor, having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives a written notice from the obligor in which the obligor—

"(1) directs the attention of the creditor to an amount shown in the statement as owing from the obligor which the obligor believes to be in error in whole or in part,

"(2) indicates the amount by which the amount shown in the statement is greater or less than the sum believed to be owing to the creditor by the obligor, and

"(3) sets forth the reasons of the obligor for the belief that an error has occurred, the creditor shall—

"(A) not later than 10 days after the receipt of the notice, send a written acknowledgment thereof to the obligor, and

"(B) not later than 60 days after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, believed to be in error—

"(i) make appropriate corrections in the account of the obligor and transmit to the obligor a statement of his account which has been revised so as to show the corrections, or

"(ii) send a written explanation to the obligor setting forth the reasons why the creditor believes the account of the obligor was correctly shown in the statement.

"LIABILITY OF CREDITOR

"SEC. 162. Any creditor, having received a notice from an obligor as provided in section 161, who fails to comply with the requirements of that section—

"(1) forfeits any right to collect from the obligor the amount shown in any statement of the obligor's account which the obligor believes to be in error and specifies in such notice in the manner prescribed in clause (2) of such section, including any finance charge or other charge imposed by the creditor in connection with the amount so specified; and

"(2) if such amount is in fact an error, is liable to the obligor in an amount equal to the sum of—

"(A) the actual damages sustained by the obligor as a result of the failure of the creditor to comply with such section;

"(B) $100 or three times the amount referred to in paragraph (1), whichever is the greater; and

"(C) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court."

SEC. 4. This Act takes effect upon the expiration of 180 days after the date of its enactment.

SENATE JOINT RESOLUTION 222—REFERRAL OF A JOINT RESOLUTION

By unanimous consent, the joint resolution (S.J. Res. 222) granting the consent of Congress to the States of New Jersey and New York for certain amendments to the Waterfront Commission compact and for entering into the Airport Commission Compact, and for other purposes, introduced by Mr. JAVITS (for himself and other Senators) on July 16, 1970, on today, July 21, 1970, was referred to the Committee on the Judiciary, then to the Committee on Commerce for not to exceed 30 days when reported from the Committee on the Judiciary.

(The remarks of Mr. JAVITS when he made the unanimous consent request appear later in the RECORD under the appropriate heading.)

ADDITIONAL COSPONSORS OF BILLS

S. 3724

Mr. McGEE. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senators from Utah (Mr. BENNETT), Oregon (Mr. HATFIELD), Kentucky (Mr. COOK), and California (Mr. MURPHY), be added as cosponsors of S. 3724, my bill to amend the Internal Revenue Code with respect to ammunition recordkeeping requirements.

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

S. 3752

Mr. PEARSON. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Texas (Mr. YARBOROUGH) be added as a cosponsor of S. 3752 to amend the Fair Packaging and Labeling Act to require the disclosure by retail distributors of unit retail prices of consumer commodities, and for other purposes.

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

S. 3867

Mr. NELSON. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Indiana (Mr. HARTKE) and the Senator from South Dakota (Mr. MCGOVERN) be added as cosponsors of S. 3867, to assure opportunities for employment and training to unemployed and underemployed persons, to assist States and local communities in providing needed public services, and for other purposes.

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

S. 4092

Mr. BYRD of West Virginia. Mr. President, at the request of my senior colleague, Senator RANDOLPH, I ask unanimous consent that, at the next printing, the names of the Senator from Montana (Mr. METCALF), the Senator from Iowa (Mr. MILLER), and the Senator from Illinois (Mr. SMITH), be added as cosponsors of S. 4092, to establish a Commission on Fuels and Energy to recommend programs and policies intended to insure that United States requirements for low-cost energy will be met, and to reconcile environmental quality requirements with future energy needs.

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

ADDITIONAL COSPONSOR OF A CONCURRENT RESOLUTION

S. CON. RES. 74

Mr. MUSKIE. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Rhode Island (Mr. PELL) be added as a cosponsor of Senate Concurrent Resolution 74 to affect the treatment of prisoners in South Vietnam.

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

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, July 21, 1970, he presented to the President of the United States 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, Calif.;

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; and

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

ADDITIONAL STATEMENTS OF SENATORS

MORE WHOLESOME MEAT

Mr. MATHIAS. Mr. President, a man may be known by his friends, but a bill in Congress is usually known by its opponents. The Mathias amendment to encourage higher sanitary standards and more wholesome products for meat consumers is now opposed by the larger scale organized packing plants which today dominate 85 percent of the interstate meat business.

Two weeks ago this Chamber took an important step toward eliminating an anomaly in the Federal meat inspection laws by adopting an amendment to double the amount of money available for the support of State inspection programs and to make sure that all meat which passes inspection at the level of Federal standards is available for shipment in interstate commerce. This amendment, if accepted by the conference committee now considering the Department of Agriculture appropriations bill, will provide further incentive to States to upgrade their meat inspection programs and to assure that those State programs which meet Federal standards stay up to that level.

But now, the handful of interests which today occupy the interstate meat market, and who apparently do not want the consumer to have the benefit of a bigger meat supply, are critical of our effort.

I appreciate the concern of consumers and organized consumer groups that all meat—both that which is processed under State inspection and that which is procesed under Federal inspection—is safe for human consumption. This is certainly the goal which we all seek to attain: a full supply of healthful meat products for the American consumer.

It is exactly this goal which the Mathias amendment will help to bring closer. For if meat is processed in a plant operating under standards certified as equal to Federal standards and the products coming from that plant must be equal to the products coming from plants which are inspected by Federal agents, the standards are the same, therefore the meat products are equally healthful.

Why should this meat, inspected in States operating at standards equal to the Federal level, be restricted to the market of a single State? We have a great opportunity here to expand the volume of wholesome meat available to the national market, by encouraging higher standards through expansion of the grant program.

The housewives of America need a spokesman in this matter. They want better meat for less money. While no one has an Aladdin's lamp to wish such a result into reality, this provision will set forces in motion that will help bring it about. The single spokesman for a consumer group who has complained was obviously not informed about the increase in grants to States to foster high-

er standards in State as well as Federal inspection systems. And an increase in the meat supply in the national market could be expected to bring about some decline in the distressingly high level of meat prices.

I am confident that the apparent misunderstandings about this provision will be cleared up and that the joint conference committee now considering this bill will act in the interest of the more than 200 million American consumers by including this key provision in the final version.

McGOVERN ASKS ROLE FOR PALESTINIANS IN MIDEAST TALKS

Mr. KENNEDY. Mr. President, yesterday the Senator from South Dakota (Mr. McGOVERN) addressed himself thoughtfully to the problems of peace in the Middle East. In the course of his remarks he presented several new proposals which merit, I believe, careful consideration by members of the Senate and by the administration.

I ask unanimous consent that relative to the Senator's speech, an article published in today's New York Times, be printed in the RECORD.

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

[From the New York Times, July 21, 1970]

McGOVERN ASKS ROLE FOR PALESTINIANS IN MIDEAST TALKS

WASHINGTON, July 18.—Senator George S. McGovern, seeking to meet criticism that he is dovish on the war in Vietnam and hawkish on the Middle East, outlined proposals today for a Middle Eastern settlement, including participation of Palestinian refugee organizations in Arab-Israeli negotiations.

In a Senate speech, the South Dakota Democrat reaffirmed his earlier support for supplying more American jet aircraft for Israel, but asserted that such a step itself was inadequate for promoting peace in that region.

Calling upon the Administration to make known its proposals for an "equitable solution," he spelled out several proposals of his own:

Israel should start allocating funds for an escrow account to compensate Arab refugees for loss of their land in Palestine as a result of the 1948 Arab-Israeli war. "The feeling of the Palestinians that they have unjustly lost their homes and property is perhaps the most important single source of tension and conflict in the Middle East," he said. "A unilateral act of Israel recognizing that fact could be the greatest single step toward peace."

Before any negotiations begin, the Arab Government should "accept responsibility for acts of aggression committed from bases" in their territories, and thereby assume responsibility for the terrorism of Palestinian commando groups.

As part of an ultimate peace settlement, Israel as well as the Arab states "should be willing to accept the presence of United Nations forces on their territories." Israel has not agreed to this in the past. Removal of such forces should be under the control of United Nations agencies, not individual governments, to prevent a repetition of the situation created by the United Arab Republic's demand in 1967 that United Nations peacekeeping forces leave its territory.

The United States should supply more jet aircraft to help maintain Israel's deterrent power, "but 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 six-day conflict in 1967."

Aides explained that Senator McGovern had sought to introduce an element of moderation into current Washington discussion over the Middle East, fearing that otherwise the Senate "might get swept up in the emotions of the moment" and grant excessive authority to the Administration, as Mr. McGovern felt was done with regard to Vietnam in 1964.

Staff members also said that Senator McGovern had drafted his speech to answer criticism that he took a hard pro-Israeli line on the Middle East while on Vietnam he was dovish. On several points, he appeared to have offered suggestions that had not previously been made by any member of Congress.

Although both the Johnson and the Nixon Administrations have asserted that repatriation of roughly one million Palestinian refugees and compensation for their losses should be a part of any over-all Middle Eastern settlement, neither Administration has advocated participation of Palestinian organizations in Arab-Israeli negotiations.

Israel is opposed to such a step, and some Arab Governments have been hesitant about it. At the moment, the most militant Palestinian organizations themselves are disdainful of negotiations, but some diplomatic observers consider this only a tactic. Mr. McGovern suggested that the Palestinian groups be represented in Middle Eastern peace talks only if Arab Governments proposed such a move.

SOCIAL SECURITY AMENDMENTS

Mr. MOSS. Mr. President, the Senate will soon have before it for consideration the House-passed social security bill. This bill which reflects the many months of hearings by the House Ways and Means Committee is presently before the Finance Committee of the Senate.

As it stands, the social security bill of 1970, by and large, is a good bill making important improvements in the structure and administration of the social security program. Some of these positive proposals include:

First. A 5 percent across-the-board increase in social security benefits effective January 1971. For the average retired single worker this means that his check will increase from $116 to $121.80 monthly. Average benefits for a retired couple would be raised from the present $196 to $205.80.

Second. A liberalization of the retirement test to permit beneficiaries under 72 to earn up to $2,000 annually before having their social security earnings reduced. Under present law the reduction takes place after an individual earns $1,680.

Third. An automatic cost-of-living adjustment mechanism beginning in 1972 which would provide that social security payments would be automatically raised for each 3-percent increase in the Consumer Price Index.

Fourth. The allowance of widows to receive 100 percent of their deceased spouse's benefits instead of the present 82½ percent. Under this proposal the average widow's benefits will increase nearly 21 percent from $102 to $123 monthly.

Mr. President, the House-passed bill—H.R. 17550—also makes major changes in the medicare and medicaid programs. Some of these changes include:

First. The proposal that persons presently ineligible for part A, the hospital insurance portion of medicare, be allowed to enroll for coverage at the rate of $27 a month.

Second. Removal of the present provision in the law that requires that an elderly person enroll in part B of medicare—supplementary medical insurance—within 3 years after becoming eligible.

Third. The proposal giving power to the Secretary of Health, Education, and Welfare to terminate payments to physicians found to be guilty of program abuses, including overcharging, furnishing inferior, harmful or excessive services, or making a false statement to obtain payment.

Fourth. The proposal directing the Secretary of Health, Education, and Welfare to establish specific periods of time for hospitalization after which time the patient would be presumed to require services in a nursing home. A similar provision would apply to posthospital home health services.

Fifth. Making Federal funds available at the 90-percent level to the States to establish mechanized claims processing and information retrieval systems. Federal funds are to be made available at the 75-percent level for the operation of such systems.

Sixth. The inclusion of a 25-percent bonus to the States over present Federal matching—commonly at the 50-percent level—if the State will make use of medicaid home health services instead of providing services in a nursing home.

Seventh. The reduction of Federal matching by one-third after an individual in a medicaid nursing home has received 90 days of care and further reductions in Federal matching funds with the continued tenure of the patient.

Mr. President, it is patently obvious that the Social Security Amendments of 1970 represent a potent package with far-reaching effects. I believe the primary thrust of these amendments is positive but I do take exception to two of the proposed amendments to medicaid.

To deal with the positive side first, surely there can be no one who could disagree with the present need for a 5-percent increase in social security benefits. This amount will barely cover the increase in the cost of living from December 1969, when the last increase was voted by the Congress through January 1971, when the new increase is to take effect.

By the same token, there should be few who would argue with the proposition that periodic increases in social security payments should come automatically to keep up with increases in the cost of living as indicated by the Consumer Price Index. Almost every major labor-management contract today contains such a clause. Why then should our senior citizens be forced to carry the full burden of our accelerating inflation. There is little logic in requiring the Congress to come to the rescue of our seniors with this kind of a stopgap increase every year; the process should be automatic.

At this point, Mr. President, let me say what I have said so many times before:

Social security payments, even with the proposed increase, will continue to be inadequate. Reportedly, more than 50 percent of our seniors have only their social security checks to rely on, with outside incomes dropping sharply in recent years. With the proposed 5-percent increase the average elderly couple on social security would be receiving a check for $205.80 monthly, or a total income of $2,469 a year.

This annual income total falls far below the dollar amount which, according to the Department of Labor's Bureau of Labor Statistics, would be needed by a retired couple to maintain a moderate standard of living. At the beginning of 1970 a retired couple was found to need at least $4,320. Clearly, a retired couple whose only income is a social security check cannot afford a moderate standard of living. Indeed, the total income of $2,469 would put the average retired couple well below the BLS budget level for a "lower" standard of living.

This income crisis, which confronts our elderly as their number grows and their discontent multiplies, has been well documented by this year's report of the Special Committee on Aging entitled: "Developments in Aging 1969." We must do more to provide our seniors with a proper income which would go a long way toward restoring their self-respect and place in society.

Perhaps the best place to start in this regard is by taking another look at the retirement test which tells a senior that he is free to work but that his social security check will be cut back if he earns more than $1,680 a year. This year's proposal in raising the test to $2,000 is a step in the right direction, but I continue to have preference for my own bill which called for raising the retirement test to $2,520 a year or $210 a month.

Assuming that the presently proposed 5-percent increase is passed and the average retired couple can count on an income of $205.80 monthly, and assuming that my proposal is adopted so that a retired person could earn up to $210 monthly without penalty, the average retired couple would have a potential income of about $5,000 yearly. This would compare favorably with the 1970 BLS total of $4,320 which is needed by a retired couple to maintain a "moderate" standard of living.

Another positive feature of the proposed bill would allow widows to receive 100 percent of their deceased spouse's benefits instead of the present 82½ percent. My mail reflects that this is one badly needed change, too long neglected.

Moving from the consideration of proposals dealing with the economic needs of the elderly, I have a few comments on those amendments which relate to the medical and health needs of the elderly.

Mr. President, as chairman of the Subcommittee on Long-Term Care of the Special Committee on Aging, I have been conducting a series of hearings on the problems inherent in the medicare and medicaid programs. When these hearings are completed I expect to issue a report to the Senate with my recommendations. On April 10, I addressed the Senate decrying the step-by-step dismantling of the medicare nursing program and giving my extreme dissatisfaction with retroactive denials of claims and again on April 16 calling for the implementation of the Moss amendments of 1967.

At this point, I say again that when the claims of patients ostensibly settled can be ordered reopened and reevaluated retroactively in the light of newly announced criteria, and providers can be forced to pay back sums now deemed improvidently granted, there exists serious questions of equity and due process. The new bill provides minimum protection against these retroactive denials when it calls for the Secretary to establish a set of presumptions as to which patients are deemed compensable under the medicare nursing home program and for how long.

Few could take issue with other proposals of H.R. 17550 which expand the accessibility of these programs and which provide Federal funds to aid States in setting up modern claims-handling procedure.

The provision giving power to the Secretary of Health, Education, and Welfare to terminate payments to physicians found guilty of program abuses such as furnishing inferior services, or submitting false claims for payment, should be acceptable. I state my own view that most of the physicians who participate in the programs do so in good faith and render excellent services. The enforcement mechanism here will be the real test of the wisdom of this amendment.

Mr. President, let me now cover those amendments I find objectionable and to give my reasons for my beliefs.

A few months ago the President told us that he was going to propose the abolition of 57 agencies in the Government that had outlived their usefulness. Sandwiched in that proposal, curiously, was the suggestion that the Federal Government is not now, nor should it ever be, in the position of financing long-term care. The reference was made in terms of the medicaid program which sees the State and the Federal Government sharing the cost of keeping a patient in a nursing home.

In California a nursing home operator received $14 a day for a medicaid patient—medicaid is the word of universal usage although California calls its program Medi-Cal. The Federal Government contributes $7 of this total toward care of the patients.

That this amount—$14 a day—is unreasonably low is obvious and was confirmed by our recent San Francisco hearing. The fact is that most States have this kind of unreasonably low rate of reimbursement. States complain that they are hard pressed in this day and age to raise their share of the money to match Federal outlays.

Against this background comes the suggestion from the administration that long-term care is a local and State responsibility. With the action of the House of Representatives, on May 21, it has become much more than a suggestion; it has come near to being the law of the land.

I make reference to section 225 of the House-passed bill which commands that the Federal matching for any nursing home patient in the medicaid program will be reduced by one-third after 90 days and continue to be reduced with the patient's continued tenure in the nursing home.

The proposal appears to be based on the notion that people who are in medicaid nursing homes 90 days can be rendered well enough to get along with simply personal care after that. This is an erroneous assumption.

An old person sick enough to need the full spectrum of skilled nursing care probably never can be made self-sufficient. The function of the nursing home for these infirm elderly has historically been to comfort and to prevent further deterioration. The medicaid program in this respect can be distinguished from the medicare program, which was intended to be postoperative and post-hospital. The medicare program, perhaps in theory, would lend itself to set numerical limits on number of patient days, and so forth, but in practice this idea has caused problems.

Another provision also objectionable is the 25-percent bonus which is given to the State in the event it elects to treat the patient through its home health services, rather than through its nursing home system. In the case of California again, the State ordinarily would pay $7 and receive a matching $7 from the Federal Government to make up the total of $14 a day paid to nursing home providers. If the State elected to treat a patient, instead, through its home health services, the share by the Federal Government jumps 25 percent. In this case the Federal Government would pay $10.50 and the State of California would pay $3.50. The assumption here seems to be that services rendered in the private home will be cheaper. The problem here is that over 50 percent of the patients presently on the medicaid roles have no family and no home. What some envisage, then, is purchasing old hotels and buildings and creating artificial homes by the State and then bringing in home health services to take advantage of the additional 25-percent bonus in Federal matching funds.

To my way of thinking, these services may be much more expensive than anyone has yet contemplated, since there is such a strong incentive for the States to make use of home health agencies. Let me make it clear that I do not oppose home health where appropriate—hardly so, since it was my 1967 amendments to the Social Security Act which required that the State set up home health agencies under medicaid.

To put it as plainly as possible, I feel that we are trying by these two unhappy provisions to set the type and site of care through fiscal gimmickry. Are we not really just using the Federal matching moneys to reward and punish, on the basis of monetary and fiscal considerations?

To my way of thinking the proposed amendment to limit the Federal matching after 90 days is a poor way to eliminate those who do not need medical care—call them custodial—from those who need such service in a nursing home.

If such is really the goal of the Government, might it not better be accomplished by the implementation of the Moss amendments of 1967, one of which calls for the States to set up regular programs of medical review. These medical review teams would travel through the States' nursing homes and make evaluations about the type and quality of care, the appropriateness of the site. Their recommendations would then be carried out, hopefully with benefit to the patient and the Government. The idea is to insure that every patient is where he needs to be and that he receives the kinds of services he needs. This decision should primarily be made on the basis of evaluating medical evidence and by an experienced group of professionals. The decision should not be made blindly by the Congress on the basis of financial considerations.

The hardships on nursing home operators if the Federal matching is reduced after 90 days is obvious since most are reluctant to take medicaid patients now as rates continue to be woefully low.

The hardships to the patients who need medicaid care and are pushed into intermediate care institutions perhaps, or into boarding houses, receiving little if any personal care, creates a desperate picture.

I would hope that Congress would conclude that we have responsibility to long-term care patients and reject the proposal to cut the Federal matching after 90 days of care. At the same time, I ask for more prompt implementation of my 1967 amendments by HEW to improve the quality of care for those who are presently in these medicaid institutions.

THE COURAGE OF WOMEN WHO WAIT

Mr. GRIFFIN. Mr. President, to those who wait anxiously for word of their loved ones, an hour seems a day and a day seems like an eternity.

It takes unusual courage to face the apparent hopelessness which each day of such a life presents. The depth and strength of this courage can often be measured only in terms of length—how long one has lived with uncertainty and depended on faith and hope for sustenance.

Yet, this unusual courage is not rare here in America. Right now, today, there are hundreds upon hundreds of American women—the wives and mothers of prisoners of war—in whose daily lives fear and anxiety are companions. They do not know whether their husbands and sons are alive or dead. They do not know whether, if alive, their husbands and sons are well or wounded, crippled or whole, whether starving or fed.

Somehow, these gracious and loyal women have managed to maintain a calm demeanor, and have attempted to go on with the business of life in as normal as possible.

Great credit is due them. But we owe them more than that.

We owe every possible effort to determine the fate of their men in North Vietnam. We also owe it to do all we can to bring home as quickly as possible, those who are alive.

THE DRUNK DRIVER

Mr. MOSS. Mr. President, of the many tragic aspects of alcoholism, none is more dangerous to society than that of the alcoholic behind the wheel. All too often the drunk driver kills or maims not only himself, but kills or maims other, completely innocent people.

A particularly fine article on the toll exacted by the drinking driver and what America is trying to do about it was published in the Christian Science Monitor of July 16. I ask unanimous consent that it be printed in the RECORD.

My request reflects my continuing interest in the battle on alcoholism, an interest I have had ever since my days as a city judge in Salt Lake City. I have joined the Senator from Iowa (Mr. HUGHES) and the Senator from New York (Mr. JAVITS) in sponsoring the most sweeping Federal legislation ever introduced to combat alcoholism, S. 3835. The vast importance of the bill and of other efforts to control the drinking driver are discussed with perception and force in the Christian Science article. I commend it to the Senate.

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

ALCOHOLISM BEHIND THE WHEEL

(By Guy Halverson)

MILWAUKEE.—A confused and lonely 21-year-old Florida woman races alone through a stormy night on a motorbike. An alcoholic since her teen-age years, she is drunk. Rain and wind slash against her as she tightens her grip on the bike's handlebars. She looks up and in an instant of blurred recognition sees the glare of headlights from a vehicle racing directly at her. She is hurled across the highway and a human life is wasted.

The woman is one of about 70 million Americans who both drink and drive. Of these, millions are either problem drinkers or chronic alcoholics.

Clearly, alcoholism itself underlies much of the spiraling liquor-related accident toll on United States highways. And the toll won't be cut until Americans start to cure this deeper problem.

Efforts in this direction are producing results in some instances:

Here in Milwaukee, at another moment in time, a silver-haired business executive strides quickly toward a massive building. The renewal he feels inside shines as bright as the spring day. The man is a recovered alcoholic, and this day is his last at an outpatient clinic at the privately funded DePaul rehabilitation hospital.

FRAGMENTARY RESPONSE

But in general, response by government and the public to the alcohol problem is only fragmentary and all too often lethargic and ineffective.

The drunk driver, safety experts insist, reveals only one aspect of the blotch of alcoholism that stains so much of American society. Divorces, shattered families, frequent home and industrial accidents, and mounting crime all testify to it. Industry loses over $2 billion annually to alcoholism in absenteeism and shoddy work.

"The central truth," says Sen. Harold E. Hughes (D) of Iowa, chairman of the special Senate subcommittee on alcoholism and narcotics, and himself a reformed alcoholic, "is that we must make up our minds to launch an all-out, adequately funded attack on the problem of alcoholism in America if we are to make significant reductions in the deaths and maimings on our highways. . . ."

Most safety experts agree there must be a sharp about face in the permissive attitudes about liquor now sweeping the land:

The mass media, in particular, must stop glamorizing drunkenness by identifying it with good humor and sophistication.

The home, the church, the school must do a better job of acquainting young people with the dangers and risks of drinking.

Employers, work associates, and relatives must stop overprotecting alcoholics who desperately need attention—not the hidden isolation that is often a sure passport to self-destruction and tragedy for others.

Courts must be given greater flexibility in dealing with drinking drivers. The present system—which seeks to control driving behavior through reliance on legal sanctions alone—is a failure. Modern rehabilitation facilities and techniques are sorely needed in almost every major community in the nation.

The problem of alcoholism and liquor abuse seems almost overwhelming in its complexity and ubiquity. In one of the nation's largest metropolitan areas I walked into the office of the local sheriff to discuss highway safety and found him seated behind his desk with a highball in his hand. It was 2 p.m.

MOST NEGLECTED PROBLEM

In another city a local traffic safety council official could hardly keep his eyes open during our interview because of the drinks he had had during an afternoon meeting. He finally had to have a relative come and drive him home.

No matter where one goes—to the office of a police official, a safety expert, a highway engineer—the conversation inevitably swings around to a discussion of alcoholism. Yet, as John W. Gardner, former Secretary of Health, Education, and Welfare, has pointed out, alcoholism, the nation's No. 3 health problem, is also its most neglected. Alcoholism treatment lags far behind treatment for drug abuse, which touches a much smaller percentage of the population.

Alcohol is the most used—and widely abused—drug in society.

Health officials insist that alcoholism is a disease, not just a behavior problem as was assumed for so many years. Between 6 and 20 million people are believed to be chronic alcoholics or problem drinkers with a compulsive dependence on liquor. But there is also a staggering multiplier effect that adds a tangled new dimension to the problem. Every alcoholic, the experts say, directly affects up to three relatives. Thus, up to 60 million people in this country may be immediately touched by alcoholism. That would mean one out of every five homes.

For years the public stereotype of the problem drinker was that of the skid-row derelict. But, says William M. Moore, Jr., executive director of the National Council on Alcoholism, "only about 3 percent of all alcoholics are derelicts. Most are the type of people you might meet anywhere in society—wage earners, homeowners, housewives, professional people."

Take what happened one day here. The local office of Alcoholics Anonymous received a frantic call that a woman, plainly drunk, was about to slide behind the wheel. AA called the local sheriff who dispatched a car. The woman was pulled from her vehicle be-

fore she could drive it off. It was a bus for elementary school children.

MANY DIFFERENT TYPES

Studies of drinking drivers clearly indicate that many are chronic alcoholics or longtime problem drinkers. Indeed, most studies show the typical drinking driver involved in a fatal or near fatal accident to have a blood-level content far above levels associated with normal social drinking.

Yet, when one talks about the "drinking driver" one is really talking about many different types of drinkers:

1. The chronic alcoholic or problem drinker who is suspected of causing perhaps the largest chunk of all fatal accidents.

2. The social drinker, whose blood level usually registers less than most problem drinkers, but still accounts for an important share of highway mishaps.

3. The novice drinker or occasional drinker, whose inexperience with liquor is a contributing factor to some accidents.

4. The young drinker. Some studies suggest that the youthful drinker is causing an increasing number of highway accidents. Of the first 10 auto fatalities this year in Michigan, for example, all were under age 26, and liquor was a factor or suspected as a factor in nine of the cases.

How does one stop these people from mixing their drinks with driving?

In most courts throughout the U.S., judges are still heavily dependent on punitive legal sanctions—fines, license suspensions and revocations, or jail sentences. But because of the hardship on the offender, whose livelihood is often dependent on use of his vehicle (particularly in the Western states with their large distances), juries and courts are reluctant to impose stiff sentences. Moreover, prosecutors, acutely aware of public sentiment, carefully weed out thousands of marginal cases each year, even though they know the defendant is guilty of a road violation. Or they deliberately seek a lesser charge, such as "reckless driving," instead of "driving while intoxicated."

"HEALTH-LEGAL" APPROACH

The resulting "control system" is just not working. In Chicago several months back, a 28-year-old man was slapped with a $20 fine and court costs for staggering drunk in front of a stream of cars at a busy intersection. The very next night he was again arrested—this time for drunk driving.

Last year some 300,000 drivers had their licenses suspended or revoked. Yet, it's believed that as many as 200,000 of them continued to drive illegally.

What's needed, say many jurists, is a multipronged attack on the drunk driver—a "health-legal" approach, as Lyle Filkins of the Highway Safety Research Institute of the University of Michigan has dubbed it. On the one hand, judges should be allowed to impose stiff sanctions for those drivers who respond to punishment—such as social drinkers, occasional drinkers, and young people. On the other hand, rehabilitation should be available for those drivers who need a change in drinking behavior more than driving behavior.

And that's the rub. Few jurists today have any place to send the problem drinker for rehabilitation.

In many cities I found businessmen and teen-agers, problem drinkers, and hard-core derelicts all thrown indiscriminately together into grim drunk tanks. In one Southwest city I found a middle-aged man lying face down on a concrete floor where he had tumbled from a bunk.

PROGRAMS JUST NOT ENOUGH

There are only about 200 facilities of varying types around the country to handle the problem drinker, including halfway houses and clinics. Only about six cities have major detoxification centers, including important installations at Washington, St. Louis, and Des Moines. Even more significantly, only about six cities have comprehensive treatment programs, including Minneapolis, Atlanta, and the private DePaul program here in Milwaukee.

The federal response has so far been spotty and piecemeal.

The main thrust to date, most experts feel, come out of the National Center for the Prevention and Control of Alcoholism in the Department of Health, Education, and Welfare. Budgeted at around $4 million annually, the program has dealt with the research, education, and treatment areas.

Rehabilitators maintain that the programs are just not enough. More money is spent each day on liquor purchases in the U.S., they say, than the entire federal government spends on alcoholism treatment in the course of an entire year.

A measure recently introduced into the Senate by Senator Hughes, along with Sens. Jacob K. Javits (R) of New York and Frank E. Moss (D) of Utah, would earmark a more realistic amount of $435 million over a three-year period for a comprehensive alcoholism program, including grants for construction of facilities by state and local communities. It would set up a control agency located most likely in the National Institute of Mental Health (that section is being hammered out in committee as of this writing). The measure would require establishment of prevention and treatment programs for federal employees and armed forces personnel, and also provide that group health and disability policies for federal employees must include alcoholism.

The Hughes bill (S3835) in effect supersedes an earlier, less comprehensive bill introduced several years ago by Senators Javits and Moss. The newer Hughes-Javits-Moss bill has so far snapped up endorsement from close to 50 senators, including a spectrum as diverse as Sens. George Murphy (R) of California, Charles H. Percy (R) and Ralph Tyler Smith (R) of Illinois, and John J. Sparkman (D) of Alabama.

PROPONENTS OPTIMISTIC

Proponents of the Hughes-Javits-Moss bill are optimistic of passage during the next year. They note that the Hill-Burton hospital construction bill—enacted over a veto by President Nixon last month—contained a provision establishing new priorities for treatment of alcoholism within hospitals. In the past most hospitals have tended to shun the alcoholic. The Hill-Burton Law, rehabilitation enthusiasts assert, shows that a national consensus is building toward a broad-based federal rehabilitation program.

The new $18 million program under way at the Office of Alcohol Countermeasures in the Department of Transportation is also geared in great part to an identification—and then control—of the problem drinker. Under the program, announced June 26, demonstration grants have been awarded to a number of communities around the nation: the state of Vermont; Marathon and Sheboygan Counties in Wisconsin; Nassau County in New York; Washtenaw County in Michigan; King County, Washington; the cities of Eugene and Portland, Ore.; Denver; Seattle; Albuquerque, N.M.; and Charlotte, N.C. DOT officials hope the roster can be upped by an additional 20 localities next year.

The imaginative program—a small, but important first step in the control of the drinking driver—will test out some 50 or 60 countermeasures, including use of chemical agents that cause the drinker to react unfavorably when he imbibes alcohol, tying gas station operators into special traffic grids so they can check license numbers of motorists suspected of being intoxicated, and even special buzzer devices on the cars of drinking drivers that may be activated due to erratic driving conditions.

INDICTMENT OF ADMINISTRATION'S SCIENCE POLICY

Mr. KENNEDY. Mr. President, the latest issue of Nature, one of the world's most respected scientific journals, contains a slashing indictment of the administration's science policy. As chairman of the Special Subcommittee on the National Science Foundation, I, too, have been concerned with the recent cutback in Federal support for basic scientific research. I, therefore, urge every member of Congress to read the Nature article. I ask unanimous consent that it be printed in the RECORD.

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

TUNE WITHOUT A PIPER

Washington stands in relation to American science as does Brussels to the European Economic Community. Without the bureaucracy there would be no science, especially now that it is tacitly although not explicitly acknowledged that government must provide financial support for science. Moreover, the doings of the bureaucracy have a fascination of their own, not merely for those directly involved. Yet there is a sense in which the bureaucracy is irrelevant to American science. Nobody in Washington in this past six months has helped to identify a new initiation factor for the translation of DNA into RNA, or has with his own hands fashioned a new kind of laser. It is tempting to hope that the bureaucracy will, like the old-fashioned Marxist state, one day wither away. Within the EEC, there is some reason to hope that Brussels will become increasingly irrelevant as the objectives of the Treaty of Rome become realities, but unfortunately it seems as if the influence of Washington on American science has come to stay.

The bureaucracy will not go away. The best that can happen is that it will somehow be improved. The past six months have been a vivid demonstration of how muddled are the ways of Washington in administering an amount of money so large that many other governments must consider it extraordinary wealth. One way and another, something like $2,000 million find their way each year into basic research outside the direct influence of government laboratories, and even this is only one-eighth of what the Federal Government as a whole spends on research and development each year. Government expenditure on research and development in the United States is, in short, comparable in size with the whole of government expenditure in Britain. No wonder that some people suppose that the inefficiency with which research funds are administered is immaterial.

Until January this year, the notion that inefficiency is tolerable had many supporters. Now, however, it is plain that many vigorous fields of research are being damaged by the way in which policy is made—or, rather, unmade—in Washington. Whether the Princeton-Pennsylvania accelerator, which cost $40 million to build, which has been operating for only about two years and which had already gathered its research groups of young people, will be able to keep going for the next academic year remains to be seen. Administration officials seem now willing to acknowledge that it was needlessly severe to have trimmed the budget of the Atomic Energy Commission in such a mindless fashion, yet an unpalatable truth that no less a person than President Nixon gave the impending closure of the laboratory as an example of his fiscal prudence, and that it will be necessary to find some face-saving formula before the laboratory can be given the

meager $1 million that would now be needed to keep it going for another year.

Tangible signs like this of how the budget restrictions have begun to bite into academic research in the United States are only the tip of the iceberg. It is more serious that many of the new ventures on which American universities would now naturally embark are being postponed not so much for lack of funds as for the lack of the promise of them. Radio astronomy is the most spectacular example of this dereliction of ambition. Three years ago, a panel under Professor R. H. Dicke of Princeton University provided a list of half a dozen projects on which money could usefully be spent, and singled out the project to provide a new surface for the Arecibo radio telescope in Puerto Rico as the cheapest and in many ways the best buy. In spite of this, however, the $3 million needed for the Arecibo project found their way into the current budget only for the financial year which has just begun. The more ambitious projects on which people have set their hearts remain in limbo.

The temper of Washington's reaction to these developments is well illustrated by the argument of one White House official in the past few months that no harm will be done if the United States "gives other nations a chance to shine" in some parts of science. In the last resort, of course, what determines a nation's prowess in some chosen field is not the amount of money which it decides to spend but its ability to recruit bright people. This is a point which has, in the past few months, been put forcefully and eloquently by Mr. P. Haggerty, the chairman of Texas Instruments. But actually to opt out of a field of research which is exceedingly relevant to much of what other agencies in the United States are trying to accomplish is quite a different issue. Are the administrators trying to make a virtue out of budgetary necessity?

Why is there such a muddle? The short answer is that there is nothing in the Administration that could pass for a policy towards science and technology. Some time ago, the OECD searched for what would have been called elsewhere the country's science policy, and concluded that in the United States "there is not one science policy but several." This is a kindly flattery. The truth is that, on several important questions which lie at the roots of the conduct of science in the United States, the Federal Government has not had the time or the inclination or the wit to make up its mind. The result is that important matters on which the Administration should give a lead are left to be decided by the tug of war in which the several agencies of government are habitually engaged and by the necessarily wayward arguments of Congress.

If this should seem a harsh judgment, the case of the government's curious attempt to do away with graduate traineeships in the early weeks of 1970 is a sufficient proof of indolence or worse. Graduate traineeships in the terminology of the National Science Foundation are the financial awards to graduate students in the gift of selected graduate schools at universities up and down the country. The NSF also makes available graduate fellowships which are awarded by competition among undergraduates and which are tenable at the university of the student's choice. When the budget of the National Science Foundation appeared in February this year, it was immediately apparent that the customary allowance for traineeships was missing, and so people looked quickly at the other parts of the federal budget in which the equivalents of traineeships are usually to be found. The amount allowed for National Institutes of Health traineeships was unimpaired, but the University Support Program with which NASA has encouraged the universities on a declining scale in the past few years had disappeared altogether, as had all new money in the Department of Defense budget. Only with the beginning of the annual ritual of congressional inquiries into the federal budget did it become known, from spokesmen of the NSF, that the Administration had decided that would-be graduate students in science and technology should find other ways to keep themselves in graduate school, that the NSF's dependents would not be affected in the academic year immediately ahead and that the NIH had been able to resist successfully the Administration's point of view—largely, it seems, because of the personal intervention of Mr. Robert Finch, the then secretary of Health, Education and Welfare.

This sorry tale has a number of curious features. In the first place, no spokesman of the Administration has ever sought in public to justify the decision. The Bureau of the Budget seems to have been the driving force behind the proposals, and there has been a good deal of talk about the rightness (and wrongness) of requiring graduate students to keep themselves at university by means of loans—a potentially important device which is not yet working as smoothly as people hope. In practice, however, the NSF is frankly unhappy with the situation; Dr. William McElroy, the new director, says that he is prepared to go along with the decision only on condition that there is a careful review of how things are working within the course of a year. Yet, in all the discussion, nobody has seen fit to mention the way in which the Administration's decision flies in the face of the powerful arguments put forward merely a year before by the National Science Board, in a report which asked for such an explicit commitment of the Federal Government to the support of university research that a substantially larger proportion of the money for university research would be supplied by means of earmarked grants to institutions and not by grants for particularly research projects.

In other words, the Administration has rejected the National Science Board's argument, but has done so inarticulately, not bothering to say why. In Washington, where a low profile is something enviable, this may seem sensible enough. Why should one of the Administration's spokesmen—Dr. L. DuBridge, for example—choose to justify such an unpopular and irrational decision when called on to make one of his several public speeches when he can talk about the evils of pollution instead, and win friends, not enemies? The tragedy, of course, is that nobody bothers to ask what can be the effect of all this on the next generation of graduate students and on the universities which, a few years ago, took the then administration at its word and behaved as if it were their patriotic duty to turn out more PhDs.

For those with long memories, the contrast between now and the heady late fifties is almost bizarre. Then, higher education in the sciences became overnight a cherished part of the apparatus of state—a commodity of which there could not be too much. Now it is a kind of tribute which the government pays the universities more or less as if it were to prevent them from lapsing entirely into anarchy. One of the unexpected happenings of the past few months has been the way in which Dr. DuBridge, a card-carrying hot-gospeller for basic research when he went to the White House eighteen months ago, now comports himself as just another pragmatist.

To an outsider, the gulf which now exists between the Administration and the academic community is not merely remarkable but alarming. How, one wonders, can the country carry on if such a great proportion of the intellectual community insists on talking about Cambodia and not physical chemistry or nuclear physics? The signs of trouble first came more than two years ago, when evidently level-headed people, some friends but many acquaintances, would spend fifty minutes out of a precious hour denouncing the then president and his Vietnam policy and merely ten minutes saying what they had been up to. By now, the same people are much more intimately involved in the intricacies of campus or national policy—the ABM and all that. Perhaps this is what Vice-President Agnew means when he talks of the radicalization of the campuses. The truth is, however, that a visitor to the United States must now acknowledge that the academic community, the scientific community, included, is much more absorbed in political and social questions than it used to be. Moreover, he must be prepared for the outspoken scorn of a great many people for the Administration's claim on public attention. If the objective is merely to stop the war, no harm may be done. To be sure, it is exceedingly distracting for serious scholars. If the disaffection goes deeper, the capacity of American governments to govern may be in question.

Vietnam apart, the past few months have also provided a series of causes why the Administration and the scientific community should be at odds. Muddles like that about traineeships are dwarfed by the extraordinary way in which the Administration seems to have been powerless to mitigate the effects of the Mansfield Amendment to the past fiscal year's military appropriations bill on the pattern of spending on pure science. To be sure, the Mansfield Amendment was finally attached to the military budget only in December 1969, by which time the budget for the current year must have been more or less decided, but this does not explain why the agencies of the Federal Government were busily pruning their research budgets to fit in with the new doctrine that the defense establishment and even the other mission agencies should not support basic research without there being any apparent effort, elsewhere within the government, to count up the cost of the cast-off projects. After all, there was nothing in the chain of argument leading to the Mansfield Amendment which could reasonably have convinced the Administration that Congress had suddenly become hostile to basic research. The, complaint more simply was that it is illogical that a good deal of the United States effort in pure research should be a kind of by-product of military defense. The Administration's failure to count the cost—estimated to be the best part of $50 million—is not so much a failure of public administration but a weakness in simple arithmetic.

It is inevitable that this failure should have damaged the standing of the Office of Science and Technology with professional scientists. Rightly or wrongly, the office has acquired in the past decade the unique distinction of being at once a source of private advice to the President and a focus for the expression of public opinion by professional scientists. The failure of the office to rise in the defense of academic science against the simple arithmetic of the easy—and conveniently thrifty—interpretation of the Mansfield Amendment is one from which its reputation will easily not recover.

A part of the trouble is that the present holder of the office, Dr. DuBridge, is not the kind of fellow who is able to create the illusion of being a means by which the scientific community can make its voice heard in high places. He is too shy, even gauche, for that. Everybody admits that he is honest, diligent and willing to cooperate in all kinds of causes, from that for the banishment of teratogenic herbicides to the need not to overload the electricity generating system during the air conditioning season. Yet even now, after eighteen months of hard work, the kindest thing that is said of him is that he is a much better science adviser to the President than some of the candidates originally suggested. To be sure, Dr. DuBridge is the first of five science advisers to have held office while the budget has not been growing

quickly, but it is probably fair to say that at this stage in the game, most of his predecessors would either have felt themselves exercising some real influence on the system or would have given up. Dr. DuBridge has soldiered on at a job in which he insists a great deal of valuable committee work is being carried on. What has happened, for reasons bigger than himself, is that the time has passed when a single mandarin in the White House could be at once courtier and professional representative.

It is only fair to add a list of the reasons why the character of the Office of Science and Technology must now change. First, the days of the mandarins are over—no federal agency worth its salt would now pretend to be able to do its job without independent scientific advice of its own. If the science advisers of the sixties had to be conjurers to make a mark, those of the seventies would have to be wizards. But how valuable as an initiator of science policy can the Science Adviser be if the rest of the Administration to which he belongs is unwilling to listen? Finally, the growth of agencies such as the National Science Foundation and organizations such as the National Institutes of Health has shifted interest away from the Office of Science and Technology and from the President's Scientific Advisory Committee. To be sure, OST and PSAC still have useful work to do, but it is bound to be less glamorous work than in the fifties. This tendency is bound to mean that there will in future be fewer channels by means of which the views of professional scientists on the technicalities of military defense can be carried to a wider public—this, no doubt, is why people who have things to say about the ABM or MIRV are eager to turn up before congressional committees to say their pieces. If the Office of Science and Technology has ceased to be the constituency representative, however, there is no certainty that the National Science Foundation—the logical successor—is yet equipped to fill this role. The past six months have shown how much a part of the Administration the foundation really is. The same period has shown what a weathercock it can be. It was the National Science Foundation, no less, which introduced to a committee of Congress a witness who said, without any obvious trace of sarcasm, that "ecology is not a discipline but an attitude of mind" at a time at which the foundation was especially anxious to draw attention to what it planned to do for the improvement of the environment. It is the same foundation which has just spent $50,000 on a research project by two medical students from Stanford University which is intended to suggest ways in which newspapers and broadcasting stations may be able the more effectively to "cover the deterioration of our environment".

To say all this is not to make fun of what has been the quite proper concern in the United States about the condition of the physical environment. The complaint is merely that the National Science Foundation has not instinctively become a source of philosophy and of measured judgment on the environment but, rather, an earnest follower of other people's fashions. It is only fair to say that this may be a reflection of the anxiety of the new director to squeeze the last nickel out of the Bureau of the Budget, and there is probably also a great deal of truth in Dr. McElroy's frequent statement that the time has gone when American taxpayers are willing to spend money on scientific research which does not somehow solve practical problems. But in circumstances like these, is it not for the National Science Foundation to spend more of its energy on a demonstration that even supposedly conventional forms of basic research—high energy physics, for example—are in their runny way as relevant to the needs of modern society as all the half-baked attempts at mathematical modelling of ill-defined ecosystems which now come on top of the list for grants of public money?

The fashion for anxiety about the environment, now rapidly on the wane, seems to have been welcomed enthusiastically in Washington not for its own sake but because it is one issue on which politicians can make common cause with at least some of the younger generation. To be sure, there is every reason why arrangements should quickly be made to prevent municipal authorities and industrial enterprises from using the rivers as sewers; there is a great need for vigilance about the use of possibly teratogenic or carcinogenic chemicals and serious cause to fear that unbridled use of the undeveloped land remaining in the United States, vast though its acreage may be, will be disastrous for flora, fauna and even people. But are these not matters which have been dealt with in many other industrialized nations without all the cries of doomsday which have echoed about Washington in the past few months? Why should not the familiar legal instruments of public administration provide at least a good foundation for a campaign to improve the environment? A part of the trouble in the United States is, of course, that there are serious limitations on the power of the Federal Government to enforce uniform standards of good practice on the whole country, and, at the local level, the advocates of cleaner environment are also strongly opposed to the higher taxes needed to pay for sewage treatment plants. At the same time, the Federal Government clearly shrinks from some of the financial implications of its policy to tempt local authorities along desirable paths by means of financial subsidies. These, however, are essentially political problems even if, in the long run, technology may help to simplify some of them. The Washington establishment has done its reputation very little good by going along with the easy assumption, in the past few months, that an urgent programme of scientific research should be the mainspring of the movement for cleaner surroundings. This observer, at least, has been dismayed to see how readily sober men will argue, when challenged, that exaggeration is often necessary for the swift mobilization of public opinion. Fair play, Dr. DuBridge has been one of the few stalwarts.

The ideal, of course, is that the National Science Foundation should itself become the source of levelheaded opinions on what can and cannot be accomplished by scientific research. As things are, however, the NSF is neither big enough nor sure enough of itself to function in such a way. The National Science Board is better placed, with its responsibility not merely for guiding the policy of the NSF but for giving advice on questions of scientific policy to anybody in the federal government prepared to listen. And, true to the form set with its first report on the national importance of graduate education, the National Science Board did this year produce an eloquent document arguing the case for continued financing for research in the physical sciences. As with the previous document, however, the Administration's reception of this report was marked by its indifference. The truth, it seems, is that if an agency of the federal government wishes to help with the making of science policy, it must first be well placed politically or must enjoy a healthy budget.

So what about the National Academy of Sciences? Does that have the leverage required to ensure that the funds available are spent to the best advantage? A year ago, after the election of Dr. Phillip Handler as president, it may have seemed as if the academy would have an increasingly powerful influence on events. And it remains an observable fact that Dr. Handler is alone among the Washington dignitaries in being prepared to make a public speech without a written text. In reality, however, the academy has been slow to move into the vacuum which exists. In the past few months, much of the academy's energy seems to have gone into questions of the relationship which it should have both with engineers and professional medical people. The academy continues to undertake studies on specific problems—the extension of the runways at New York's airports and the assessment of the safety or otherwise of food additives now on the Food and Drug Administration's list of substances "generally recognized as safe", but the Committee on Science and Public Policy seems to be making heavy weather of responding to the strains of the past few months.

May it therefore be for Congress to spell out what should be done? If it were not for the impending departure of Mr. Emilio Q. Daddario, the chairman of the House of Representatives subcommittee on science, research and development, who is almost certain to become governor of Connecticut in November, there might be some reason to hope that his committee could have had a continuing and beneficial influence at least on the development of institutions. Mr. Daddario's committee, for example, was principally responsible for the legislation by means of which the National Science Foundation now enjoys a greater degree of independence than in the past. Inevitably, however, it has been itself exposed to some of the popular pressures both for a better environment and for finding some way of "living with technology", as the saying goes. The committee's proposal that there should be established a much larger institution than the NSF to be responsible for close on half of the basic research at present supported by the Federal Government has a great deal to commend it even if nobody in authority has so far seen fit to risk an opinion. It will be interesting to see if the same cause is taken up by Senator Edward Kennedy, Mr. Daddario's most likely successor in Congress as champion of organized science.

In the last resort, the most serious complaint which can be sustained against the Washington establishment is that it is cruelly indifferent to many of the good ideas which abound. The excuse which the administrators tend to fall back on is that there are limits to the degree of innovation that Congress will find acceptable. But is this really a sufficient reason why the Atomic Energy Commission should continue to spend almost as much on physical research, mostly in high energy and nuclear physics, as the National Science Foundation can afford to spend on research of all kinds? Is it really credible that high officials of the Administration should have been unable even in a year of tightening budgets to find room for the kind of financial support needed to keep radio astronomy, or organic chemistry, moving along? Outsiders are sometimes hard pressed to know what is in charge—the machine or those who are supposed to administer it.

Unhappily, the administration of American science reflects little of the sharpness and flair which mark much of what goes on in the laboratories even when people's energies are more than ever bound up in extramural activities of one kind and another. The bureaucracy is not so much malevolent as weak and even dull. Because no amount of wishful thinking will make it go away, the best that can be hoped for is that it will be strengthened and enlivened. A concentration of responsibility for basic research in an organization much like the National Science Foundation would be a step in the right direction, but this organization would then have to be managed, like NASA and the National Bureau of Standards, with the skill and flair of an agency which knows where it is going.

ALASKAN STUDENT URGES RESPONSIBLE APPROACH TO UNIVERSITY REFORM

Mr. STEVENS. Mr. President, the degree of sensitivity of some of our young people to the very difficult issues of the day has at times astounded me, but nothing has astounded me so much as a paper that was recently sent to me by my good friend Ken Davis, of Anchorage, Alaska. His son Randy Davis is in the ninth grade at Odle Junior High School. The paper is entitled "Prospects of University Reform."

Wallace Collins, who is a teacher at Odle Junior High School, stated in a letter:

The entire paper is just as it was originally written.

I submit this paper with the views of a ninth grade student on the problems related to university for two reasons. First, it is, as Mr. Collins stated, representative of the feelings of many young people today. Secondly, I call particular attention to Randy's paper because of the views that he has expressed. He said:

I feel that I am logical enough to realize (as apparently many student radical groups have not) that you cannot tear down and build again in the same day.

Randy Davis also said:

For any truly significant changes in the eductional structure to be made the student must recognize that the university is a place of learning, not a showcase for activities unrelated to education. The student must also recognize the fact that for any advances to be made, he must concentrate on learning, make it his sole reason for attending the university, and not to use it for a political bandwagon or as an athletic field for violent athletic activity.

I ask unanimous consent that the complete text of Randy Davis' paper be printed in the RECORD.

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

PROSPECTS OF UNIVERSITY REFORM

While I do not now, nor have I ever supported the actions against the American university carried out by violent radical groups, it is essential to realize that while the university is the most sophisticated of the educational systems, with this increased sophistication comes vulnerability to organizational problems. These problems cannot be solved in a short span of time because their nature has been born in the hundreds of years of history of the university. While I could not hope to provide a satisfactory solution to all of the problems, I do hope that by providing a general outline for improvement, the solution would remain flexible for difference among individuals.

The most basic problem is: should the universities attempt to produce something original in their students or continue to modify and increase the student's previous knowledge? Obviously, the first solution would be the best one. The prospect of a society in which there is creative thought not limited to artists or writers is tremendous. While this situation would be very desirable. I am afraid it lies in the lost realm of all Utopias; that is, not quite ever reaching the goal. The reason I feel this way is that it is almost impossible to teach creativity. Certainly, it can be developed and expanded, but how could you teach creative thought to a non-creatively inclined group. Not that the only problem is with the students, but many of our greatest teachers are not too creative; while they have a gift for explaining and clarifying what is already known to them, they have trouble teaching independently. For the majority (of students, teachers, and subjects) a state where the student is *told* what he needs to know and then is forced to develop some degree of imagination is the most (and only) logical solution. It is supposed that by the university level, the student has developed enough mental ability to enable him to begin to develop superior logic and to a certain extent, imagination.

Another of the basic difficulties is the question of where the reform should be originated. In other words, on who should the responsibility for the design of change fall, student or administration. I feel that the responsibility lies with the students because social reform must start at the bottom of the social scale, not at the top. Also, since the students outnumber the faculty, it is logical to deduce that the university reform program should be designed by the group best suited to design a program that would involve the majority group. I feel a person himself is the best organizer of his own affairs. Another way to state it is that since the faculty has already been educated, the program should be oriented toward those who have not yet completed their education. I do not wish to imply that the sole function of the faculty and, above all, the university, is to be placed at the feet of the students to use as they wish, creating programs that may endanger the function of the university as an educational institution. It is important to realize that the prime flexibility of a university should be designed with the learning requirements of the student in mind. It is unfortunate that this type of reform may not be possible for some time because a program of this kind would require considerable intellectual maturity on the part of both students and faculty, and in many recent cases I have not seen evidence of any of the maturity needed to make this system work. I also, feel that a large percentage of today's university students are too involved and susceptible to outside influences that are not logically connected with the learning process. While I do not wish to argue about the practical value of such groups, I do not feel that the place (or stage, as you wish) for their rather bizarre activities is on the university. For any truly significant changes in the educational structure to be made, the student must recognize that the university is a place of learning, not a showcase for activities unrelated to education. The student must also recognize the fact that for any advances to be made, he must concentrate on learning, make it his sole reason for attending the university, and not to use it for a political bandwagon or as an athletic field for violent athletic activity.

The co-working of the universities departments is crucial because if the departments of related subjects cannot work together, the knowledge level will drop. With the many new sciences opening up, many new opportunities for inter-related sciences have appeared. Imagine the difference in available skill if you had four students from inter-related subjects all working on the same problem compared to having four students all from the same subject working on the same problem. The working of inter-related subjects is being worked within the graduate schools (to some extent), but while students are waiting to graduate, they are losing the time to gain precious knowledge. Knowledge cannot be confined into neat little Pythagorean rectangles; it must be allowed to flow freely and expand, like a gas. If its expansion is restricted, the faculty does not suffer, only the students; and the students are the point of education. If this change is realized, tomorrow's intellectual leaders will have to possess one quality that the vast majority of them do not have today. That quality is the ability to work together, to see the problem another person's way. If this is possible, then Man would have taken his biggest step forward since he learned to communicate with his fellows.

As I have stated before, these reforms would not come easily or in a short time. I feel that I am logical enough to realize (as apparently many student radical groups have not) that you cannot tear down and build again in the same day. Not only would these reforms require changes in the society's view of the university, the student's view of the university and the faculty's view of the university, they would also require changes in the general views of society toward education and the uses of the increase in available knowledge. Like all powerful things, knowledge must be used without malice or vengeance toward people.

Also, the universities must quit jockeying for position in terms of prestige; i.e., the Ivy League, by putting less importance on educational value and more on how many senators or presidents went there. I feel that the Ivy League and related schools are in the same state as the decline of the Roman Empire—proud and unwilling to accept defeat. It is interesting to note that in the last 20 years the majority of the large cheating scandals have involved students of the so-called "exclusive" schools. This is an indication that perhaps the student's academic interest is lagging due to the false security that their parents have money and they are Ivy League.

"The university is harder to re-organize than a cemetery".—Warren Bennis.

FISCAL STABILIZATION BOARD

Mr. BELLMON. Mr. President, one of the provisions of S. 4056, my bill to establish a Fiscal Stabilization Board, calls for the creation of a special fund which could be used to stimulate or slow down the economy. Some skepticism has been raised as to the practicability of such a fund, particularly as it relates to disposition of moneys during a period of downward tax adjustments.

It is interesting to note that an anti-inflation bill approved by the West German Parliament this month contains a similar provision.

Mr. President, I ask unanimous consent that an article published in the New York Times concerning the bill be printed in the RECORD for the benefit of Senators who are interested in fiscal and monetary reform.

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

BONN VOTES A SURCHARGE ON TAXES TO CURB INFLATION

BONN, July 11.—The West German Parliament approved today a Government bill to combat inflation through a number of tax measures, including a 10 per cent refundable surcharge on personal and corporation taxes.

The vote ended a two-day special session in the Bundestag, or lower house. The Bundesrat, or upper house, is expected to approve the legislation Wednesday.

The legislation was unanimously supported in the Bundestag by the deputies of the governing Social Democratic and Free Democratic parties. Almost all deputies of the opposition Christian Democratic party abstained.

DEPUTIES RUSHED BACK

To attend the special session convened two weeks after the start of the summer recess, deputies had rushed back to Bonn from places as far away as Latin America and Africa. Two Social Democratic deputies

motored 700 miles through the African bush to catch a plane to Bonn.

Key element in the new law legislation is the temporary 10 per cent surcharge on withholding and corporation taxes as well as on taxes on the self-employed. The surcharge, designed to curb demand, would be levied from August 1 to July 1, 1971, and would be repaid to taxpayers by March 31, 1973, at the latest.

Another provision is for a six-month suspension of tax write-offs on capital investments. The Minister of Economics Karl Schiller said Wednesday that postponement of industrial investments and reduction of individual spending through tax increases would take an estimated $2.5-billion to $2.8-billion out of the economy.

OPPOSITION'S POSITION

Speakers for the Christian Democratic party accused Chancellor Willy Brandt's Government of placing an undue burden on taxpayers in the interest of economic stability. They generally supported the surcharge on taxes and other anti-inflationary steps under the Government bill, but they demanded that the surcharge be repaid one year earlier with interest.

In reply to an attack by Franz Josef Strauss, the conservative Bavarian politician, the Economics Minister expressed the hope that the Bundesbank, West Germany's central bank, would soon ease its tight credit policy in response to the Government's anti-inflationary action. Mr. Strauss had blamed what he called the Government's "miserable economic policies" for rising prices and interest levels.

The central bank, a supporter of Mr. Schiller's fight for unpopular tax measures to stabilize the economy, has maintained a bank rate of 7.5 per cent since March. The rate caused spiraling interest rates and price increases of up to 25 per cent in some fields, notably the construction and steel industries. Consumer prices, however, rose by only 3.8 per cent in the last twelve months, a recent report said.

LETTER FROM VIETNAM

Mr. GRIFFIN. Mr. President, recently I received a thought-provoking letter from Sp4c. Michael J. Emeott, who is serving in Vietnam with the 4th Infantry Division.

I believe the comments and observations of this young man deserve attention; accordingly, I ask unanimous consent that his letter be printed in the RECORD.

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

JULY 12, 1970.

DEAR SENATOR GRIFFIN: I have spent the last 16 months in Vietnam. I have worked during this time all over Vietnam and went to Cambodia last May. I have worked both in the field and now in a CP. Some men very close to me have lost their lives over here.

I'm very interested in politics and worked during the campaigns in 1968. Shortly I'll be leaving the service and plan to once again become active in politics. Until I can obtain a voice in governmental affairs as strong as yours, I would like the use of yours. Someone must convince the American people that we are not a second rate power; that our soldiers are not a band of murderers who go from village to village and slaughter other human beings.

Every time I pick up a magazine or newspaper, listen to the radio broadcasts, all I hear about is "Vietnam Massacres," student protests, etc. Our publications, and the entire news media, are laying the groundwork for the destruction of America; they are brainwashing the people. Never do we hear of our country doing good; only, instead we hear of strikes by teachers, truck drivers, newspapers, airlines, railroads; the morality of the war in Vietnam; inflation; criticism of the government.

The enemy in Vietnam does not need to propagandize the American soldier. Our own people tell us we should not be here, that we are doing wrong. Many of the propaganda leaflets we find distributed by the VC and NVA are quotes from Americans. Much of the supplies we find here in the Central Highlands are made in the United States and sent over by groups such as the Black Panthers and SDS. I know this is true because I have seen these items with paper saying whom they were "donated" to and by whom.

Our morale is high only because we know that the protests are by a minority of our people. But why must they be given so much attention? Put their actions on the back page of newspapers and magazines; don't spend 15 minutes of a 30-minute newscast glorifying their actions.

Take the publicity from them and they are defeated. If they want a free country, they are certainly going about it the wrong way. Let them use the channels open to them in government.

Freedom of speech can be abused and to put a halt to the abuse we may have to amend the Constitution and should that ever be done we have lost the principles and ideals our country was founded on. It is time the news media reported the news and not just news that profits the pocketbook.

MICHAEL J. EMEOTT.

HEALTH CARE AND FINANCING

Mr. HRUSKA. Mr. President, earlier this month I noted in our daily papers news stories concerning a tax-financed national health insurance program for all citizens suggested by the Committee for National Health Insurance, sponsored by the United Automobile Workers Union. A bill to create such a program is to be introduced in the Senate later this month. Called a health security program, it was described in the Washington Post as a proposal which "could radically change the way medicine is practiced" in the United States.

I, for one, am not in favor of changing the way medicine is practiced in this country. I have the feeling that most of my fellow citizens would agree. Our doctors are among our great national assets. Their contribution to the welfare of the entire Nation would be difficult to match. The amount of time physicians devote to the cure and care of indigent patients is often overlooked. The tremendous advances in medical science which have been acomplished by dedicated men and women in order to insure a long and healthy life for all Americans are too often forgotten.

Health care and the financing of that care in the Nation are not perfect. Even the American Medical Association has recognized this by proposing its own plan for "Medicredit," based on a sliding scale of Federal tax credits. But the solutions to these problems do not necessitate a complete Federal takeover of medical care in the United States.

Our experience with medicare illustrate, all to vividly, the problems which are created by Federal intervention in the health field. Rising costs, declining quality of care, destruction of the close patient-physician relationship are but a few of the results.

There is an additional consequence which has drawn little attention: the erosion of the morale of the physician himself. Rather than the respected professional he once was, a doctor now sees himself as society is unfortunately coming to see him: as a skilled technician whose services can be freely bought just as a computer operator or an audit mechanic. Those who suggest that such a change is permissible do not understand the time-honored bond that has tied physician and patient together; they do not foresee that the consequence will be fewer men and women of extraordinary talent entering the medical profession and a resulting decline in the health care given our citizens.

There is no easy or inexpensive path to the practice of medicine. All too many young people who feel a calling to this most demanding profession ultimately find they do not have the patience and dedication it takes, or that they are not willing to make the necessary sacrifices.

It may not be generally realized in the large metropolitan areas, but small communities in the Midwest have a serious shortage of doctors. No comprehensive health plans devised by man will solve the medical problems of these communities, without the presence of more doctors.

It should be apparent, Mr. President, that any revisions of our Nation's medical program should contain as an integral factor the means of stimulating more young people to the practice of medicine. Unfortunately, I fear too many of the proposals being put forth today tend to discourage them from entering the practice and to this extent aggravate our medical care problems rather than solving them.

In line with these thoughts, I cite an address given by J. Whitney Kelley, M.D., past president of the Nebraska State Medical Association, and one of Omaha's outstanding practicing physicians. This thoughtful speech was his valedictory as president of the association, and in it he speaks for himself and not for the association. I ask unanimous consent that the relevant portions of Dr. Kelley's statement be printed in the RECORD so that Senators may have the benefit of some ideas which might not have occurred to them before.

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

FINAL REPORT OF PRESIDENT, NEBRASKA STATE MEDICAL ASSOCIATION

(By J. Whitney Kelley, M.D.)

Up to now I have written my presidential pages always bearing in mind that I was speaking for the doctors in the state. This time I am speaking for myself.

The physicians of Nebraska have kept faith with their patients and have maintained their fees at the same or a lower level than ever increasing costs of living. In spite of this, and in spite of the need to work more than sixty hours a week, the doctors have taken time to realize that some of our population are hard put to meet the medical expenses. That group of people who are in the lower, middle income bracket are not eligible for Medicare or Medicaid. At the

same time they do not have adequate income to pay the health insurance policies necessary to be adequate to cover the increased costs of new lifesaving discoveries in medicine.

These people are in need of help and they need it badly. The answer suggested by some people is nation wide health insurance. The physicians would prefer to care for the people in the traditional way absorbing the loss themselves in order to retain their dearly beloved doctor-patient relationship.

If, however, the Government decides for political reasons that nation wide health insurance is the answer, then let us do it through already existing health and accident insurance companies. They know how to do it and would save the Government millions of dollars. For example, in 1969, the administrative costs of Medicare alone were $287,352,000.00. This, ladies and gentlemen is 4.3% of the total amount of money dispensed. It costs $95,053,000.00 for Medicaid. This is 4.1% and they're proud of their record. The banks operate on an eighth of one percent and the loan companies, who are middle men, operate on a half of one percent.

If nationwide health insurance is to be the answer, the premiums could be paid by deductions from income tax for those who could afford it. The Federal Government could pay the premiums for the group whose income was too small. These funds could come from Social Security sources and relieve the Government of a new, large, wasteful agency.

Should they choose to do it on a Federal basis, however, reducing the physicians to common vendors that in name, they have already called us, they should be aware of the risk they take. The doctors are on a short fuse and they had better find it out.

Merely a few alterations in the Constitution of the A.M.A. could bring about a change which would make the association a guild or a union. Reuther and his committee of a hundred have seen that laws have been put through Congress to protect the rights of bargaining for unions. With this change in the A.M.A., in this manner if we are to be servants of the Government, we could take advantage of these laws which protect with our rights.

We could demand a right to collective bargaining, a forty hour week, vacations with pay, retirement funds at sixty-five and other fringe benefits. This would cut the number of doctor hours spent by over a third and the politicians should be aware of it. They would be haunted by the spectre of the strike of the Belgian physicians of three years ago and the recent strike of 30,000 Argentine doctors which took place in March of this year.

The politicians know so little of the dedicated feelings of physicians that they probably would feel that this strike would be alright and they would do the same if pushed hard enough. They think only in terms of power. You and our patients know that American physicians are very unlikely to resort to such ends. We are much too devoted to the principles of service to our patients to cause them to suffer because of the mistakes of self-seeking politicians. These same polticians don't know this however, because they do not have the same degree of dedication. Let them beware because a doctor has a limit to his patience if he's pushed too hard.

You know, we think these problems are ours alone. I'm going to read for you a poem which was written 400 years ago by Eucrecius Cordis, a Ph.D. at the time.

"God and the doctor we alike adore,
But only in trouble and not before.
The trouble, or both alike are requited,
God is forgotten, and the doctor slighted."

RISK OF DEATH THROUGH NEGLIGENCE

Mr. BELLMON. Mr. President, a recent Associated Press story reports on a near tragic mistake in connection with the case of Lance Cpl. Robert E. Madewell of Muskogee, Okla. According to the story, Corporal Madewell, who had been severely wounded by shrapnel, was being put into a bag to be shipped home as dead when he moaned. He was subsequently rushed to an operating room and is now recuperating from his injuries in the Veterans' Administration hospital at Muskogee, Okla.

This near tragedy raises grave questions as to the procedures used by the military in ascertaining the condition of injured servicemen.

According to the published report, Corporal Madewell had been pronounced dead in the field by a "young medical corpsman." I have serious doubts that young medical corpsmen have either the experience or the medical knowledge required to make decisions of such a serious nature.

Therefore, I have today written the Secretary of Defense, Hon. Melvin Laird, asking for a full report on the procedures used in these life-or-death situations. In the case the policies seem to be inadequate, it may be necessary for Congress to take action to assure that no serviceman, regardless of the extent of his injuries, may run the risk of dying through negligence. We must be sure that any American fighting man, wounded in the line of duty, who still has the breath of life in him, will not have that life snuffed out by a callous or careless act by an untrained or inexperienced corpsman.

The men who are called upon to serve the Nation on the field of battle make the greatest possible human sacrifice, and they deserve every chance for survival. Along with other Members of Congress, I deplore careless or inept conduct by the officers or officials charged with the safety of these men, and I believe that Congress has a responsibility to make certain that every safeguard is taken.

Mr. President, I ask unanimous consent that the news story and the text of my letter to Secretary Laird be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C., July 21, 1970.

Hon. MELVIN R. LAIRD,
Secretary, Department of Defense,
Washington, D.C.

DEAR MR. SECRETARY: Enclosed is a copy of an Associated Press story, concerning a report that Lance Corporal Robert E. Madewell, of Muskogee, Oklahoma, was being put into a bag to be shipped home as dead, when it was accidentally discovered that he was still alive. Corporal Madewell is now recuperating in the Veterans Hospital in Muskogee, Oklahoma.

This is a shocking report and it raises the question as to the reliability of methods used by the military service in ascertaining the condition of wounded servicemen. As this article shows, such a determination is truly a life-or-death matter.

According to the report, Corporal Madewell had been pronounced dead in the field by a "young medical corpsman." It occurs to me that a decision of this magnitude should not be made by young medical corpsmen, but only by experienced, commissioned medical officers.

I would appreciate a full report as to the authorized procedures in cases of this nature.

Sincerely,

HENRY BELLMON.

MOAN FROM INSIDE BAG SAVES "DEAD" MARINE

(By Randolph Schmid)

MEMPHIS, TENN., July 17.—The Marines were zipping up one of the many canvas bags used to send back bodies from Vietnam when they heard a moan.

It came from Lance Cp. Robert E. Madewell of Muskogee, Okla.

"They were putting me in a bag to ship me home as dead when I moaned, so they rushed me right into the operating room," Madewell explained Thursday at a Naval hospital here.

Madewell had lain for six hours in a morgue, pronounced dead in the field by a young medical corpsman.

Soon he hopes to go home with a medical discharge from the Marines and to receive treatment at a veterans' hospital in Muskogee.

Asked about Vietnam, Madewell commented: "I have no desire to go back."

He described the Vietcong as villagers whom the troops meet in the daytime, but who go around throwing grenades and setting booby traps at night.

It was one of these traps that wounded the 20-year-old Oklahoman. "The shrapnel hit me all over," he said.

He was struck in the jugular vein and the femoral artery. "They say you usually have only 60 seconds to live when you're hit either place," he added.

It all happened on a patrol in pursuit of the Vietcong. A trainer and dog ahead of Madewell stepped on the trap and the explosion sprayed him with three dozen pieces of shrapnel.

Madewell didn't know that he had been pronounced dead until after he had been brought here, following surgery and 10 days in a coma in Vietnam.

His memory is a little hazy yet, and his voice falters, but he can move about on crutches and has made one trip home to visit his parents.

Madewell, a star high school football player, says he hopes he can return to school. "It all depends," he said, "on what my speech and memory turn out to be."

A SOUND ANALYSIS

Mr. DOLE. Mr. President, July 1, the distinguished Senator from Idaho (Mr. JORDAN) focused his considerable talents of analysis and vast reservoir of wisdom on one of the most publicized and vital areas of concern to our Nation today—the conflict in Southeast Asia. In the manner which has characterized his 8 years of service in this body, his approach is clear sighted, free from emotionalism, and eminently sensible. Too often these qualities are lacking in many of the news presentations and some of the public debate of these issues.

I believe Senator JORDAN's thoughts would be of considerable value to any serious student of national and world

affairs. I ask unanimous consent that they be printed in the RECORD.

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

THOUGHTS OF LEN B. JORDAN

Before Cambodia, a fair degree of public consensus seemed to exist about Vietnam policy. Large numbers of Americans approved the administration policy of withdrawal of forces from Vietnam, which would give the South Vietnamese a fair chance to carry the burden after we left, but which would not make Americans responsible for the outcome.

Most Americans seemed reasonably satisfied with the prospect. No target date existed for completing our withdrawal but 115,000 troops had already been withdrawn with the promise of an additional 150,000 in another year. Thus it was assumed that complete withdrawal could be achieved in the same orderly fashion. Reaction to the Cambodian operation undermined this consensus. Vocal opinion polarized between pleas that we accept defeat and get it over with, or that we set our sights on all out victory. I do not consider them to be realistic options because neither in my opinion, offers a basis for restoring the previous consensus and without consensus there can be no effective Vietnam policy.

The problem is how to restore that lost consensus. Revived again, in loud and angry tones, are all the questions about our original involvement and doubts about the credibility of our disengagement. Viewed strictly as a tactical military maneuver the probability is that the Cambodian "surgical operation" has sufficiently upset the North Vietnamese Vietcong setup so that it cannot retaliate in any meaningful way for several months after the monsoon season is over. Left unanswered at this moment is what is our long range Vietnam policy. The American purpose ought to be to return its focus to Vietnam.

If the Cambodian operation is a success and we escape long range Cambodian involvement, the framework will have been set for a return to the original consensus for disengagement in an orderly manner.

What should be the U.S. role in Vietnam after planned withdrawals are completed in early 1971 which would reduce pre-Nixon forces in Vietnam by about 50 percent. Two alternatives emerge and the choice between them hinges largely on how we see our long term purpose:

(1) One view is that we shall not permit either Russia or China to become the dominant power in Asia. If this is our purpose we should make sure, beyond any doubt and by whatever U.S. effort is required, that a noncommunist South Vietnam survives for the foreseeable future—in much the same way as we are committed by our presence in Western Europe, to insure that communism does not take over that area. This means that our forces might be in Vietnam for a long time. We have been in Europe since World War II.

It is hard to see a national consensus being built around the proposition that we should maintain a substantial military presence in Vietnam for years to come. Personally I can not endorse this concept.

(2) An alternative view is that our purpose should be to give the South Vietnamese time and opportunity to take over from the United States, while recognizing that the ultimate responsibility is theirs. Under this view, it should be possible to continue to reduce our military presence steadily and to set a date—say late 1972—by which time our obligation would have been discharged and U.S. withdrawals could be completed.

Secretary of Defense Laird has announced publicly that South Vietnamese forces will replace all U.S. combat troops by mid-1971. I support this goal believing it to be both realistic and desirable in terms of bringing our nation back together.

This schedule could be stretched out if the other side tried to take advantage of our withdrawals by stepped up attacks on U.S. forces; or it could be compressed if the other side agreed to mutual de-escalation before we withdraw. Total withdrawal should not be made without complete release of all American prisoners of war now held by the enemy.

I choose the latter course because I believe that this course has the best chance to provide a durable peace. In effect it would be restoring and implementing what I understand the Nixon doctrine to be. Let us not forget: President Nixon is the President who has been reducing forces in Southeast Asia, not building them up.

In support of the Nixon doctrine there are many advantages. With a definite withdrawal schedule established, it will be possible to reorder spending priorities of our national budget and to provide a definite timetable for achieving some of the domestic goals which are presently either unattended or simmering on the back burner. A national commitment for disengagement by a time certain would go a long way to restore America's confidence in America's traditional objectives. Those objectives are better and equal opportunity in education and employment for all our people, better health, better housing, better environment, and a sound dollar that will encourage thrift both nationally and personally.

When I speak of traditional objectives I do not limit these to solely what government can do. I speak rather of those national and traditional objectives which are the combined goals of both the public and the private sectors as well as the hopes and aspirations of each of us as human beings and Americans.

As long as the U.S. commitment in Vietnam is open-ended we cannot proceed with definite programs to achieve these objectives.

WE'D RATHER DIE THAN GO BACK

Mr. GURNEY. Mr. President, on July 26, 1970, a few jet-age miles south of Florida, a Communist regime in Cuba celebrated the 11th year of its rule over a once-progressive and free people. The din of this totalitarian affair strikes a discordant note in minds of free people everywhere.

We cannot—I will not—let this Communist noise go unchallenged. Mr. President, a well-known and respected American journalist recently spent many days in Miami where she spoke—in their own language—with recently arrived Cuban refugees. Their words are eloquent testimony. They reveal not only the minds of free Cubans but their hearts as well and their dedication to liberty. Many have literally risked their very lives to gain the freedom of our shores. This is the one free election that has taken place in Cuba in the last decade: the election of thousands of Cubans to flee their homeland and the oppressive Castro regime.

Mr. President, I ask unanimous consent that the article published in the Washington Daily News of July 13, 1970, be printed in the RECORD, so that the words of free Cubans will be heard. I also ask unanimous consent that Miss Prewett's followup article, published in the Daily News of July 15 be printed in the RECORD.

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

CUBANS CONTINUING DARING ESCAPES

(By Virginia Prewett)

Freedom House Reception Center, near Miami, Fla.—The six young Cubans were still children when Castro took power. Now they are from twenty to twenty-four years old. Last weekend they were picked up by an Esso tanker ten miles off Florida, floating on a raft made from four liberated truck inner tubes.

They were six days at sea and rowed an estimated 200 miles. Their bread and sugar washed overboard. They exhausted their six cans of condensed milk and had no food or drink the last two days. Four are workmen—mechanics—and two are students.

"We decided to die in the water rather than go back to Cuba," said one. Three had been in prison for previous escape attempts.

A similar group of five was picked up two days before them. Unnoticed except by Cubans, these young men continue to escape by a route many times more deadly than going over the Berlin Wall. Castro has held power over ten years. Why are the young so desperate to escape?

"The life there is impossible to describe," said one. For their families' sakes, names cannot be published.

"There's no present, no future," said another. "You can't plan anything, make something of yourself. Your family is always hungry. In Havana, only food from the little pizzerias make it possible to keep going. People fall on the street from hunger—it's always called something else."

$365 MILLION YEARLY

But Russia subsidized Castro with over $365 million yearly. Where does this go?

"Into arms," answered one, and the others nodded.

Each in turn tells details of Castro's system. Looming over all is the fact that the regime can have you picked up and shot without charge, trial or appeal. This is the "paredon"—the firing squad.

Next is the organized terror and the organized chivvyingo of the people by an elite who gain privileges for doing the harassing.

"If you don't show positive toward communism in frequent tests," said one, "you can't be a student, you go to work camps, you're finished. They're always setting traps. People are afraid to sit on their front steps in the evening, because an informer might say 'Juan Such-and-Such is an idler." You can't trust anybody, not even your brother."

BIG ACTION NEEDED

Yet the escapees insist that if some big action were aimed at Castro, "95 per cent of Cubans would turn against him, even in the military."

"It's the terror," they repeat over and over. For the oppressors themselves are under constant pressure and surveillance.

"Cuba is fully of crazy people, talking to themselves," said one youth. "The fear, the long lines for food and everything, the constant frustration on every detail of life—even my mother mutters to herself around the house."

And the regime compounds frustration "to keep people busy."

"You go to a doctor, you just get sent on to another, and another, and another—without medical help. They change the bus routes frequently and you can spend half a day hunting for a bus to get you somewhere."

ALWAYS PRESSING

The youngest broke in: "You have to fill out questionnaires, what movies you like, what you think of the United States, what leaders you like. They're always pushing, pressing, probing."

"All labor in Cuba is forced labor," said another. "Yet everybody does as little as possible. It's the only way you can resist. But the

communist are always trying to force, force, force . . ."

It cannot be described, they tell us. "You cannot breathe in Cuba," they say.

A LITTLE BIT OF HEAVEN—IN EXILE

(By Virginia Prewett)

MIAMI.—The Cuban community here is unique even in a country long receptive to refugees. For it is a reconstituted capital for Free Cuba, it is a dynamic society that is modifying even the culture around it.

Economically, it is one of the world's fastest growing communities. When Castro seized power in 1950, Cubans here numbered 27,000. Now they are nearly 300,000. Official records show that about 19 per cent were professional people in Cuba and 78 per cent fishermen, farmers, office workers, sales personnel and skilled an semi-skilled workers. More than 80 per cent were under 50 years old on arrival.

These vigorous working people left Cuba with only the clothes on their backs in protest against Castro's tyranny. They have built a community with its own restaurants, Chamber of Commerce, Rotary, Lions and other civic and professional clubs, its social clubs, Boy Scouts, rep company, a ballet now gaining international recognition, hospital, clinics, nursery schools, newspapers, radio and TV stations and a strong network of informal community assistance.

The centrist Party of the Authentic Revolution (in exile) convened here recently to plan the future of a liberated Cuba. Havana's well known American Club is alive and well-known in Miami.

Around half the families in this hard-working community have bought homes. Cubans own about 6,500 businesses, mostly family enterprises.

When the exiles began to move into the residential district where most of them live, it had been proclaimed "blighted." They have renewed it without an official program. Today it is repainted, clean, neat and attractive. Crime and unemployment rates run below average.

Cuban students, many holding full-time jobs, make well above average scholastic records in Florida universities. The nation's "most outstanding high school student" for 1969 was a Cuban student here.

The Miami Cubans do not wall themselves off from the white and black people around them. Some say white leaders fear that the Cubans and blacks will eventually combine to dominate local politics; hence, white efforts to promote strife between Cubans and blacks. Keenly aware, Cubans do not intend for such strategy to succeed.

Cubans contribute generously to the Miami United Fund. They buy local bond issues and have representatives to work with Dade County community planners. A recent market study shows that 63 per cent do their shopping at "Americano" stores—the Grand Union, Food Fair and Kwik Chek. Similarly, 80 per cent buy clothes at Miami department stores like Burdine's and Sears Roebuck.

Free Cuba's capital is democratic both economically and socially. The family income of 60 percent ranges from $300 to $600 monthly. Less than 8 per cent make over $10,800 a year. Here a former supreme court judge may run an elevator. He is treated with the respect due his former station. And the unschooled newcomer who operates the next car is treated courteously, too.

The Cubans are making more than an economic contributions to Miami. They are sympathetic and helpful among themselves. Resort cities like Miami always suffer from an abrasiveness between the permanent and tourist populations. But Cubans are happy to be free. They carry over their courteous, will manners into the "Americano" culture. And they are making Miami a pleasanter place to be.

TELLING THE ENEMY TOO MUCH

Mr. FANNIN. Mr. President, during the debate on the Cooper-Church amendment, the question was often raised whether we must be required to tell the enemy what we will or will not do in Southeast Asia. The lives of our American soldiers are at stake.

I invite the attention of Senators to a discerning editorial published in the San Francisco Examiner of July 5, 1970, and I ask unanimous consent that it be printed in the RECORD:

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

TELLING THE ENEMY MUCH TOO MUCH

President Richard Nixon faced the nation on Wednesday evening.

He also faced a battery of professional newsmen who also faced the nation.

In short, all were front and center on the world stage.

Each word and each facial expression was instantaneously received on hundreds of millions of TV sets around the globe.

By friend and foe alike.

Here was dramatic proof of the open processes and freedoms of the American way.

The assignment of the newsmen was to ask probing questions with the objective of obtaining presidential answers that would reveal headline making developments in foreign policy.

All of the participants performed well. President Nixon showed remarkable strength, knowledge, courage and competence in responding to the far-ranging questions of his able interrogators.

It was a demonstration that could not be contemplated by the leaders of any of the Communist nations of the world.

We salute the President for his courage, candor and convictions.

We salute Howard K. Smith, Eric Sevareid and John Chancellor for their competent handling of a serious and complex assignment.

As newsmen we are inclined to applaud this open report to the people.

However, as concerned citizens we question the need and propriety of revealing so much to those who would destroy us.

We are in a limited war in Asia. We are faced with a festering war in the Middle East. We are threatened with the possibility of a war of global proportions by enemies who have made clear their determination to dominate the world.

Should the President of the United States—the Commander-in-Chief of our military forces—be required to tell our enemies what we will and will not do on the battlefield?

Would Hanoi not be less comfortable if it did not know whether or not we would strike again into Cambodia?

Would Hanoi not be more nervous if we had not ruled out landings in North Vietnam?

Would Hanoi be less inclined to play the waiting game if they were not assured we would reduce our fighting force by 150,000 men in the next twelve months?

Would Hanoi not be more concerned if we had not openly ruled out a blockade of Haiphong; a bombing of the dikes of the Red River; the use of nuclear weapons?

Piece by piece, report by report—in Senate hearings and interviews with cabinet leaders—the enemy has been told hundreds of our plans.

We need take none of the actions we have ruled out but we should not foreclose the options.

We have seriously reduced our options. The enemy has reduced none of his.

He acts without interviews. He acts without global discussions. He acts with confidence that slowly but surely the United States will shackle and limit its own power so that he can be sure of victory.

The intellectuals and liberals in our society who have forced so many full disclosures by our President should be intelligent enough to know the great danger inherent in such disclosures.

In a declared war our open society does not hesitate to invoke military censorship and to ask news agencies and sources to restrain voluntarily from revealing any information that might help the enemy. In today's explosive world situation such voluntary restraints are no less desirable.

This deadly game cannot be played successfully with the cards face up only on our side.

FUEL AND ENERGY SHORTAGE

Mr. BELLMON. Mr. President, last Thursday, the distinguished senior Senator from West Virginia (Mr. RANDOLPH) presented a thoughtful and well-documented statement concerning the possible fuel and energy shortage facing the country, and pointing up the need for a Commission on Fuels and Energy to be established at the Federal level to formulate policy for solving the energy crisis. I was pleased to join the Senator as a cosponsor of this effort.

The seriousness of this situation as it affects natural gas and petroleum, which are among our most important sources of energy, is emphasized in articles published recently in the Oil and Gas Journal. The articles further support the necessity for action to avert shortages of these vital resources.

Mr. President, I ask unanimous consent that the articles be printed in the RECORD.

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

FPC REGULATION OF GAS IS A "DRY HOLE"

The FPC's natural gas regulation has resulted in a regulatory "dry hole" and has failed the "practical test" established in the Commission's 1965 Permian Basin area-rate decision, Federal Power Commissioner, Carl E. Bagge has declared.

In a speech at Midland, Tex., before a joint meeting of the Permian Basin Petroleum Association the West Texas Geological Society and the Natural Gasmen of the Permian Basin, Commissioner Bagge said:

"Here in the Permian Basin the Federal Power Commission, in its first area-rate decision, established a test of the efficacy of producer price regulation."

It was not a theoretical test, he said, and did not involve econometric models or the expert testimony of numerous economists and petroleum engineers.

"It was a simple test. The test involved an examination of the functional effectiveness of the decision based solely upon the supply of gas elicited by the price which was established," he said.

"Practical" test failed. He noted that in the Permian Basin decision the Commission said: "The separate prices we fix herein for new gas-well gas in the Permian Basin should serve to furnish a practical test of whether in fact it will result in bringing forth additional supplies."

"It has been 5 years since we established that practical test for ourselves," Bagge said. "Can anyone seriously contend that we have passed the test when the intrastate market has preempted the sales of gas in the Permian Basin?"

"I think that if we are candid, it must be acknowledged that we have failed the 'practical test' established in Permian. We are obliged to conclude that cost-based, area-rate making has been demonstrated to be unworkable. The urgent need for squaring producer prices with the realities of the market should be clear to the most zealous advocates of producer price regulation," Bagge said.

Urgency on gas supply. "In our present national gas supply situation, there can be no room for any party's effort to gain personal, political, or legal victories simply for the sake of victory itself," he asserted. There is too much at stake, he added. In fact, "it appears to me that it would help if all concerned would swallow a little pride."

Bagge said adequate supplies of gas at reasonable prices "are indispensable to the public interest. Too much emphasis has been placed in litigation, posturing, and polemics by all parties during the past decade of producer regulation.

"Now is certainly the time for all parties to cooperate in a unified effort to provide protection, without the trappings of unbridled contentiousness, to the gas consumer we are all bound to serve."

"Unfettered" market needed. "It appears to me that we have been drilling regulatory dry holes," Bagge asserted. "We should, as you producers do, now shift to a more productive location. The point is that we are obliged, in discharging our responsibilities, to examine our regulatory drilling efforts and make some basic decisions concerning where we go from here."

He said "we are obliged, therefore, to establish the policies now which will permit the inevitable ascendancy of market forces to operate in such a way as to work for the public just as they do in most other areas of our economic life.

"This, in the final analysis, can only be achieved if the market can operate unfettered by regulation and if, prior to that time, government policies are evolved which will affirmatively enlarge the supply base by broadening the base supply and increasing the supply sources."

Bagge's original bombshell. Earlier this year, Commissioner Bagge called for the end of regulation by the Federal Government of natural gas prices at the wellhead.

In address to the Midwest Gas Assn., he said "the time has come for the FPC to extricate itself from the strictures of the existing methods of regulating independent gas producer prices." He said "cost-based, area-rate making has been demonstrated to be unworkable."

IT'S TOO LATE TO AVERT U.S. GAS SHORTAGE, INDUSTRY LEADER SAYS

F. Randolph Yost, president of Pan American Petroleum Corp., said in Tulsa last month that adequate increases in natural gas prices by the Federal Power Commission would set off a boom in exploration and development.

But, warned Yost, such action could not avert a gas shortage in the United States. Even shipments from Alaska and Canada will be inadequate to meet U.S. demand during the next decade.

A gas pipeline from Alaska's North Slope could bring in much new supply, but it would amount to only 3 to 4 percent of predicted demand by 1980.

The basic supply problem, Yost said, is that FPC has cut prices of natural gas below the point that provides producers with the incentives needed to drill. Incentives have been "so poor over a long period" that supply problems can't be corrected quickly.

BIG GAS PRICE INCREASE NEEDED TO SOLVE SHORTAGE

There's no doubt now that the stage is being set for an eventual increase in wellhead prices of natural gas.

Pressure of an energy crisis finally is making the truth clear to all: Producers must earn more hard cash from their gas to encourage them to dedicate present reserves to interstate markets and step up exploration for new gas reserves.

More gas is the answer to the energy shortage. FPC members, gas distributors, and even the general public are becoming reconciled to a pricing solution for inadequate supply.

But one overriding question is not being discussed openly: the size of a price increase needed to bring forth more gas.

It's time to discuss the point, because the truth is a big increase is mandatory. A token price increase just won't bring forth enough new gas. It will take a significant increase to encourage gas exploration. And such an increase actually will be cheaper for the consumer.

There's danger that the FPC is thinking in terms of a modest increase, say somewhere in the lower edge of a 2–5¢/Mcf scale.

The FPC allowed Phillips 2¢/Mcf above guidelines in selling its casinghead gas from Powder River basin. And when inviting producers to file for price increases above Permian ceilings, FPC staff indicated increases of 3 to 5¢/Mcf will be favorably considered.

The commission certainly is on the right track in reopening Permian rates. That in itself shows a measure of courage which, however, isn't matched by the feeble price signals being set up to producers.

It will take at least 5¢/Mcf for producers just to catch up on rising costs since the original Permian decision. A recent Humble study shows that inflation has cost producers the equivalent of 3¢/Mcf. The cut in percentage depletion cost them another 2¢/Mcf.

An increase between 10 to 20¢/Mcf probably will be needed to set off any significant upward trend in exploration. This will be strong medicine to regulators and perhaps to an unprepared public. It means the industry has a big job ahead to develop pertinent economic data for upcoming rate hearings so there's no misunderstanding among regulators or the consuming public on the price incentives necessity.

At 10 to 20¢/Mcf higher, gas still is cheaper than any alternative fuel. And even if the producer gets no price increase, gas is going to cost the consumer more. With declining supply, pipeline throughput will drop. Pipeline costs, as a result of inefficient use of facilities, will rise. The carriers then will need higher rates to recover these costs. The consumer thus will pay more—and still get less gas.

On the other hand, a wellhead price increase big enough to bring up larger gas supply will allow carriers to pack pipelines and move gas cheaper. The consumer will pay more for gas, but he will be getting more fuel. He won't pay more and get less fuel.

Timid pricing won't solve the gas shortage.

It will take courage to make the big price move. But that's still the cheapest route for the FPC to get more energy to the consumer.

LOOK WHO'S IN FAVOR OF RESTRICTING IMPORTS NOW

(By Gene Kinney)

Events have a way of confounding policymakers and would-be policy-makers, and nowhere is this more evident today than in oil-import controls.

New England consumers and politicians still look to increased imports under a tariff system as the key to lower product prices. But the tide seems to be turning against the tariff scheme recommended by the Cabinet Task Force on Oil Import Controls. This despite the fact that the chairman of the President's Oil Policy Committee and the chief White House aide on the subject are still in the tariff camp.

There are two main reasons for changing attitudes. One is the growing problem of energy supply, now properly considered a crisis.

It has brought home the folly of some past policies—premature reliance on atomic energy at the expense of coal, and restriction of natural-gas prices until supply has dried up.

The other reason is the dangerous situation in the Middle East. Arab-Israeli tensions and government-industry conflicts make insecure sources seem still less certain.

Together, these developments have had a sobering effect on public officials. The need to encourage development of domestic energy sources sticks out more obviously than ever.

In the present tight tanker market, advocates of imports as a means of breaking U.S. prices are getting an education. Past imports of No. 2 oil haven't lowered prices. The grant of 40,000 b/d in regular quotas to terminal operators probably won't either. Indeed, these terminal operators may have trouble finding a foreign supply this winter—especially at cut-rate prices they were expecting.

And, who would ever believe that the delivered cost of foreign oil on the East Coast would exceed domestic prices? But that's the present situation, lending weight to the arguments of those who say cheap foreign oil will remain cheap only so long as we don't have to depend on it.

In this atmosphere, the key staff members who wrote the task-force report have taken pains to tell petroleum economists privately that they have been badly misunderstood. Professors Phillip Areeda and James McKie stress the report's finding that imports should be limited to protect national security—although their first proposal was for unlimited imports. And drive prices down? They favored no such thing, despite clear language in the report to the contrary. Would they support an increase in domestic prices to $4/bbl if necessary to develop reserves? Why, yes.

As we say, events have a way of confounding policy-makers, and to an even greater extent, would-be policy-makers.

SOARING TANKER RATES FELT IN U.S.

The bottom has dropped out of market for U.S. import tickets amid soaring tanker rates and tightened worldwide crude supply.

And no relief is in sight, industry sources say, until two things happen. One is restoration of Libyan production, which has been cut by 400,000 b/d, according to U.S. Government officials keeping tabs on the situation. The other is a return to service of Trans-Arabian Pipe Line, which was delivering 500,000 b/d to the Mediterranean before shutdown for repairs in Syria.

Prospects for a favorable change in either situation look bleak, at least in the near future. U.S. officials expect the Libyan cutback to continue or worsen as long as the export price dispute persists between the host government and the producing companies. Arab-Israeli tensions offer little encouragement that the Syrian Government will permit repair of Tapline, according to the State department.

The loss of almost 1,000,000 b/d of oil west of Suez and close to western Europe markets has strained tanker capacity and sent spot rates skyrocketing. Replacement of this supply with long-haul oil from the Persian Gulf around South Africa takes six to eight times the tanker capacity.

The impact is being felt both in western Europe and the U.S., although U.S. dependence on Eastern Hemisphere oil is slight. Tanker capacity was rather tight before recent developments, partly due to rapidly rising demand. Hence the jump to world scale plus 280% under the added strain of the Tapline closing and Libyan curtailment.

TICKET VALUES SLUMP

One result has been an almost overnight destruction of the market for import tickets, especially in Dist. 1–4.

Inland refiners with licenses to exchange with East Coast refiners for domestic crude have seen the demand disappear in the past 3 weeks. Some inland refiners are protected by a 1-year contract.

Others which hadn't yet made a deal for the second half are finding that spot tanker rates have priced foreign oil out of the U.S. market temporarily. One importer last week calculated the delivered cost of Persian Gulf oil to the U.S. East Coast at $4.50/bbl—$1.25 for the oil, and $3.25 for freight. Another estimate placed the cost at $4 to $4.25.

A third major importer calculated delivered costs of Arabian light (34°-gravity) at $4.985, with a posted price of $1.80, freight of $3.08, and duty of 10.5¢, but noted the posting is shaded by as much as 55¢/bbl. A comparable figure for Kuwait 31°-gravity crude is $4.825, including $1.59/bbl posting, $3.13 freight, and 10.5¢ duty. This posting is shaded by up to 44¢/bbl.

That compares with $3.75/bbl for Gulf Coast oil delivered to the East Coast.

One major importer last week estimated the value of an import ticket had dropped from $1.40/bbl—the price it paid for first-half exchanges—to 30¢/bbl.

A second importer placed the ticket value at zero. This refiner is turning to the Gulf Coast for oil needed beyond the foreign supply covered by its own import quota.

If the situation continues, inland refiners will find themselves in a bind, both for crude oil and money. In a normal tanker market, the inland refiner has been able to make an exchange deal within a month or two, at a profit of $1.25 to $1.50/bbl.

If there was some delay, he could take the ticket to the bank and obtain a loan, with the import right as collateral. It was both a source of crude and financing, usually providing the margin of profit for a small corporation. Now both are jeopardized.

Major integrated companies who usually take the tickets now need a part of the domestic supply they normally exchange to replace temporarily expensive foreign oil.

Although U.S. crude stocks are said to be ample or even high, the situation has turned quickly so that buyers are finding little available.

Pipelines full. There will be a mounting pressure for higher August allowables in Louisiana and Texas.

But inland refiners fear this may not solve their supply problem.

Pipeline space from the Southwest to the Midwest, they say, is at a premium. Some additional crude could be moved via Capline to the Chicago area, one refiner told the Journal, but additional Texas oil may have to move via water into the Midwest.

An Oklahoma crude buyer told the Journal that the tight pipeline situation has always been around. But recent actions in the Middle East and on Canadian imports have emphasized the situation. He said the only pipeline capacity available that he knew of was from the Rockies going east.

Capline, he said, has the line size but not the pumping and "it will take time to take care of this problem."

However, some help could come from Texas, if the usual comments are any indication. For one, Mobil Pipe Line can handle 10,000 b/d additional now, but tomorrow it may be chocked full.

Mid-Valley Pipeline, which has a 240,000-b/d line running from Longview to Lima, Ohio, is filled to the last drop. The five shippers using the line have committed more to the line than it can move.

However, Mid-Valley has a stop-gap expansion in the works, but is holding off on any big projects to see if the capacity-crush will last. "We ran for years at less than full capacity," a spokesman said.

Canadian imports boost? The department of Interior is already hearing mounting demands for an increase in the 395,000-b/d ceiling for imports from Canada east of the Rockies.

Refiners explain that pipeline capacity is available in the Interprovincial-Lakehead system to boost deliveries into the Great Lakes area.

Moves to loosen Canadian quotas will require action by the President. The oil import appeals board has a small kitty available for hardship cases. But this volume won't be enough to satisfy demand caused by any significant diversion of Southwest and Gulf Coast crude to the East Coast.

A SINCERE EXPRESSION OF PATRIOTISM

Mr. MAGNUSON. Mr. President, I recently received a letter from my principal appointment to the U.S. Military Academy in 1948, Henry Purcell III. Lieutenant Colonel Purcell in his letter dated July 4, 1970, indicated that he was on his way back to Vietnam to command an infantry battalion in combat.

Mr. President, rarely have I read a more sincere expression of patriotism than this letter. In order to share Colonel Purcell's letter with the Senate, I ask unanimous consent that it be inserted in the RECORD.

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

TAMPA, FLA., *July 4, 1970.*

HON. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: Twenty-two years ago you gave me the greatest opportunity of my life, by assigning me a principal appointment as a cadet candidate to the United States Military Academy.

Since then I have attempted in my work to repay you and my country for that chance to become deeply involved in the life and work of our nation. I have been fortunate. Since my graduation from West Point in 1953, I have been thoroughly schooled in military matters, to include a year at the US Army Command and General Staff College at Fort Leavenworth. I have become fluent in the Turkish language and interpreted for the Vice President, then Mr. Lyndon B. Johnson, and for the former US Ambassador to Turkey, Mr. Raymond Hare. Through our association as graduate students at Princeton University, I am on close terms with the only Arab citizen of Israel with a degree as Doctor of Philosophy and who is a Professor of Politics at the University of Tel Aviv. As advisor to a Vietnamese Infantry Regiment, I assisted in bringing about changes resulting in greater accomplishment at less expense in terms of time, material, and human lives. My most recent assignment allowed me to participate in the formulation of United States strategy for the Middle East.

I am now on my way back to Vietnam to command an Infantry Battalion in combat. I believe I can achieve the mission and also save lives. I leave behind a wonderful family who are not anxious to see me return to combat. Nevertheless they understand why I must seek out and not avoid this obligation; they respect my decision to volunteer.

Senator Magnuson, I wanted you to know that your 1948 West Point principal appointee, without reference to various positions on the war being debated in the United States Senate, recognizes his responsibility to serve his country, and is doing so willingly and without reservation.

Very respectfully,

HENRY PURCELL III.

STRATEGIC WITHDRAWAL FROM VIETNAM

Mr. FANNIN. Mr. President, the American people are proud of the military men who have served our country so well. Most Americans feel a debt of gratitude to them.

Members of Congress participate in this proud record by their recommendations of fine outstanding men, carefully chosen from among their constituents, to enter our military academies.

Yet, some of the proposals which have been before Congress indicate a lack of confidence in the system. They tend to involve Congress in the day-to-day details and particularly the timetable of a strategic withdrawal from Southeast Asia by which the President hopes to hold to a bare minimum the number of American casualties that will be involved before all American troops are withdrawn.

Mr. President, Mr. George M. Hill, an attorney in Phoenix, Ariz., has ably expressed this concern in a letter to me. I ask unanimous consent to publish in the RECORD an excerpt of Mr. Hill's letter:

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

I think it must be acknowledged that the President and his military advisers are now engaged in a strategic withdrawal. The objectives of that withdrawal are to return to the United States at the earliest possible time the greatest number of soldiers we now have in Vietnam with the least number of casualties.

In carrying on that strategic withdrawal the President has available to him all of those officers in the Army, the Navy and the Air Force whose education and training throughout their active lives has been devoted to the study and practice of warfare, including strategic withdrawals.

Congress, in its wisdom, in providing for the military security and welfare of the United States, created our military institution at West Point. It also created our naval academy at Annapolis. It did at a much later date, following the consummation of World War II, provide for the establishment of the Air Force Academy in Colorado. The wisdom of Congress in establishing these military institutions has been proven in every conflict, large and small, in which our country has been engaged militarily.

All members of Congress have some familiarity with the capabilities and the intelligence of those young men who are accepted by the military schools because the members of Congress have some part in their approval and appointment.

While the Cooper Church Amendment purports to be just simply an avowal of cooperation with the President, who has set a timetable with relation to our withdrawal from Cambodia, it is in truth and in fact a condemnation of the right of the President to rely on the products of those military schools which Congress has provided and maintained for the purpose of making available to the President the most highly-trained and capable military men in the world.

While the purported purpose of the Cooper Church Amendment is to just simply provide a timetable with relation to the Cambodian withdrawal to which the President must adhere, it is in reality a direct attack upon our whole military system.

Surely no one can question that the President, with relation to Cambodia, was acting after he had at least received the benefit of

the advice and recommendations of our senior military officers.

CONSTITUTIONALITY OF THE WAR IN VIETNAM

Mr. CRANSTON. Mr. President, in at least two recent court cases, *Orlando* v. *Laird*, 70 C 745 (E.D.N.Y. 1970) and *Berk* v. *Laird*, No. 900 (2d Cir. 1970), where servicemen challenged the right of the Army to send them to fight, and perhaps die, in a war that they believe to be unconstitutional, the Nixon administration has advanced a disingenuous argument that Senators should be aware of.

The administration argues that Congress ratified the Vietnam war by appropriating the funds which were used to conduct that war. In addition, the administration argues that the Congress ratified the war by passing two Selective Service Acts under which young men were drafted and sent to Vietnam.

This argument in effect stands the Constitution on its head. The Constitution creates a system of government where it is the function of Congress to authorize executive action, except where the Constitution reserves the power to act to the executive branch. Congress is also empowered to appropriate money for all governmental action, whether it be initiated by Congress or the Executive.

But the Nixon administration's constitutional theory suggests that the executive branch may take any action that it wishes, subject only to a congressional veto in the appropriation process. The dangers inherent in this radical theory can be illustrated by the Cambodian invasion.

President Nixon invaded Cambodia, relying on his authority as Commander in Chief, without congressional authorization and in disregard of the commitments resolution passed by the Senate last year.

The lesson to be drawn from this experience is that President Nixon's constitutional theory overturns the historic balance of power between Congress and the Executive. The most ironic aspect of the administration's argument in the two cases I mentioned is that the precedent they cite to support their argument, upon careful reading, refutes it. The Government cites *Ex Parte Endo*, 323 U.S. 283, to support their theory of implied ratification by appropriation, but in that case the Supreme Court rejected the argument that Congress ratified the Executive's detention of admittedly loyal Japanese-Americans in camps by appropriating funds for such purposes. The Court avoided a constitutional issue by interpreting the detention law as not authorizing the detention of admittedly loyal Americans.

To justify the Executive's action in continuing the Vietnam war, a court would have to find that the language in the appropriations or Selective Service Acts cited was equivalent to a declaration of war. This finding would be difficult in light of the Court's admonition in Ex Parte Endo that to be a valid ratification, "the appropriation must plainly show a purpose to bestow the precise authority which is claimed"—*Ex Parte Endo*, 323 U.S. at 303, note 24.

Given the current debate over this country's Vietnam policy, one can hardly say that Congress has granted precise authority to wage war in Indochina. Whenever appropriations for the war come up for a vote, supporters claim that we cannot abandon our boys who are fighting there. Many Congressmen vote for the appropriations for that reason. Other Congressmen vote for the military appropriations bill so that our forces can be withdrawn safely from Vietnam at the earliest possible date.

To say that a Congressman ratifies the continuation and expansion of the Vietnam war when he votes for appropriations to protect American servicemen as they are withdrawn is a cruel deceit. It makes as much sense to argue that the Department of the Interior could grant leases to drill in the Santa Barbara Channel in the absence of explicit congressional authorization and relying only on congressional passage of the general appropriations for the Department of the Interior's ongoing activities.

Mr. President, I intend to make a more detailed statement on the legal issues involved in the Indochinese war in the near future, but I wanted to raise these questions now so that the Senate can ponder them during the forthcoming debate on the military authorization bill.

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:

THREE ROB HOTEL IN DOWNTOWN DISTRICT OF COLUMBIA

A downtown Washington hotel was held up early yesterday by three armed men who also robbed two employees before tying them up and escaping with an undetermined amount of money, police said.

George J. Olivier, front desk clerk at the Claridge Hotel, told police the gunmen entered the hotel at 820 Connecticut Ave. NW shortly after 3 a.m. He said one of them placed a revolver at his back, warned, "Don't turn around," and took his money and watch.

Another gunman robbed the bell boy, Anthony A. Roman, of his watch and wallet and then helped his companions empty the cash drawer, according to police.

Olivier said the trio forced him at gunpoint to lead them to the hotel safe in the basement, ordered him to open it and removed the money and checks.

After handcuffing Olivier and Roman and tying them to each other, police said, the armed men ran out of the hotel and escaped.

In other serious crimes reported by area police up to 6 p.m. yesterday:

ASSAULTED

Kenneth E. Sullivan, of Washington, was treated at Washington Hospital Center for a gunshot wound in the upper right arm that he suffered about 6:55 p.m. Sunday when a man in a blue car drove past him at 14th Street and Park Road NW and fired one shot at him.

Evelyne Clark, of Washington, was treated at Washington Hospital Center and released after an unseen gunman shot her in the right thigh as she was about to enter an apartment building shortly after midnight Sunday.

Thomas Price, of 1352 Wylie Ct. NE, was treated at Rogers Memorial Hospital after he was struck in the face during a fight with a man wielding a lead pipe in his garage at about 7:50 p.m. Sunday.

Belinda Baker, of Washington, was treated at Hadley Hospital for head injuries she suffered when she intervened in a fight in the park in the 200 block of Wayne Place SE. Miss Baker told police a woman hit her with a stick about 8:30 p.m. when she tried to break up a fight.

Zebulon Shaw, of Washington, was treated at George Washington University Hospital for injuries she suffered about 1 a.m. when she was attacked by a man as she was leaving a friend's house at 5th and E Streets NW. Her assailant hit her in the head and body and fled on foot.

ROBBED

Spencer Carl Mammett, of Washington, a driver for Dream Maid Ice Cream. Co., was held up about 9:15 Sunday by a man wielding a revolver who approached him while he was selling at the corner of 32d Street and Ely Place SE. Waving his gun, the man said, "This is a stickup or whatever you want to call it, so just give me the money." After taking a cardboard box containing a large amount of cash from the vendor, the gunman ran towards Minnesota Avenue SE.

Albert Richard Webster, of Washington, was beaten and robbed about 11:10 p.m. Sunday by two men who confronted him in the 4300 block of Deane Avenue NE and asked for change for a dollar bill. After Webster handed them the change, they demanded, "Give us the dollar back." One of them then began hitting Webster while the other man took his wallet.

Kenneth Lingelbach, of Jutland, N.J., was held up about 12:15 by two men who approached him in the 2100 block of New Hampshire Avenue NW. One of them drew a knife, demanded money and held Lingelbach at bay while his companion took the money from the victim's pockets.

Fariborz Nazerian, of Washington, was beaten and robbed about 9:15 Sunday by three youths who surrounded him at 4th and Farragut Streets NW while he was selling ice cream. One of them held Nazerian while the others took the money from his pockets and fled east along Farragut Street.

Esso Service Station, 4650 South Capitol St. SE, was held up Sunday by a young man armed with a gun who drove into the station in a white car and told the attendant, "Give me the money and the gun that you carry." When the attendant replied he had no gun, the driver said, "Just give me the change carrier and the money." After taking a large amount of cash, the gunman drove from the station. The car was later recovered in the 4700 block of 1st Street SW.

Bernice Lorene Bookman, of Washington, was held up while she was working in the Bolling Air Force mess hall, Portland Street SE, by three youths. About 9:30 p.m. the trio approached her and one of them, pointing a handgun at her, demanded, "Lady, I want your purse." After grabbing her pocketbook, the youths fled.

James Fletcher, of Washington, was treated at Rogers Memorial Hospital for injuries he suffered during a robbery about 4 a.m. Sunday. Two young men attacked him from behind on 10th Street NE, knocked him to the ground and kicked him in the face. They took his wallet and papers and fled on foot.

William Barry, of Washington, was beaten and robbed about 11:05 p.m. Sunday by a

man who approached his car at 11th and I Streets NW and asked him for a ride. The man then entered Barry's auto, hit him in his face and body and kicked him. After removing the bills from Barry's pockets, the assailant got out of the car and escaped.

Larry Kelly, of Fairmont Heights, an employee of the Riggus Construction Company, 4225 Grant St. NE, was held up about 9:45 p.m. Saturday by a man who approached him from behind on the street near his office and warned, "Don't move." He then pulled out a handgun and ordered, "Give me your money." Grabbing Kelly's wallet, the gunman fled on foot.

Regis K. C. Morgan, of Washington, was held up about 6:05 p.m. Sunday by three youths who surrounded him on the 11th Street Bridge and asked, "Got any money?" When Morgan said he did not, the trio began hitting him and forced him to surrender his wallet, then fled across the bridge.

Lorenzo Garner, of Washington, was held up about 2:15 a.m. Sunday by two youths, one brandishing a gun, who confronted him in the 600 block of 21st Street NE and asked if he had any money. Grabbing Garner's cash, the pair fled.

John Bailey, of Washington, was held up shortly after 11 p.m. Sunday by three youths who approached him as he was getting out of his car in a parking lot in the 600 block of Division Avenue NE. One of them pointed a handgun at Bailey and ordered, "Sit down." While the gunman held him at bay, the other two took his wallet, watch and car keys. The trio then took Bailey's auto.

Jimmie Carr, of Washington, was held up about 11:15 p.m. Friday by three men who attacked him in the 1300 block of H Street NE and forced him into a nearby alley. After hitting Carr with a revolver, the man took the money from his pockets and fled on foot.

James E. White, of Washington, was held up near his home in the 800 block of Longfellow Street NW about 10:10 p.m. Sunday by two youths, one concealing a gun in his pocket. The pair forced White to hand over his watch and money.

Arthur Williams Lewis, of Washington, was held up shortly after 9 p.m. Saturday by three men who approached him at the intersection of Deane and Division Avenues NE. One of them pointed a revolver at Lewis and ordered, "Okay, dad, let me have it." While the gunman held him at bay, a second man took the wallet from his pocket. He removed the money, returned the wallet to Lewis and fled with his companions.

Linda Hebel, of Washington, was beaten and robbed about 5:45 p.m. Sunday by a youth who yoked her in the 300 block of 4th Street SW and knocked her to the ground. After beating and kicking his victim, the youth took her pocketbook and fled on foot.

James Pervis, of Washington, was held up about 12:10 a.m. Sunday by two youths who confronted him at 3d and Bates Streets N.W. Drawing a handgun, one of them said, "This is a holdup." After grabbing Pervis' wallet and watch, the youths escaped.

Charles W. Bell, Jr., of Bowie was held up Sunday by two youths who approached his truck at 7th Street NW. One of them pointed a revolver at Bell while the other youth took the change carrier from his belt and the bills from his pocket.

Larry James Graham, of Arlington, was held up about 9:55 p.m. Sunday by three youths who approached him as he was entering his car in the 700 block of E Street SE. The trio attacked him from behind, took his gold watch and wallet and fled on foot.

George Moran, of Washington, was held up about 11:20 p.m. Sunday when he drove a young woman to a house in the 500 block of F Street SE. She entered the house and returned with three men, all armed with handguns. One of them opened Moran's car door and ordered him to get out of the car. After taking his money and watch, the gunmen drove off in his station wagon.

John Kossow Fireworks, New York and West Virginia Avenues NE, was held up about 7:15 p.m. Sunday by a man armed with a revolver who approached the clerk and demanded, "Give me your money." After taking a large amount of cash, the gunman entered a gold car and escaped.

Steve Hallmark, of Oklahoma City, Okla., was held up about 3 a.m. in an apartment house in the 1300 block of 10th Street NW by a young woman and a man who said he had a gun. The couple forced Hallmark to give them two diamond rings, with a total value of $2,800, his $600 watch and $45 in cash.

STOLEN

Approximately $700 in cash was stolen between 5 p.m. Friday and 8:30 a.m. Monday from a safe at the Lawrence D. Rose and Company office at 212 West Virginia Ave. NE during a burglary in which the main office was ransacked.

Cartons of milk and soft drinks were stolen between 10 a.m. Friday and Monday morning from Lewis Elementary School, 300 Bryant St. NW. Burglars who looted the walk-in freezer ransacked the entire building.

Two manual typewriters and three IBM electric typewriters, with a total value of $500, were stolen before midnight Sunday from the Peoples Involvement Corporation, 651 Florida Ave. NW.

RECENT ADDRESS BY THE HONORABLE JOHN A. HANNAH, ADMINISTRATOR OF AID, AT PUEBLA, MEXICO

Mr. COOPER. Mr. President, on July 17 the Honorable John A. Hannah, Administrator of the Agency for International Development, delivered an address at the University of the Americas at Puebla, Mexico, entitled "Looking to the Developing Countries for Answers."

In his address, Dr. Hannah points out the role that increased educational opportunities can play in assisting developing countries to solve many of their problems on their own initiative.

Dr. Hannah's statement is thoughtful and timely and merits the attention of Senators who are interested in this subject matter.

Mr. President, I ask unanimous consent that Dr. Hannah's remarks be printed in the RECORD.

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

LOOKING TO THE DEVELOPING COUNTRIES FOR ANSWERS

I

President Lindley, Distinguished Citizens of Mexico, Members of the Board of Trustees, Members of the Faculty, Honored Guests, Ladies and Gentlemen.

The dedication of a new university campus involves more than paying homage to bricks and mortar. It is a celebration of progress and of promise for the future.

Today we mark the beginning of a new era for this University. From its beginnings in 1940 as a small city college primarily for students from the United States, the University of the Americas has grown to a full-fledged university of about 1,000 students from 42 countries, with one-third of the student body citizens of Mexico.

This new campus is a harbinger of future growth. It opens doors—not only to buildings—but to opportunities to carry forward and accelerate the momentum of the past. The soul or the spirit of a university is not defined by its buildings. This new campus provides a setting in which that spirit can expand and flourish.

This dedication is doubly felicitous. It combines pride in the past with hope for the future. It is an important occasion and I am honored by your invitation to participate in it.

Congratulations are due to those who have made this dedication today possible. The Agency for International Development played a part, but the primary credit goes to the Jenkins Foundation for their financial support, to President Lindley, to the Board of Trustees and to the Faculty of the University for their energy and leadership, and to the Mexican Government for its support.

II

The growth of the University of the Americas takes place in an auspicious context. For the past thirty years, Mexico has been one of the fastest growing, most dynamic societies in this hemisphere and indeed in the world. We who are primarily concerned with development recognize that Mexico's achievement in maintaining a real GNP growth rate of 6 to 7 percent annually for almost 30 years is a record matched by few countries. We are impressed by the fact that your GNP is much larger than that of many other countries with much larger populations.

Mexico is a leader among nations in its progress in national development. It serves as a model for other less well advanced countries. Mexico has much human talent and technical expertise, and a body of development experience rare in Latin America. We hope that in the near future Mexico will expand its program to make some of this skill and experience available to aid other Latin American countries. A contribtuion of this sort could help speed the process of hemispheric development. It would impart new energy and meaning to the pattern of partnership which binds the countries of North and South America. The ranks of aid donors would be broadened; a precedent of importance would be established.

III

Mexico's position in the vanguard of developing countries has implications beyond the opportunity it offers to asssit others, less well advanced countries. Your country is now, and will continue to be, among the first to confront some of the "second generation" problems occasioned by the development process itself. I refer particularly to inequalities which the initial stages of development generally seem to heighten, not diminish.

Development always proceeds unevenly. Urban areas and urban facilities grow more rapidly than rural ones. Some geographic areas in a country, favored by climate, topography, natural resources, or better than average leadership, move faster than others. In farm communities the new seeds and fertilizer often go first to large farmers who can buy them on the commercial market.

We see this pattern working in many parts of Asia today. The income from the recent spurts in cereal grain production there too often seem to be accruing first to large landowners and farmers who can afford the investment in water, fertilizer and other inputs which the new technology requires. This tends to widen the gaps in income.

Uneven patterns of development introduce new elements of instability into the social fabric. New, relatively affluent cities grow up anxious to preserve their wealth. The existence of this new wealth in a few areas whets the appetite of those in surrounding areas. Social tensions increase rather than diminish.

This is not a new phenomenon. Wealth tends to beget wealth and economic power tends to concentrate. Still it is a vexatious problem: how to stimulate growth efficiently while at the same time ensuring that the benefits of growth are widely shared; how to move the country forward without creating tensions that threaten to tear it apart.

This problem will loom as a central problem of the 1970's as development accelerates and as rapid population growth enlarges the pool of those demanding to participate in and benefit from development. Those in the forefront of development will, of course, face it first.

This is a difficult probelm for which there are now few ready answers. In the United States, we now recognize that large segments of our people have not participated adequately in the growth of our economy. We are seriously searching for better ways to bring these people into the mainstream of the economic process. Their children need better education opportunities. Better housing, better health care, better jobs, are all a part of the problem.

Yet we have a mature economy. It should be relatively easy to rechannel some of our resources to benefit the less fortunate. This task is even more difficult in an economy which has only recently begun to grow. Here the question is how to distribute the fruits of growth without chocking off that growth.

The developing countries face some uncharted frontiers in the 1970's—problems for which the developed world has no ready models; problems which will demand innovation, imagination, and a fair measure of hard work to solve.

It is in this sense then that I suggest that Mexico has a chance to become a model for other developing countries. Some of the problems of unequal development now confront Mexico as it does other leaders in the development process. To the extent that Mexico finds effective means to ease these problems, it will stand forth as a model and pioneer for other less developed countries to follow.

IV

Is this relevant to education and for the University of the Americas? The answer is yes.

Education too faces some uncharted problems in the 1970's. And while there are friends in the developed countries who are willing to give time, funds and talent to assist in solving some of these problems, we have few ready made answers that we are sure are the right answers.

To state the problem simply, education in most of the developing world faces problems of numbers—the forbidding arithmetic of supply and demand.

Demand for education will accelerate in the next ten years. Between 1965 and 1980, the size of the 5 to 14 age group in Europe is expected to remain constant; in the United States to increase by 13 percent; and in Latin America and other developing countries to explode by some 50 percent or more. This presents a bleak picture—especially considering the prodigious expansion of the school systems in the past decade. In Latin America, for instance, primary school enrollment increased by 62% and secondary school enrollments by 194% between 1960 and 1969. Yet, with all the increase in schooling, while there were some 27 million school-age children in Latin America out of school in 1960, in 1968 the total out of school had grown to 28 million due to rapid population growth.

To finance past expansion, education budgets have been rising at least twice as fast as GNP in most of the hemisphere and more rapidly than this in some countries. Virtually all countries in the developing world will face a heightened confrontation in the 1970's between the public demand for education and the availability of resources for this purpose. Inevitably there will come a point at which outlays for education will have to be correlated with increases in public revenues.

The funding squeeze in the next ten years will be tightened further by the expansion of the school system which has occurred in the last two decades. Most of the past expansion has occurred in primary schools. As more and more students graduate from these schools, pressures to expand the secondary school system will increase. The average annual expenditure for a primary school student in all of Latin America for instance, is about $42.00. To put the same student through secondary school costs four or five times as much—from $155 to $210 per year.

Beyond this gloomy arithmetic, there are indications that the scarce education dollars that are available are not being used most efficiently. Drop-outs are a problem in this hemisphere and throughout the world at all levels of education. Rural areas head the list. In some communities less than 5 percent of the students who begin the primary school finish it. Often 50 percent drop out between the first and second grades. Drop-outs in secondary education are also high, as are drop-out rates in universities.

Side by side with the high drop-out rate is another unsettling phenomenon: the educated unemployed. Often those who do make it through the education system emerge to find that their skills are too rudimentary to permit them to perform effectively in a job or that they are equipped with skills for which there is little demand. In some countries the education system has not geared itself to produce graduates with the skills and competencies required in that country. The educational system has not recognized its true role of not only providing educated graduates, but trained personnel who will be able to find jobs in the local societies.

What conclusion do we draw from these statistics?

One answer often given is to cut back the school system in order to provide better quality education for the relatively few. This elitest proposal is ruled out from the start. All over the developing world, education is seen as the path which the downtrodden and disadvantaged can lift themselves out of the mire of backwardness.

Education has been declared a basic human right in the U.N. Declaration of Human Rights. Seeking to restrict the supply of educational opportunity is not tenable.

These statistics do, however, seem to point to the conclusion that the traditional school system needs to be reviewed. Expansion of traditional education in traditional schools may not meet the educational needs of the less developed countries in the 1970's. New and better answers must be sought.

The search for these answers is just beginning. Some ideas, of unproven effectiveness, are being tossed hopefully about.

Among them there is the notion that non-formal systems of education might well play an increasingly significant role. Non-formal education is a dignified title for a miscellaneous assortment of educational tools including: in-service training, work-study programs, extension and correspondence courses, worker participation programs, planned radio and TV teaching programs, and many more. Rather than attempting to provide years of traditional primary and secondary schooling for all children, possibly non-formal school programs might be better. In many countries large, varied non-formal systems exist, but we have too little knowledge of their effectiveness.

Break-throughs in educational technology may open doors to significant improvements in education in less developed countries. Exploitation of sophisticated tools such as TV, radio, computers, satellites, tapes and films, hold promise both of improving the quality of education and making it accessible to vast numbers of people. The whole system of transmitting knowledge in all its familiar forms—classrooms, teachers, books, logical arrangements and so forth—require re-examination. There is the possibility for marked improvements in pedagogical techniques which can make the learning process far more efficient.

Recognizing the need for leaders especially equipped for dealing with the complex issues of economic and social development, some educators are beginning to think of a new type of university—a development university directed toward equipping young people to cope with the development problems of their nations and emphasizing the rewards of services to one society rather than putting first emphasis on personal affluence or prestige.

The over-riding purpose of such a university would be to relate its curriculum to the political, social, and economic problems of development. The students could spend a proportion of their time off campus engaged in practical problems of development. The university's research program would be directed to key development problems—population, improvement of rural life, problems of urban growth, the whole area of preserving and maintaining a climate with clean air, clean water, recreational areas, and all the rest that can make life in the future satisfying and meaningful. There are many theoretical and practical problems with this concept of a university, but it is worth exploring further.

The point to underline here is that these are but suggestions—glimpses of the future. There are as yet no answers. The solution does not lie in exporting to the developing countries a mirror-image of the education system in the developed countries. Although the developed countries may offer assistance, the solution will hinge largely on the energy and creativity which the developing countries themselves apply to these problems. The University of the Americas could have a role to play in this process. The dedication and drive which has stimulated its growth and produced this new campus can and should be used to help forge answers to the mounting educational problems of the less developed countries.

The development process is turning full circle. In the early days, it sometimes proceeded on the assumption that we in the developed world had the answers, and that the task of development was to hurry poorer nations along the same paths we had traveled. Experience has taught us otherwise. It is not necessarily advantageous for the developing countries to ape the forms and patterns of those that call themselves developed. It is not impossible that something better could be developed—avoiding many of the unhappy outcomes we can easily see in the affluent society. The developing countries face problems unique to them. There is much in their indigenous cultures that should be preserved.

My thesis today then is that relatively advanced countries like Mexico can and should be the creative leaders in solving these problems. Your rapid advance endows you with talent and funds. Your success in solving past problems imparts confidence in your ability to solve future problems. As leaders in the development train, you have an opportunity to create the models which other less well-advanced countries can follow.

The effect of this is to alter the relationships between developed and the more advanced developing countries. The normal distinctions between developed and less-developed don't apply here, although the developed countries will continue to offer assistance.

In the words which I've used as the title of this speech—they are "looking to the developing countries for answers." To the extent that development proceeds on this basis, it will be—more than ever before—a cooperative venture and a partnership of equals.

It is my hope that this University of the Americas will develop a wide horizon of usefulness as it charts its new future.

The future will have many problems and few answers. What man has made—he can improve.

We salute this University and wish for it

a long life of useful service to Mexico, to the Americas, and to the world.

SINGING SAM RABORN, TUCSON, ARIZ.

Mr. FANNIN. Mr. President, on a visit to Arizona, I attended a dedication ceremony and had the opportunity to visit with one of the old friends of many Members of the Senate.

Many Senators will recall the wonderful pleasantries that Rufus Sam Raborn so readily expressed. Singing Sam Raborn, as he is known among his friends, now is living in Arizona, at Tucson.

He is a Texas-born West Virginia gospel singer we welcome to Arizona.

Mr. President, I ask unanimous consent that there be printed in the RECORD an article published in the Tucson Daily Citizen of July 11, 1970. Appropriately it is headlined, "Singing Sam Has Retired To Tucson, But Won't Quit."

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

SINGING SAM HAS RETIRED TO TUCSON, BUT WON'T QUIT

(By S. C. Warman)

Singing Sam Raborn—the Texas-born West Virginia gospel singer whose career as a baritone began more than 50 years ago in the era of Evangelist Billy Sunday and is still going strong in the days of Evangelist Billy Graham—will be a guest singer tomorrow at Tucson Baptist Temple.

Rufus Sam Raborn has been making his home in Tucson for almost a year, and he and Mrs. Raborn have joined the Baptist Temple congregation of the Rev. Louis W. Johnson, 1525 S. Columbus Blvd. The service will be at 11 a.m.

While Raborn readily admits his 75th birthday is coming Nov. 26, he adds: "But my voice is still only 50 years old." And he has the energy and enthusiasm of a much younger man.

He was born in Hillsboro, Tex., the son of an evangelist, and attended Baylor University in 1915–16. He moved to Mannington, W. Va., and became associated as a singer with the late Homer Rodeheaver, the famed song leader of Billy Sunday's evangelism party.

He remained in Mannington 25 years until he went to Beckley for 12 years. There he became a friend of Robert Byrd and helped launch his political career in the West Virginia Legislature and finally into the U.S. Senate.

Sen. Byrd made his bid for public attention playing a guitar on Rodeheaver radio religious music programs.

For the 10 years before coming to Tucson, Raborn lived at Silver Spring, Md.; served on the staff of the U.S. Senate, and made frequent guest appearances on Washington radio programs.

He was called the songleader of the Senate. At Easter and Christmas when church choirs were at the Capitol for religious music festivals, Rodeheaver was master of ceremonies.

A World War I veteran, Raborn survived the influenza epidemic at Camp Lee, Va. The West Virginia American Legion three times made him department chaplain and voted him "convention soloist for life." In 1934 he was songleader and soloist for the Kiwanis International Convention.

A few years later he was on a coast-to-coast NBC radio network as soloist on the Wheeling Steel Hour.

Raborn did one crusade with Billy Sunday. He substituted for Rodeheaver during meeting in Charleston, W. Va., about 1931. During a Billy Graham Crusade at Washington, Raborn said he joined the choir. Cliff Barrows noticed him and put Raborn in a special men's section of the chorus.

Among the outstanding preachers for whom Raborn has served as songleader were Dr. George W. Truit, pastor of the First Baptist Church of Dallas, when on evangelical tours; Dr. J. Frank Norris of the First Baptist Church at Fort Worth and Dr. B. R. Lakin.

Mr. and Mrs. Raborn live at 6161 E. 21st St.

NATIONAL GOALS RESEARCH STAFF URGES BALANCED POPULATION REDISTRIBUTION POLICIES

Mr. PEARSON. Mr. President, this past weekend the White House released a report by the President's national goals research staff entitled "Toward Balanced Growth: Quantity and Quality."

This is an interesting and useful document. It does not attempt to recommend a specific set of policies for the future but it does identify the principal areas which will require major policy decisions in the future and discusses some of the factors and alternatives which policymakers will likely have to deal with. The first such policy area with which the report deals is entitled, "Population Growth and Distribution." The staff concludes that the question of population growth may or may not become a major policy issue, depending upon the trends in birth rates over the next few years. They point to the possibility that we may be approaching a zero population growth period.

However, this report does point out quite vigorously that we are going to have to deal very seriously with the question of the distribution of our population. The report states—

On this point there is no argument. Too many Americans have seen the sorrowful face of the deteriorating central city, the awesome pattern of suburban sprawl, and the sullen stagnation of the small town.

And at another point the report states—

Our population has been concentrating increasingly, not only in cities, but more and more proportionately into a few rather large urban masses. This has resulted in a lowering of the quality of life in both urban and rural areas.

The report concludes that unless corrective action is taken the concentration of our population in a relatively few metropolitan areas will continue. It indicates that if present trends continue almost all the population growth in the next few decades will be concentrated in the 12 largest urban regions and that at least 50 percent of the total population will be found in three great metropolitan belts: Boston-Washington, Chicago-Pittsburgh, San Francisco-San Diego.

Thus, the staff concludes:

The country faces an important though very difficult and complex choice: whether to allow existing trends to shape the future distribution of population, or whether to seek a different spatial distribution of the population by means of decisive public policy.

Mr. President, I believe that the national goals research staff has quite properly pointed to population distribution as a major public policy concern of the future. And I hope that this report will help to stimulate and expand the debate that is already going on in this area.

For several years now a number of us in Congress have been calling attention to the fact that the distribution of our population is becoming needlessly and dangerously tilted toward the major metropolitan centers and away from the small communities. We have urged that a commitment to expand economic and social and cultural opportunities in the smaller towns and cities and farm communities of rural America should be of highest national priority. We have argued that the great problems of the cities are intertwined with the problems of rural America. We have argued that one of the policy questions that must be dealt with in dealing with the crisis of the cities is that of how to keep more and more people from crowding into them.

Mr. President, for my own part, I have suggested several rural community development policy initiatives including: the Rural Job Development Act, first introduced in 1967 and reintroduced in 1969 as S. 15, the Rural Community Development Bank bill (S. 3607), and the Rural Development Highways Act of 1970 (S. 3986). Several of my colleagues have proposed additional policy innovations.

Therefore, those of us in the Congress and outside Government who have been concerned with this problem the past several years welcome this contribution by the President's national goals research staff. I hope this will serve to encourage additional action here in the Congress and equally important, I hope that it will serve to encourage the administration to begin to identify and propose concrete policy initiatives of its own.

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST CONTRIBUTES TO GENOCIDE CONVENTION RATIFICATION

Mr. PROXMIRE. Mr. President, in the past few weeks, advertisements have been published in many of the major newspapers in our Nation, urging the defeat of the Genocide Convention. Unfortunately, these advertisements have been based on emotional and illogical arguments.

Rational, concise, and reasonable discussion is absolutely vital on this issue. The Foreign Relations subcommittee which held hearings on the Genocide Convention this past spring heard many well reasoned statements on both sides of this issue. One of the most cogent appeals for ratification of the treaty came from the statement submitted by Mrs. Theodore O. Wedel, of the National Council of the Churches of Christ of the U.S.A.

Mr. President, I ask unanimous consent that exerpts from the statement be printed in the RECORD.

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

NATIONAL COUNCIL OF THE
CHURCHES OF CHRIST IN THE U.S.A.,
Washington, D.C., April 23, 1970.

Senator FRANK CHURCH,
Chairman, Special Subcommittee on the Ratification of the Genocide Convention, Senate Foreign Relations Committee, New Senate Office Building, Washington, D.C.:

Now that President Nixon has salvaged the convention from its 20-year limbo, the Senate has an opportunity to redeem the nation's earlier inaction by consenting to ratification. Speaking on behalf of the National Council of Churches, I urge most strongly that this be done. The fact that 75 nations have ratified the Genocide Convention and that the United States is not among that number is not only "anomalous", as the Secretary of State has described it; it is also rather scandalous.

In view of the fact that the President believes ratification would be in the national interest, and that the Secretary of State and Attorney General agree that there are no constitutional obstacles to ratification, there appears to be little validity to the claimed legal basis of the opposition to ratification. In fact, the ABA Section on Individual Rights and Responsibilities has approved a report, I understand, stating that none of the legal objections raised both in 1949 and again today stands up to careful analysis. In addition, the President has said in his message to the Senate that affirmative action "will demonstrate unequivocally our country's desire to participate in the building of international order based on law and justice." There is a strong implication in his message that such a demonstration is necessary if the United States is to maintain its credibility on human rights issues.

It was ten years ago, in June, 1960, that the National Council of Churches first declared its conviction that "the Genocide Convention, which the United States signed in 1948, should be ratified without delay." This statement was made in the context of expressing a broader belief, based on both practical reason and the mandates of the faith we hold, that "the United States Government should renew and invigorate its leadership in the promotion of human rights." Since there seems to have been at least a partial abdication from that leadership role since 1948, I would like to reiterate that conviction and that belief on behalf of the National Council of Churches.

Ratification would be fully in keeping with our nation's traditions and principles and with its support of the Universal Declaration of Human Rights. Failure to ratify would be interpreted in some quarters, rightly or wrongly, as tacit admission of some U.S. involvement in acts condemned by the Convention and could only cast doubts on our commitment to justice. I urge your subcommittee, the Senate Foreign Relations Committee, and finally the full Senate to give their approval to ratification of the Genocide Convention.

Sincerely,

Mrs. THEODORE O. WEDEL.

HON. J. FIFE SYMINGTON

Mr. MATHIAS. Mr. President, the Caribbean is a place of tranquil waters and idyllic islands, but we should not forget that it is also the birthplace of hurricanes. A political hurricane that could have assumed significant proportions was recently dispersed in its infancy by the prompt and decisive actions of the Government of Trinidad and Tobago. The Prime Minister and his colleagues displayed great vigor and skill and are to be much congratulated for abating the storm.

Of necessity, one of the men in the eye of this incipient hurricane was the Honorable J. Fife Symington, U.S. Ambassador to Trinidad and Tobago. His alert reaction to the crisis, the climate of understanding and helpfulness he created which made it possible for the Government to seek his assistance, and the low personal profile he maintained all confirm President Nixon's good judgment in appointing him to this delicate post.

One of the best accounts of the crisis in Trinidad was published in the Evening Star of April 22 and April 23, 1970. I ask unanimous consent that they be printed in the RECORD. The facts will speak for themselves in detailing the important role played by Ambassador Symington.

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

U.S. SHIPS CALLED IN TRINIDAD RIOT; TWO CRAFT TO AID U.S. CITIZENS IF NEED ARISES

(By Jeremiah O'Leary)

An American naval and Marine task force today was churning across the Caribbean toward Trinidad where 1,000 U.S. citizens may have to be evacuated because of civil disturbances and a mutiny by nearly half of Trinidad's armed forces.

Three deaths were reported during outbreaks of violence in Trinidad last night that grew out of the arrest of 13 black power leaders, the Associated Press reported. And shooting broke out in Port of pain, the Trinidad capital, again today.

The State Department asked the Department of Defense last night to send the "minimum necessary force required to evacuate 1,000 persons" from the troubled island nation.

The Navy's Caribbean ready force immediately ordered the helicopter-carrier Guadalcanal and the amphibious assault ship Spiegel Grove to sail toward Trinidad from waters near Puerto Rico.

ENVOY SEES PRIME MINISTER

Prime Minister Eric Williams notified Ambassador J. Fife Symington Jr. of the armed forces mutiny yesterday, and the envoy relayed his concern about the safety of the 1,000 Americans to Washington.

Williams, a former professor at Howard University before he became prime minister of the one-time British colony, also notified London of the tense situation and requested British assistance.

State Department sources said they understood a British frigate normally stationed in the Caribbean also was steaming toward the island on the north coast of South America.

There has been considerable political and labor unrest in Trinidad in recent weeks. At least some of the problem is attributed to a growing black power sentiment in Trinidad and several other predominantly black former British colonies in the West Indies.

LABOR TROUBLES

Williams also has been having trouble with Trinidad's labor unions as an outgrowth of chronic unemployment and underemployment. The situation came to a head yesterday when the crowds went on a rampage in downtown Port of Spain.

Then, Washington sources said, the mutiny took place among the 700-man Trinidad and Tobago Regiment, the island's only military force.

Eighty soldiers of the regiment mutinied and captured 300 other soldiers, including 10 officers, to hold as hostages.

The mutineers also seized control of the regiment's ammunition dump at Chaguaramas, the former U.S. naval base on the outskirts of Port of Spain.

Later, according to authoritative reports reaching here, 200 of the hostage soldiers joined with the 80 original rebels and sent word that they wanted to talk to the prime minister.

TWO ARE KILLED

(United Press International report that the mutineers fought with loyal troops who tried to take back the base. One man on each side was reported killed.)

Indications from Trinidad were that the mutineers, nearly half of the Trinidadian military force, were demanding the release of several people who were arrested in yesterday's rioting and also were seeking changes in the government of Trinidad.

A meeting was arranged for 5:45 p.m. yesterday but Washington was informed that the session never took place. It was at this point that Williams—as the prime minister of a nation within the British Commonwealth—asked for British help.

He also conferred with Ambassador Symington and it is assumed that the ambassador asked for standby assistance from the U.S. Caribbean fleet because of the uncertainties in the situation.

Washington sources said the trouble spot is approximately 30 hours away from Puerto Rico by surface vessel and that the U.S. task force is expected to arrive in Trinidadian waters by tomorrow morning.

Officials said no decision would be made about carrying out an evacuation of U.S. civilians until the situation clarifies.

The Guadalcanal and other vessels of the Caribbean ready force carry a batallion of Marines which could be quickly moved ashore by helicopter in any troubled situation.

Sources indicated there was no thought of an American intervention in the Trinidad crisis, such as was ordered by President Lyndon B. Johnson in 1965 when civil war broke out between units of the armed forces of the Dominican Republic. Dispatch of the American task force last night was a precautionary move, sources said, and was deemed prudent because of the possibility that fighting might break out between the loyal and mutineer forces of the Trinidadian regiment.

(According to the Associated Press, the violence broke out yesterday when police tried to bring the 13 arrested black power leaders to the military camp at Tiburon Bay in order to ship them aboard coast guard boats to Nelson Island, a small detention prison off the coast.

But when they arrived at the camp, police were turned back at its gates by army guards and forced to take their prisoners back to town, according to reports.)

TRINIDAD AIDE AND REBEL CONFER; TWO SEEK TO END CRISIS AFTER ARMY MUTINY

PORT OF SPAIN.—A rebel army officer has begun negotiations with Attorney General Carleton Phillips of Trinidad to end a two-day mutiny at the Chaguaramas army base, unofficial sources said today.

The situation at the base 11 miles north of Port of Spain was not clear.

The army said it had the situation under control and that some rebels, demanding a bigger voice for black persons on the island, had fled into the hills to wage guerrilla warfare. But other sources said the mutineers still held the base.

The death toll in the violence rose to six today when police shot and killed a man who was trying to blow up a power substation on the outskirts of the city. At least 40 rebels were reported wounded in fighting at Chaguaramas.

U.S. ARMS BROUGHT IN

Blacks make up about 43 percent of the population of Trinidad and Tobago and the current unrest began yesterday when black power advocates led violent demonstrations

in the streets demanding more power in government.

At least 60 army troops mutinied in support of the black power movement and seized the arms and ammunition depot at Chaguaramas.

The sources said one of the rebel officers, Lt. Rex La Salle, began negotiations with loyal units today to end the mutiny. Prime Minister Eric Williams' residence would neither confirm nor deny the report.

U.S. arms and ammunition were landed yesterday for loyal troops whose own supplies were seized by rebels. Government sources said British Commonwealth troops from Jamaica and Guyana had landed to help put down the mutiny.

CURFEW IS RELAXED

The government relaxed its nationwide dusk-to-dawn curfew to cover only Port of Spain and San Fernando, the two biggest cities.

Piarco international airport was opened this morning. It was closed earlier under a state of seige declared by the government.

Sporadic gunfire erupted in the slum section of the capital after nightfall yesterday and a fire destroyed four buildings and seven vehicles at Camp Ogden, an army outpost six miles from Chaguaramas.

Six U.S. ships with 2,000 Marines aboard stood offshore to evacuate the approximately 1,000 American residents and additional tourists if necessary.

In Washington, the State Department said the United States was selling the small arms to Trinidad for cash at the government's request.

ARMS ARE LISTED

The department said the arms included ten 81-millimeter mortars, 200 81-mm. shells, 75,000 rounds of ammunition for general purpose machine guns, 7,500 rounds of 9-mm. ammunition, 100 two-inch mortar smoke bombs, 50 81-mm. smoke bombs and 50 machineguns.

Department aides indicated Prime Minister Williams had granted approval for U.S. landing parties, to come ashore for the express purpose of evacuating U.S. citizens, if that should become necessary.

But they discouraged the notion that the United States, at this point, has any intention of intervening in Trinidad in the manner in which it did in the Dominican Republic in 1965.

From London, the British Defense Ministry announced it has alerted two guided missile frigates in the Caribbean for possible emergency duty.

VENEZUELA ASKED TO HELP

Trinidad's ambassador to nearby Venezuela, George Daniel, told newsmen in Caracas that Williams has asked Venezuela for help, too, "on the same principles he requested (aid) from the United States and England."

Daniel told newsmen "the soldiers who staged the small army revolt have taken to the mountains, carrying along ammunitions and all sorts of weapons from the Chaguaramas base and arsenal. . . .

"Their idea might be to start a guerrilla operation against the established constitutional order."

Daniel made his remarks shortly after speaking by telephone to Williams, who kept silent on the uprising.

UNEMPLOYMENT NOTED

The ambassador attributed the army revolt to the "well-cemented intranquility which has been exploited by black power elements among students and the unemployed."

An unemployment rate of 25 percent among the island's blacks led to street demonstrations beginning in March. A protest Tuesday led to the outbreak of fighting and the uprising in the army.

"The control of our economy and industry in foreign hands has led to well-grounded indisposition," Daniel said. "This explains part of what is taking place right now."

Trinidad, about the size of Rhode Island is the most southerly of the West Indies islands. The Chaguaramas arsenal was one of the former U.S. Navy bases obtained by the United States from Britain in exchange for 50 destroyers after World War II.

ADDRESS BY MARITIME ADMINISTRATOR ON GREAT LAKES-ST. LAWRENCE SEAWAY

Mr. GRIFFIN. Mr. President, two important steps in the development of commerce through the Great Lakes-St. Lawrence Seaway were taken last week. The first came in an address by Maritime Administrator Andrew Gibson at a July 15 luncheon sponsored by the American Shipbuilding Co. Mr. Gibson announced an affirmative policy of promoting waterborne commerce in the Great Lakes when he stated:

Beginning today, it's my hope that by working together the Great Lakes maritime industry and the Maritime Administration can effectively achieve a more productive, more modern and more profitable Great Lakes fleet, one better able to meet the needs of Great Lakes shippers today and tomorrow.

The second important step was a first-hand look at the Great Lakes, from Cleveland to Sault Ste. Marie, by the Administrator aboard an ore carrier. To my knowledge, this is the first such tour of the Great Lakes ever taken by a Maritime Administrator.

Recently, I wrote to Mr. Gibson pointing out that none of the ships proposed as a result of the Maritime Administration's design competition conformed to the limitations of the seaway locks. Consequently, I was particularly pleased by the recognition indicated in Mr. Gibson's address of the need to tailor the design of at least one ship developed in the competition—the multipurpose *Kennebec* class of Bath Industries—in order that it will be suitable for seaway transit. Furthermore, in response to my letter, Mr. Gibson indicated that the Maritime Administration has developed, in addition to the *Kennebec* design, a general purpose cargo ship capable of traversing the seaway.

Mr. President, in addition, I am pleased that research efforts are going forward to strengthen ships for an extended-season operation, and that a Chicago office of the Maritime Administration is being opened to work directly with maritime industries in the Great Lakes region.

Mr. President, I ask unanimous consent that the text of my letter of June 23, the text of a letter dated July 8 from the Administrator, and the text of his address at the Cleveland luncheon be printed in the RECORD.

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

JUNE 23, 1970.

Hon. ANDREW E. GIBSON,
Administrator, Maritime Administration,
U.S. Department of Commerce,
Washington, D.C.

DEAR MR. GIBSON: The maritime bill which has passed the House of Representatives and is pending before the Senate Commerce Committee includes a provision designating the Great Lakes as a fourth seacoast.

Such a designation makes applicable to the Great Lakes an obligation imposed upon the Secretary of Commerce, through the Maritime Administrator, under Section 210 of the Merchant Marine Act of 1936, for "the creation of an adequate and well-balanced merchant fleet, including vessels of all types, to provide shipping service essential for maintaining the flow of the foreign commerce of the United States. . . ."

Furthermore, since the Great Lakes-St. Lawrence Seaway System has been designated as an essential trade route, the Secretary is required under Section 211 to determine "The type, size, speed, method of propulsion and other requirements of the vessels . . . which should be employed in such services or on such routes or lines . . . with a view to furnishing adequate, regular, certain and permanent service. . . ."

In the light of this legislative framework, my staff has reviewed the various ship plans which resulted from the recent Maritime Administration design competition. While the resulting ships undoubtedly will make a substantial contribution to most of the American merchant marine, we find that the overall dimensions of the mid-range bulk carriers are such that it would not be possible for them to transit the Seaway and thus be of use in the Great Lakes.

You are aware that although there has been a growing use of the Great Lakes ports by modern European ships, there has been a steady decline of use by American vessels in foreign trade.

I would very much appreciate it if your staff would review the proposed plans to determine if sufficient modification could be made in the designs to permit their ready availability for Seaway use. I shall appreciate hearing from you at your early convenience.

Sincerely,

ROBERT P. GRIFFIN,
U.S. Senator.

U. S. DEPARTMENT OF COMMERCE,
Washington, D.C., July 8, 1970.

Senator ROBERT P. GRIFFIN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GRIFFIN: This is in response to your letter of June 23, 1970, in which you refer to the legislative framework dealing with the creation of an adequate and well balanced merchant fleet with special reference to the Great Lakes-St. Lawrence Seaway System. You indicate that the overall dimensions of the mid-range bulk carriers, the design of which resulted from the recent Maritime Administration design competition, appear to be such that it would not be possible for them to transit the Seaway.

As you have suggested, a review of the designs by our staff indicate that the Kennebec class can be sailed through the St. Lawrence Seaway and is designed to carry ore, bulk or general cargoes. This versatile ship has a beam of 75' with an overall length of 570' having a deadweight capacity of 21,000 tons in ocean service. Due to limited Seaway draft conditions, the capacity through the Seaway must of necessity be somewhat less. However, by adding approximately 160' to the length, the capacity of the ship under Seaway conditions would be approximately 20,000 DWT and under ocean conditions could carry 27,000 DWT. Ships for Great Lakes operation alone, excluding the Seaway, can of course be considerably larger.

In addition, the Maritime Administration has developed an 18 Knot 74' beam general purpose cargo ship with alternate ocean capacities of 15,000 to 19,000 DWT depending upon length. Under limited Seaway draft conditions, these tonnage capacities would be somewhat less, however the bale cubic capacities are very high. Enclosed is a brochure describing this design.

Of equal importance to the availability of

these aforementioned designs is our policy of considering construction subsidy support for ships other than those developed in our recent CMX design competition. Any operator or group of operators who require specialized designs and who wish to construct a series of modern ships under our new program will receive the same consideration as those applicants who consider our new standard designs to be more suitable. Our goal is to develop a competitive merchant marine.

A review of the 1969 Great Lakes foreign trade indicates that 97% of the total inbound cargo came from the United Kingdom/Continent, Mediterranean and the Far East, while 83% of all outbound cargo went to the same areas. The predominant cargoes were animal feeds, corn and wheat, oil seeds and nuts, iron and steel scrap, steel plates and sheets, alcoholic beverages, and large quantities of foodstuffs. The majority of the foreign flag ships now carrying these commodities are reasonably modern breakbulk ships with speeds of 15–16 knots. It would be our evaluation that the Kennebec class multipurpose ships or the MarAd design might prove attractive to U.S. flag operators providing they are able to book the cargo.

As already stated, we stand willing to work with all interested operators or to consider alternate designs considered more suitable to carry Great Lakes cargoes. If I can be of further assistance, please let me know.

Sincerely,

A. E. GIBSON,
Administrator.

REMARKS BY A. E. GIBSON, MARITIME ADMINISTRATOR

I am told that if my visit today does not actually represent the first journey of a Maritime Administrator to the Great Lakes, at least such visits have been so rare that no one can remember the last occurrence, and it must be obvious that past maritime policy has contributed much of the underlying reason for this conspicuous absence.

The Merchant Marine Act of 1936, which has been, and will continue to direct United States maritime affairs until the enactment of new legislation anticipated later this summer, was specifically designed by the Congress to provide this Nation with a merchant fleet which could be "sufficient to carry its domestic waterborne commerce and a substantial portion of the waterborne export and import foreign commerce . . . [and] capable of serving as a naval and military auxiliary in time of war or national emergency."

Although this is a far reaching directive the administration of the Act has dictated that virtually all of the effort and assistance go to the preservation of the essential trade routes in foreign commerce and therefore there has been relatively little attention paid to contract carriers engaged in the transportation of bulk cargoes, which represent so much of the Great Lakes traffic.

Given such emphasis, it is not surprising that over the years the lines of communication between the Maritime Administration and the shipping community on the Great Lakes have been virtually non-existent.

My presence here today is to provide evidence that it is our desire to establish a closer and, hopefully, a mutually beneficial relationship for the future. The recent installation of Admiral Trimble as President of the Lake Carriers Association, provides this Region and the industry with an exceedingly able and knowledgeable individual with whom we in Government can effectively work, and I congratulate those responsible for being able to persuade him to lead their organization.

During the 1968 election campaign, Richard Nixon laid the groundwork for his future maritime program. This was a proposal of far reaching significance and it was the direct outgrowth of his concern for our maritime well-being. In it, he fully recognized the problems of the Great Lakes. The President said at that time:

"Unsubsidized sectors of our merchant fleet must be given attention so that they too can replace their deteriorating fleets in the immediate future. Included in this category are . . . the Great Lakes operators who daily face competition from their government-assisted counterparts.

"Although the Eisenhower administration provided the United States with a fourth seacoast, through the St. Lawrence Seaway, the [past] administration has chosen to turn its back on this inland network of water transporation. Certainly [this] segment of our merchant marine can be stimulated by tax incentives. . . . The United States, in turn, can expect [it] to make a capital commitment in new ships and facilities."

Throughout that remarkable speech, President Nixon outlined a definite plan of action to bring about a reversal of the steady decline that our merchant marine has suffered for too many years.

In developing the actual provisions and machinery to carry out the President's directives, those of us in the new Administration faced many problems, one of the major ones being the direction and emphasis with which we would focus our effort. We believed that the fleet required to carry our foreign commerce must have the top priority. The disappearance of two-thirds of this fleet in the next few years was too large a problem to be deferred. That our order of priority was correct was dramatically borne out earlier this year when the British underwriters proposed increased insurance rates for cargo carried on ships 25 years or older. By this one directive, had it been allowed to be implemented, the resulting higher rates would have driven some 250 of our present 650 ship fleet engaged in foreign trade from the sea lanes. Fortunately, we were able to forestall the implementation of this scheme, but the handwriting is on the wall.

With domestic trades protected from direct competition through our cabotage laws, we believed that this would at least give us some breathing space to get the foreign trade fleet on the road to modernization before turning our attention to the domestic fleet and this was reflected in the enabling legislation sent to the Congress last December.

During the course of the extensive hearings, particularly through the untiring efforts of our host George Steinbrenner and Admiral Hirschfield, until his recent second retirement the distinguished head of the Lake Carriers Association, through the continuous concern expressed by the Great Lakes delegation in the Congress, such as Ohio's able, hardworking Representative Charles Mosher, it became apparent that the problems of the domestic operators on the Great Lakes would have to have immediate attention. The Congress therefore advanced the time table and has provided the avenues into which this effort is to be channeled. We in the Administration are prepared to carry out their mandate.

As the proposed legislation now stands, it contains three major provisions that offer substantial assistance to the Great Lakes operators.

First, the bill would allow for the creation of tax deferred construction reserve funds for the financing of new ship building. This was the primary benefit sought by your Association, and Mr. Steinbrenner, in his testimony, estimated that this provision could double the number of ships planned for construction on the Lakes in the next 5 to 10 years.

This is a most significant provision and its utility is well illustrated by those subsidized operators who have previously held this privilege. The fact that this liner fleet is the most modern segment of our merchant marine is due in large part to the ability to set aside funds for rebuilding their fleet which would otherwise have been paid as taxes. That this ocean fleet contains many of the most productive and competitive ships in world liner trade provides conclusive evidence that the reserve funds have been effectively utilized, and I am sure that your efforts in the coming years will be equally well directed.

The second provision that will assist you in the ship replacement program is the expansion of the Ship Mortgage Insurance program. We have asked the Congress to raise the ceiling on the amount of insurance that can be written from the present $1 billion to $3 billion. Because of the financial strength of many of the Great Lakes owners in the past, such mortgage insurance has never been utilized, but in this day of abnormally high interest rates its use is becoming almost essential to obtain the required financing at anything approaching reasonable rates.

The third provision of the new legislation specifically designed to benefit this region would recognize that foreign trade within the Great Lakes is subject to the same competitive pressures as other foreign trade and therefore entitles the operator to the same aid and consideration as those steamship companies competing in other areas. The proposed new legislation corrects this previous omission and establishes the Great Lakes officially as our Fourth Seacoast.

With the enactment of the new legislation these provisions will be available to assist you to modernize your fleets and more effectively compete with your Canadian counterparts.

In his message to Congress delivering the new maritime plan, the President characterized it as a "challenge and opportunity." He challenged the American ship operating and shipbuilding industries to gain their former pre-eminence and again become a vigorous part of the American economy. To achieve this, this program will provide the necessary opportunities through an expansion of the shipbuilding program, through extension of tax deferred reserve funds, and through a revised and extended operating subsidy system.

A significant improvement in U.S. flag participation in our trade and lower shipbuilding costs are expected in return for the increased-Government support. This level of support is not intended to shore up uneconomical operations either in ship construction or in ship operation, but to provide added incentive for improving the efficiency with which ships are built and cargo is moved. We believe opportunities exist here in the Lakes as in other areas to make improvements that will lead to the development of increasingly productive ships. The two giant ore carriers being built on Lake Erie are examples of the application of such improved technology. Bigger and faster than previously existing ships on the Lakes, they have modern internal cargo handling equipment that can do for the movement of bulk cargoes what the container has done in revolutionizing the movement of packaged goods in our international trade.

To help the shipyard industry to achieve the President's goals, we are revising our procurement procedures to create an environment in which the strengths and benefits of the private enterprise system can be more readily achieved. In this connection, we have departed from past practices in which the shipyards had no control over the designs of the ships they built.

Under the Nixon program the shipyards will develop the designs, providing them with the opportunity to eliminate costly frills and the incentive to develop innovative features that will attract buyers. In contrast to past practices where the shipyards were called upon to build a small number of ships of a given design, we will consolidate orders of

identical ships to enable the yards to build them in series.

In addition as a departure from previous practices, in which contracts were awarded on the basis of firm, fixed prices, the shipyards will be given the latitude to negotiate price with prospective customers.

Surely, the Government, the taxpayer, the ship operator and the ship builder will benefit from these new procurement procedures.

In reference to design development, the Maritime Administration commissioned two shipyards to develop preliminary designs of the vessel types that will be required to increase U.S. foreign trade carriage in this decade. A total of 13 basic designs were developed by these contractors.

We have worked closely with Senator Robert Griffin of Michigan and his staff in the ship designs study to be sure that some of the ships developed under this program would possess the characteristics for successful Seaway operation, with the result that the Kennebec class—a multi-purpose carrier designed by Bath Iron Works Corporation for the carriage of ore, bulk and general cargoes—is ideally suited for Great Lakes-Seaway service. This versatile ship has a beam of 75 feet. an overall length of 570 feet and a deadweight of 21,000 tons in ocean service. An elongated version of this class is available to operate as a 20,000 deadweight ton ship in Seaway service and 27,000 ton in ocean service and as such closely resembles the most modern ships recently built for Great Lakes operations. I refer to the French vessel *Eglantine* and *Nanfri* of Norwegian registry.

We will shortly fund several research projects that can conceivably have a measurable impact on your future. Two of these projects are directly aimed at lessening some of the constraints on your operations.

One project calls for a study of the effect of railroad rate structures on the shipment of export cargoes through Great Lakes ports. We are interested in determining the loss of business to ports, operators, or shipbuilders, caused by existing rate practices and we hope to determine the probable effect on the Great Lakes area should the rail freight rate structure be revised. I am pleased to note the recent actions on the part of a railroad and a shipping company to reduce such inequities. The decision of the Illinois Central Railroad to offer unit-train rates on coal moving to South Chicago for reshipment by vessel to utility plants around Lake Michigan is a hopeful sign. The Oglebay Norton contract with the Niagara Mohawk Power Corporation to ship coal from western Lake Erie ports to the company's power plant north of Buffalo is another. This is a clear indication that given a chance to compete fairly the economies of water transportation for bulk commodities must inevitably prevail.

We will also assist in research into the requirements to ice-strengthen vessels in the Lakes to enable them to navigate the Lakes for an extended season. This is a project we intend to have in operation by the coming winter and it is intended that the results of these efforts will be made available as soon as possible so that they can be incorporated in future designs.

In the last few minutes I have tried to briefly sketch the possible effect of the new maritime legislation for the Great Lakes and some of the future possibilities concerning your shipping which we at Maritime are exploring. In both areas we welcome your interest and cooperation.

In closing, I would like to point out one further area in which I believe more of the Government's and your attention could profitably be devoted. The hinterland surrounding the Great Lakes is one of the most productive regions in this country. As our economy continues to expand, we can expect this area to share in the growth of our international as well as our domestic commerce. The tremendous potential of this region in terms of future industrial development and consequent transportation demands is of great importance. I believe that now is the time to start planning to meet the needs of the next decades. Complete and accurate market analyses and forecasts for potential services are required, for the ships we build today must be able to serve the needs of commerce in the decades ahead. We will shortly announce the opening of a Chicago office to directly work with the maritime industry to aid in this effort and again we will count on your assistance to make this activity truly productive.

Later today, together with Paul Trimble, I plan to board a Great Lakes ore carrier for a firsthand look at your great inland ocean to see for myself at least part of America's Fourth Seacoast. Beginning today, it's my hope that by working together the Great Lakes maritime industry and the Maritime Administration can effectively achieve a more productive, more modern, and more profitable Great Lakes fleet, one better able to meet the needs of Great Lakes shippers today and tomorrow.

BATTLE OF THE MONOCACY

Mr. MATHIAS. Mr. President, the city of Washington and the Federal Government have good reason to recall with gratitude the Battle of the Monocacy fought on July 9, 1864. The encounter in Maryland of Union and Confederate forces saved the National Capital from a raid if not ruin, saved the Government from a severe setback, and spared the Union a devastating blow to morale.

A recent retelling of the story of the Battle of the Monocacy, written by Paul A. Haley, was recently published in the Post, of Frederick, Md., on July 11, 1970. I ask unanimous consent that it be printed in the RECORD as a reminder that the security of the Capital has always depended on the actions of brave men.

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

BATTLE OF MONOCACY FOUGHT 106 YEARS AGO

(By Paul A. Haley)

Exactly 106 years ago July 9 at Monocacy Junction on both sides of the river from which it takes its name occurred one of the decisive battles of the Civil War.

In fact, it is not too much to say that the bloody conflict staged there that day in the view of several thousand Frederick residents who flocked to neighboring vantage points to watch the spectacle saved the nation's capital from being captured by the troops of Lieut. Gen. Jubal A. Early.

No less an authority than the Union commander in chief, General Ulysses S. Grant, makes this statement in the history of the war which he wrote years later as he lay dying of cancer of the throat at Mount McGregor in the Adirondacks.

He says:

"There is no telling how much the salvation of Washington hung on the efforts of General Lew Wallace leading his forlorn hope on the banks of the Monocacy at Frederick.

"However, had General Early been one day earlier in arriving at the gateway of Washington he might have taken over the city before the reinforcements I sent to man the forts from City Point had time to arrive.

"He lost this precious day in overcoming the courageous but greatly inferior forces Gen. Wallace assembled at Frederick.

"In fighting this losing but decisive battle, General Wallace contributed more to the cause by the defeat of the men under him than often falls to the lot of a commander with a greatly superior force who wins a victory."

In telling the story of the Battle of Monocacy, it is necessary to paint in broadly the status of the opposing armies of the North and South in the summer of 1864.

General Grant with some 100,000 finely equipped Union troops had brought to bay in the fortifications in front of Petersburg south of Richmond and the gateway to that capital of the Confederacy about 75,000 Confederate troops under the brilliant, daring, and resourceful General Robert E. Lee.

The war between the North and the South had become a conflict of attrition. Grant with superior numbers and an apparently inexhaustible supply of manpower in the north to bring in as reinforcements was relentlessly wearing down the inferior forces of Lee whose manpower reserve from the South was virtually exhausted.

In this situation, the war was militarily lost, and Lee knew it. It was only a question of time until Grant with his superior force and his ability to lose two or three men to Lee's one would at some point crack the constantly thinner Confederate defense lines at Petersburg and thereby open wide the gates of Richmond.

In this extremity, General Lee and Jefferson Davis played for time.

A presidential election was due in the fall in the Union States which were badly divided as Grant's death toll constantly mounted as he probed at the lines of Lee.

Even Lincoln despaired. He went so far about this time as to write a memorandum to himself and have it signed sight unseen by all of his Cabinet. He then quietly filed it with his papers where it was not brought to light until after battlefield victories of the summer and early fall changed the picture so that he was triumphantly swept back into office.

Lincoln's memorandum, however, said:

"As of this date, it appears that the Union cause will lose in the fall elections and that the Democrats will elect General McClellan with his peace program. In that event, it will be necessary for me to secure the co-operation of McClellan to bring the war to a close before his inauguration because he will never achieve it afterwards."

It was in the light of this hope of Lincoln's defeat and a negotiated peace which the South would win the greater part of its aims that General Lee and President Davis decided upon the audacious step of attempting to force Grant to loose his bulldog grip on the Petersburg defense line by sending General Early up the Shenandoah Valley to attack Washington.

They knew that following the promises of General Grant to keep steam up in several transports at City Point on the James River so that he could dispatch troops to protect Washington that President Lincoln had reversed his policy of four years of keeping a strong army between that city and Richmond and had denuded the forts ringing the nation's capital of all but a few thousand convalescent soldiers, workers in the government bureaus, and a handful of militia.

The defenses of Washington consisted of 53 widely separated forts ringing the city. To properly man them and handle the heavy artillery required a force of 40,000 men.

At best in the summer of 1864, there were only 7,000 of these convalescents and scrub troops available.

Douglas Southall Freeman, probably the greatest historian of the Civil War from the point of view of the South, points out that following the death of Stonewall Jackson, there was not a commanding officer with sufficient audacity and sheer guts to tackle such an assignment as Lee offered him except the fiery Jubal Early.

From his thin Petersburg defense lines, Lee took 10,000 poorly equipped infantry of

whom two-thirds, including many company officers, were without shoes.

He also gave Early cavalry and heavy artillery units adding up to some 4,000 additional troops.

With this tiny force of 14,000 men, Early was given the assignment of invading Maryland, capturing either Baltimore or Washington, as seemed most feasible when he got to Frederick, and freeing 17,000 Confederate soldiers held prisoners of war at Point Lookout for whom he carried rifles in his trains so that they could support his attacks.

The invasion was so pitifully undermanned that, as usual, the northern intelligence refused to credit the slimness of the force.

Detectives attached to Grant's Army reported to Washington that Early was invading with 35,000 trained troops and 15,000 cavalry, although anyone with even a superficial knowledge of the military situation of the South in the summer of 1864 would have known this to be impossible.

Early advanced rapidly over the soft dirt roads of Virginia which proved no hardship to his shoeless troopers, all of whom planned to get re-shod in Frederick.

He crossed his army over the Shepherdstown and Williamsport fords of the Potomac and attempted to capture the Union army of General Franz Siegel at Harpers Ferry.

Siegel's Germans—"I fights mit Siegel"—hastily evacuated the town, however, for the commanding Maryland Heights and Early knowing that occupancy of Harper's Ferry was impossible without command of the Heights abandoned his efforts and headed for Washington by way of Boonsboro, Middletown, and Frederick.

He diverted General John McCausland's cavalry long enough, however, to make a dash for Hagerstown, where on a threat to burn the town they collected $20,000 in gold from the frightened citizens.

It is time now to turn to the defensive efforts of the Union forces in Maryland and Washington.

In command at Baltimore was General Lew Wallace of Indiana, much more famous and successful later as a novelist—he wrote "Ben Hur"—than as a field commander.

Although commanding the department of Baltimore, he had less than 2,500 soldiers, most of them inexperienced, as Grant, again, had tapped the trained men for service at Petersburg.

Receiving word from Washington that Early was on his way up the Valley with his invasion army, General Wallace, small as his force was, at once entrained for Monocacy Junction at Frederick.

He realized that it was at Frederick that Early would have to tip his hand and indicate whether he contemplated an attack on Washington or Baltimore.

Here he established his headquarters at a block house beside the Baltimore and Ohio Railroad bridge and hearing that Col. David R. Clendenin, in command of some 236 Union cavalry troops, was scouting at the mouth of the Monocacy, he sent for him, informed him of Early's expected arrival, and ordered him to advance to the peaks of the Catoctin and attempt to check the Confederate army outside Frederick until reinforcements could arrive.

Col. Clendenin went out the National Road to the peak of the Catoctins and looking over the Middletown Valley saw Early's advance troops consisting of General Bradley T. Johnston's cavalry advancing from Middletown.

There was a slight clash between the opposing horsemen, but Col. Clendenin, obviously out-classed, finally had to disengage and retreat into Frederick City.

Fortuitously during the ensuing night, the Sixth Division of Grant's Army led by Gen. James R. Rickets and comprising some 5,000 seasoned troops, which had landed in Baltimore from their transports from the James River, came immediately to Monocacy Junction to swell General Wallace's little army.

What had appeared hopeless before, now gave promise of at least inflicting some damage on the invaders and possibly changing their minds about continuing to either Washington or Baltimore.

General Wallace determined to give battle. He posted Rickett's seasoned troops on the hills and bluffs overlooking the Monocacy southwesterly from the old wooden bridge over what is now Route 355 or the Washington Turnpike and his line of battle extended for about a mile.

The 2,500 un-seasoned troops and militia which General Wallace had brought with him initially he formed in line of battle to defend the main road to Baltimore, giving them what he considered a less dangerous post as he believed, and correctly as it eventuated, that Early aimed at Washington and not Baltimore.

They had not long to wait. On the morning of July 9 as the sun came up in a huge ball of fire presaging one of the hottest days of the summer, General Early's army was firmly in possession of Frederick City.

His bare-footed troopers at once raided every shoe store in the city and remedied this deficiency at the expense of the Frederick merchants who had to take their pay for the shoes in worthless Confederate money.

Meanwhile the commanding general had not been inactive. Hastily calling the mayor and city council into his tent he informed them that unless they immediately paid him $200,000 in gold as tribute that it was his intention to burn the city.

With the more or less willing co-operation of the city's banks, the Frederick officials assembled the $200,000 and paid it over, thereby incurring a municipal debt which was not paid off for nearly a century.

Closely interrogating the few southern sympathizers in Frederick City whom he could contact, General Early was told that General Wallace was in his pathway at Monocacy Junction with 2,500 men, but unfortunately for him, his informants were not aware of the arrival during the previous night of Rickett's seasoned 5,000 veterans.

Shortly after 9 A.M., General Early sent his artillery out of Frederick City towards Monocacy Junction and when they reached a commanding eminence they opened fire at random on the southern banks of the river.

One of the shots opening the battle struck a blockhouse along the railroad line and killed two men of the 151st New York Regiment who were stationed there with a small company as sharpshooters.

Under cover of his artillery, Early now dispatched a skirmish line toward Washington on the fields of the present battlefield.

He also dispatched sharpshooters who took possession of a barn on the Best farm located on the west side of the Monocacy a short distance from the wooden bridge on the turnpike to Rockville and Washington.

Still under the illusion that he had only to contend with the untrained militia assembled by Gen. Wallace as he had been told by the southern sympathizers in Frederick City, Early viewed the impeding battle as merely a matter of brushing aside a few pestiferous flies and pushing on to Washington where the gold in the Treasury Department inflamed the desires of both he and his little invasion army.

The sharpshooters proceeded to make it very uncomfortable for the some 300 members of the 10th Vermont Volunteers who General Wallace had located near the wooden bridge over the Monocacy.

Meanwhile the Union general was still not positive that the thrust was to be at Washington instead of Baltimore. Great clouds of dust arising from the Baltimore turnpike had obviously been thrown up by either the cavalry or infantry of Early's forces. If it was the former, it merely denoted a raid, but if it was infantry, the skirmishing along the Washington turnpike might be merely a feint to mask a drive at Baltimore.

Within an hour Union sympathizers from Frederick City making a wide detour to escape detection by Early's forces rode up to General Wallace to inform him that the dust on the Baltimore Turnpike was caused by the latter's dispatching of Generals Rodes and Johnston's cavalry toward that city in an attempt to reach and free the 17,000 Confederate prisoners at Point Lookout.

This confirmed the Union general's original thesis that Early's raid was aimed at the jackpot—Washington—not only the nation's capital but also the repository of its cash to wage war, the home of its President and the one city whose capture might so dishearten the North that immediate peace would be offered.

Particularly, reflected Wallace, was this true if Early carried out his announced threat of burning both the Capitol Building and the White House as the British had done in the War of 1812.

And General Wallace had also been informed by emissaries from Washington sneaking into his lines the night before that a steamer under forced draft waited in the Potomac to take President Lincoln and his entire Cabinet to Philadelphia if Early managed to overcome the pitiful convalescents in the forts ringing the city.

Wallace's thoughts were not very optimistic as he waited for the mounting Early attack to hit his 2,500 militia guarding the wooden bridge over the Washington turnpike and the 5,000 seasoned men commanded by General Ricketts laying down in the breast high corn growing so lusciously in the fields on the west side of the Monocacy toward Frederick City.

The morning wore on with the skirmishing line of Early pushing further out from Frederick and nearing the banks of the Monocacy.

Just before noon with the aid of his powerful glasses General Wallace could make out a long line of infantry led by a band and proudly flying their regimental flags filing out of their camp grounds in Frederick City toward the flat farmlands bordering the Monocacy about two miles away where battle was about to be joined.

Meanwhile occupants of the farms in the immediate pathway of the converging armies had all taken refuge in the stone basements of their homes.

A nine-year-old boy, Glenn H. Worthington, who was many years later to be a judge of the Frederick County Circuit Court and write the history of the battle as he viewed it from a basement window of his farm home, relates that as soon as the large contingent of Confederate infantry was observed by General Wallace that he became convinced that it was time to destroy the wooden bridge over the Monocacy on the Washington Turnpike.

Kindling had been previously gathered by some of the 2,500 militia converged at this strategic crossing and in a matter of minutes the bridge was a mass of flames.

Wallace had been unable to do anything to impede passage over the stone Jug Bridge on the Baltimore Turnpike because of its construction but he had cut the main link to Washington at its intersection with the turnpike which is now Route 355.

Observing the fire, Early and his lieutenants in command of the infantry halted for a council of war.

They at once determined that they would now have to locate the various fords of the Monocacy and after driving back what they still thought merely an insignificant militia force barring their way gain access to the Washington road by this method.

While the Confederate infantry waited for orders, Early sent General John McCausland

with some 1200 picked cavalry troops to force the ford on the Worthington farm.

Because the growth of brush and trees on the western side of the Monocacy was rather dense until it reached the lush fields of growing corn on the Worthington farm, McCausland was screened from General Rickett's 5,000 men of the Sixth Division who were posted on the edge of the river to prevent a crossing at the Worthington Ford.

Anticipating a brief "brush" and a conclusive breakthrough, General McCausland dismounted his cavalry, leaving one third to hold the horses of the 800 with whom he prepared to attack on foot.

With only their general and his flag-bearer mounted, the McCausland troops proceeded their charge across the cornfield between the Worthington and Thomas farms.

Here, lying down in the corn behind the dividing fences, were stationed the 5,000 seasoned and tense troops of General Ricketts, who, the only mounted figure visible on field, sat his horse as impervious to nerves as a wooden statue.

McCausland's men, unsuspicious of danger, came on rapidly.

Other than a quiet "steady now, men," General Ricketts said nothing, until the attacking force had reached a position less than 150 yards from the division fence behind which his troops lay.

Then with a quiet, "Give it to them, boy," the general gave the order which caused all of the Union troops to jump to their feet and fire point-blank into the advancing cavalry of McCausland.

The result was slaughter. John Worthington, father of the battle's historian, who observed it from the sanctuary of his nearby barn called it in after years, "a massacre."

With the terrific firepower of the Union veterans, McCausland's charging cavalrymen were completely blotted from view by the powder smoke resulting from their heavy fire. Scores were killed outright. Others were gravely and sometimes mortally wounded.

According to Worthington, who was an unwilling witness to the tragic scene, frightened Confederates dragging their muskets, cursing, and in some instances crying fled the field and retreated back to the barn in which he was hidden in the hayloft.

Many of them accused their officers of leading them into an "ambush" and swore that they would make another attempt to gain the Washington road.

It was sometime later and the day was advancing before General McCausland and his officers were able to rally the survivors for another attack but in this they were repulsed with still more serious losses.

"Militia, Hell," the surviviors indignantly shouted at McCausland as they again rallied but in diminished numbers in the Worthington barnyard. "Them's veterans!"

While General McCausland's abortive attempts to reach the Washington road had both been unsuccessful, they served the purpose of point out to General Early where the major opposition forces were located at the Worthington ford.

He at once instructed Major General John J. Breckenridge, a former vice president of the United States, to bring up the division of General John B. Gordon and with a heavy infantry attack achieve that which the cavalry had been unable to accomplish.

Gordon's men made an impressive sight as they filed out of Frederick City down to the Buckeystown Road and then assembled for the attack through the bloody cornfields of the Worthington and Thomas farms.

The Worthington meadows provided a fine place for General Gordon to maneuver his troops into position for the attack. The slender and dynamic Georgian was in his element as he delivered an eloquent address to his soldiers, who were also mostly from Georgia, and charged them to fight for the honor of their state.

The Confederates moved forward spiritedly with their customary blood-chilling Rebel yell but like McCausland they met with a savage repulse.

Brigadier General Evans leading the advance was mortally wounded as he tumbled from his horse and as the confused survivors retreated the bodies of some 50 dead Confederates and more than 100 badly or mortally wounded men lay in the corn.

General Gordon at once sent a courier to General Early at his observation post midway between Frederick and the battlefield asking for reinforcements and General Terry was sent forward with an additional 5,000 infantry.

It was the impetus of this new force bolstering the lines of General Gordon after through General Rickett's defenses and forced him into a stubborn retreat toward Urbana.

Fighting vigorous rear-guard actions, the Union troops surrendered the field, with Rickett's troops trying to cover Washington and General Wallace moving backward toward Baltimore.

The carnage on field was horrifying to behold. According to Judge Worthington, who with the impetuosity of any nine-year-old boy, was all over the field, more than 50 Union dead lay in the yard of Gambrill's Mill. Another Union Hospital was set up at the nearby Yaste property and couriers raced into Frederick City with urgent pleas for surgeons and nurses.

A Confederate Field Hospital was also set up on the Worthington property. The Confederate slain was particularly high in officers. Their total butcher's bill for the four charges through the corn came to 245 killed and 434 wounded.

The Federal death toll was 123 and they had 603 wounded and missing in action.

While General Early was anxious to be on his way to Washington, it required the remainder of the day to bury the dead and give such aid as was possible to the wounded.

He then made the bitter decision to abandon his wounded on the field and trust to the kind-hearted people of Frederick City to care for them. Time was running out for Early in his bid to capture Washington and ambulances loaded with wounded would have still further bogged down his march.

It was dawn, however, before the battered invasion army of General Early resumed its trek to the nation's capital.

Under the rays of another scorching sun which cost him several hundred stragglers en route and an early halt for the night at Rockville, the Confederates received by spies from Washington City the disquieting news that on the previous day the remainder of the veteran Sixth Division from Petersburg had arrived by steamer at the Potomac Wharfs and were starting their disembarkation and march into the forts ringing Washington.

This was bad news for General Early but he determined to push on from Rockville by Viers Mill Road the following day and passing through Silver Spring get as close as he could to Fort Stevens on Georgia Avenue in Washington and by pushing forward a skirmishing line determine just how strongly the city was held.

As he approached the fort the following day, however, Old Jube found his worst fears confirmed.

As he says in history which he wrote in his declining years:

"I determined to make an assault but before we could carry it out a study of the fortifications and their strongly manned parapets disclosed that the enemy had been strongly reinforced.

"I knew that they had been strongly reinforced with the entire Sixth Division of Grant's army and after consultation with my division commanders, I became satisfied that such an assault, even if successful, would be attended with such sacrifice as would insure the distruction of my whole force before victory could have been attained.

"And if unsuccessful, I would have equally lost my entire army. I, therefore, reluctantly determined to withdraw."

After burning the summer home of Postmaster General Montgomery Blair in Silver Spring, and rounding up more than 1,000 cows and 500 horses from the lush Montgomery County farms, Early retraced his steps crossed the Potomac at White's Ford, and although lackadaisically followed by Union troops, made his way unmolested down the Valley of Virginia to Staunton.

The loss of a day at the seemingly inconsequential Battle of the Monocacy had deflected his aim.

The significance of the battle in the history of the Civil War has not gone unnoticed by historians. In fact, they have given it a higher rating as a strategic victory of great importance to the North than have the people of Frederick County.

In the late 1800's Congress passed a totally inadequate appropriation of $5,000 by which part of the Monocacy Battlefield was acquired and over the years various energetic and patriotic Frederick citizens have tried to have it set apart as a park but their efforts have been futile.

On the scene of the conflict the States of New Jersey, Pennsylvania and Vermont erected monuments to the memory of their brave men who gave their lives in the cornfield that the nation might live.

And on the 100th anniversary of the Civil War, the Daughters of the Confederacy dedicated a monument to the soldiers of the South on the verge of Route 355 on the edge of the battlefield.

Although the slain of both sides were first buried on the scene where they fell, they were later transferred to Mount Olivet Cemetery, where they sleep side by side untroubled by the division of the nation which the past century rather than healing seems to have accentuated.

As previously related, Frederick City paid a $200,000 ransom to save the community from the torch and over the years the city government has again and again implored Congress to repay the money. In the past all such efforts have been in vain.

But at the request of the Mayor and Board of Aldermen, Senator Charles McC. Mathias and Congressman J. Glenn Beall Jr. have filed a new bill. Under its provisions the city would receive not only the original $200,000 but the accumulated interest of the past 106 years totalling to a tidy sum just under $1 million.

Times have changed. Money seems to be much freer on Capitol Hill than it was in the dying years of the last century. Who can tell? Miracles sometimes happen and the Mathias-Beall bid may yet bring Frederick City an unanticipated bonanza.

CONCLUSION OF MORNING BUSINESS

Mr. MANSFIELD. Mr. President, is there further morning business?

The PRESIDING OFFICER (Mr. GRAVEL). 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 (Mr. GRAVEL). The Chair lays before the Senate the unfinished business, which the clerk will state.

The bill clerk read as follows: 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. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

SENATE SHOULD DEFEAT UNCONSTITUTIONAL DISTRICT OF COLUMBIA CRIME BILL

Mr. YOUNG of Ohio. Mr. President, the District of Columbia faces a crime crisis of momentous proportions. Serious crime is increasing at the rate of more than 20 percent a year. District residents and tourists visiting the Nation's Capital fear for their lives. Streets in the downtown area are virtually deserted after dark.

Strong and effective action is needed to meet this mounting crisis. Those of us in this Chamber are painfully aware of that. All of us work in the District of Columbia. Most of us live here. Members of our families and our staff members have been among the victims of crime.

Every Senator wants to see the crime rate fall. All of us hope that the Nation's Capital, which is one of the most beautiful cities in the world, will once again be a safe place to live and work. We are not debating whether something should be done about crime. We are debating what should be done about crime.

The Senate acted wisely last September, just 2 months after President Nixon submitted his recommendations, by enacting constructive and comprehensive court reorganization legislation. Since that time the bill has been twisted into almost unrecognizable form by the House of Representatives and only partially salvaged by conference committee. The result is that the Senate court reform bill has been emasculated of its meaningful provisions and fused onto a virtual Pandora's box of repressive, vindictive, unconstitutional legislation.

The District of Columbia crime bill in its present form contains, among other things, authority for preventive detention of those who might commit a crime if released on bail, extremely permissive authority for no-knock searches, broad and general wiretap provisions, stiff mandatory sentences, and cruelly vindictive juvenile offender procedures. This bill, as reported by the conferees, is bad legislation. No hysteria over rising crime rates can justify its passage.

Perhaps the most dangerous and offensive aspect of the bill before us today is the so-called preventive detention provision. This blatantly unconstitutional proposal authorizes the imprisonment and punishment of persons for crimes which they have not yet committed and may never commit. It is totally repugnant to American tradition. It is a clear violation of the fifth, sixth, and eighth amendments to the U.S. Constitution.

Mr. President, we Americans have every right to be proud of those first 10 amendments to our Constitution which we affectionately term the Bill of Rights. They were written on the demand of those patriots who had fought and won the War for Independence. When the Constitution was first drafted and reported there was an uproar from the home of every patriot who had fought in the Revolutionary War. No ratification of the Constitution could have suceeded except by the adoption of the Bill of Rights, which is so dear to all American people.

The fifth amendment clearly states that:

> No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

Preventive detention is a flagrant violation of that guarantee of due process. The most fundamental principle of due process is the presumption that a man is innocent until proven guilty beyond a reasonable doubt. Under our system of justice, the Government cannot deprive a man of his liberty, and should not deprive a man of his liberty, on the basis of a mere accusation or assumption that he has committed a crime or is likely to do so.

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

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

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

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

Bail has traditionally been used to assure the appearance of a criminal suspect at trial. If bail is set at a level higher than necessary to insure appearance of a criminal suspect at trial, it is obviously excessive.

With the preventive detention rule, a suspect would not have the opportunity for any bail whatever—whether excessive or not. Excessive bail and preventive detention are therefore identical in effect. They constitute an equally unjust and unconstitutional assault on the eighth amendment.

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

The most crying need in the fight against crime is reform of our court systems. Speedy trials, firm determination of guilt or innocence, and swift sentencing for the guilty would do more than anything to cut into the growing crime problem.

Mr. President, as a former chief criminal prosecuting attorney of Cuyhoga County, Ohio, who has tried hundreds of murder cases, I know something about criminal law. In 1 year alone, in the court of highest jurisdiction in Ohio, the common pleas court, I tried 218 felony cases, including murder, manslaughter, robbery, and rape cases. Those 218 cases went to the jury. So I know something about criminal law.

As a former chief criminal prosecuting attorney of Cuyahoga County, Ohio, I believed then as I do now that certain punishment like a shadow should follow the commission of a crime. Yet, the preventive detention procedure would add special hearings onto the already clogged court calendars. The practical effect would be devastating. The overwhelming majority of criminals not being detained would roam the streets longer as court backlogs increased. Justice would be delayed even further. Justice delayed is justice denied. Presently in the District of Columbia courts, justice is too long delayed in many, many instances.

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

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

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

The figures apply, of course, to arrest

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

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

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

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

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

Even if preventive detention were the only flaw in the District of Columbia crime bill, the Senate would have good reason to defeat that bill. But it is not. The crime package reported by the conferees contains a rash of other ill-conceived and ill-advised features. Many of these were considered before by the Senate District Committee and were wisely rejected. Many others have never before been presented to the Senate at all.

One of the most dangerous of these provisions is the section which authorizes no-knock searches and seizures. Over hundreds of years man has treasured the right to privacy in his own home. Our long common-law tradition has guarded this right. In the early days of the common law, the principle was laid down that a man could use any means necessary to prevent another person from intruding on his home without his consent. Those patriots who drafted our Bill of Rights strengthened the common law provisions by guaranteeing in the fourth amendment to our Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

If we enact the District of Columbia crime bill with its no-knock authority, we will be making it legal for officers of the law to enter the homes of our citizens in the same manner that burglars enter them. The conference bill does not merely codify existing no-knock procedures as its supporters claim. Rather, it authorizes no-knock breaking and entering under new and far broader circumstances than have previously been recognized. No-knock entry would be authorized where circumstances at the time of breaking and entering would give an officer probable cause to believe that notice is likely to result in the evidence being easily and quickly destroyed or disposed of, is likely to endanger the life or safety of the officer or another person, is likely to enable party to escape, or would be a useless gesture. Using these flimsy standards of probable cause and likelihood, the number of no-knock entries by police is certain to increase substantially, bringing on all the dangers of shoot-outs between police and citizens seeking to protect their homes from unknown intruders. In 1958 in the case of Miller against the United States, the Supreme Court declared:

> Every householder, the good and the bad, the guilty and the innocent, is entitled to the protection designed to secure the common interests against unlawful invasion of the house. The petitioner could not be lawfully arrested in his home by officers breaking in without first giving him notice of their authority and purpose.

Mr. President, this bill very savagely denies to Americans the right to believe that their home is their castle. We derive our law largely from England. William Pitt was a man who recognized that eternal vigilance was the price of liberty. He stood on the floor of Parliament and opposed a proposal to allow no-knock entry on the around that it was necessary to enforce the tax laws of England. He said that a man's home is his castle, and he proclaimed that:

> The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter, the rain may enter,—but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement!

That is something precious that we have inherited from England, and yet this proposal would destroy it. That wise judgment, affirming hundreds of years of common law and constitutional principles, should certainly not now be abandoned.

S. 2601 as reported by the conferees contains wiretap provisions far broader than those passed by the Senate. The Senate sought to follow the pattern set forth in previous legislation. However, those guidelines are almost completely disregarded in the conference bill. The legislation before us today authorizes governmental intrusion into traditionally privileged conversations between doctor and patient, lawyer and client, priest and penitent. The minimum additional evidence which might be obtained in this manner cannot be worth the coarse and unconstitutional invasion of privacy that would be involved. Wiretapping and other forms of electronic eavesdropping, except under the most strictly controlled circumstances and in the most serious of cases, have no place in a free society.

The provisions of the District of Columbia crime bill which deal with juvenile offenders are blatantly hostile to any reasonable concept of justice. The legislation before us today is completely opposed to the important goals of fair, speedy, and enlightened processing of juvenile offenders and their meaningful rehabilitation. This is not a model bill for juveniles but a repressive and regressive step back into the dark ages. We in the Senate should seek to protect the teenagers of the District. We shall not be doing that if we enact this bill in its present form.

The conference report excludes young people between the ages of 16 and 18 from the jurisdiction of the proposed family division of the superior court if they have been charged with murder, forcible rape, burglary, armed robbery, or assault with intent to commit any such offense. No prior finding of delinquency for serious crime is required. This provision denies the young man or woman an opportunity to be rehabilitated through the specialized juvenile court. The fact is that to imprison a 16- or 17-year-old with adult criminals in adult penal institutions would virtually assure that no rehabilitation will take place.

Hours could be spent delineating the barbaric juvenile provisions in this bill. Preventive detention of juveniles is authorized with only the most meager procedural safeguards. The long standing right of a child to demand a jury trial is completely eliminated. No father, mother, or relative whose child is arrested would have under this bill, if we pass it, the right to demand for that child a jury trial.

Though a juvenile would probably require legal assistance more than an adult, no guarantee is made of the right of a child to be represented by counsel at every stage where such representation may be needed.

The conference bill makes no firm provision of prompt treatment for juvenile offenders. It would allow a continuation of the long incarceration of juveniles with all the accompanying ill effects of such detention. Many young offenders, detained under shocking conditions, may be lost forever to a life of crime because their cases are not considered promptly by an enlightened juvenile court.

Another area in which the conference bill is seriously deficient is that of criminal insanity. Under this bill a defendant who is acquitted by reason of insanity must 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. A sane person may be automatically confined in a mental institution solely because he has raised a reasonable doubt as to his sanity at the time of an offense which may have occurred many years before. In addition, the burden of proof on the issue of insanity is taken from the prosecution—where it has been for hundreds of years—and is placed on the defendant. The prosecution will no longer be required to prove the defendant's capacity to commit the crime beyond a reasonable doubt. If this bill in its present form is passed, the defendant will have to prove that he lacked the ca-

pacity to commit the crime. This provision runs directly counter to the hallowed American tradition which assumes that man is innocent until proven guilty. This constitutional guarantee was reaffirmed earlier this year by the Supreme Court ruling in In re Winship that the prosecution must establish beyond a reasonable doubt every fact necessary to constitute the crime charged.

Mr. President, I could go on and on. Virtually every criminal procedure section of the conference report provides a variety of new possibilities for subverting individual liberties.

These measures can make no real contribution to the fight against crime. They are nothing more than hysterical shots in the dark.

Mr. President, I fervently believe that in the District of Columbia there are ample criminal statutes providing adequate punishment for persons convicted of or pleading guilty to committing crimes. One problem is that too many judges fail to show sufficient backbone and integrity in imposing sentences against defendants who have been proven guilty beyond any reasonable doubt.

Early in 1966 Laurence D. Chappel, who is regional manager of a foodstore chain and who has a bad traffic record of reckless driving, was operating his automobile on the wrong side of Connecticut Avenue shortly after midnight. The headlights were not on. According to eyewitnesses, including members of the Police Department, he was driving his car at an excessive rate of speed, and he disregarded a red traffic light and crashed directly into a taxicab injuring the cabdriver and four passengers. Dr. George Crile, an outstanding surgeon from Cleveland, sustained internal injuries which appeared at the time to be fatal. Three surgeons from Cleveland were flown into Washington to assist him. They reported that his life was saved only because of the fact that he was an athlete and in fine physical condition before the accident. Mrs. Crile, a daughter of Poet Carl Sandburg, was also seriously injured. Two other passengers in the taxicab sustained severe head cuts.

According to eyewitnesses, Chappel drove recklessly an additional six blocks before he was stopped by police officers. The case against Chappel was prosecuted vigorously. The jury, having heard all the evidence, found him guilty of drunken and reckless driving, leaving the scene of an accident, and driving on the wrong side of the avenue. Yet, despite the preponderance of evidence and the jury verdict, the trial judge imposed no jail sentence whatever.

Laurence Chappel did not spend 1 day or even 1 hour in jail. Chappel, or the corporation that employed him, paid out some $1,500 in fines. If Laurence Chappel had been a black man or a laborer rather than a grocery chain executive, it is doubtful his punishment would have been a mere slap on the wrist for very seriously injuring five persons by his wanton criminal and reckless acts in violation of the law.

Mr. President, developing an effective response to the problem of crime in the Nation's Capital will be exceedingly difficult. It will require diligence, hard work, understanding, and a willingness to commit a far greater share of our resources. The problem will not be solved by enacting irresponsible legislation that defies our Constitution and our greatest national traditions. We can pass the conference report on the District of Columbia crime bill and go home and tell our constituents how tough we are in dealing with crime. But we would only be deluding our constituents and ourselves.

Mr. President, let us refrain from the temptation to give another kick in the teeth to the already besieged residents of the District of Columbia. Let us live up to our responsibilities by defeating this Pandora's box of repressive legislation and then get on with the work of enacting meaningful court reorganization legislation.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SPONG). What is the will of the Senate?

Mr. YOUNG of Ohio. 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. EAGLETON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. EAGLETON. Mr. President, my colleagues have been discussing in some detail a number of the questionable provisions in the District of Columbia crime conference report—preventive detention, mandatory minimum sentences, and certain changes in the juvenile code. These are all parts of the bill which make it impossible for me to give it my support. Today I want to discuss yet another section of the bill which I believe to be bad legislation—the section dealing with wiretapping.

In 1958—12 years ago—I came to Capitol Hill to testify at hearings on "Wiretapping, Eavesdropping, and the Bill of Rights" before the Subcommittee on Constitutional Rights, then chaired by the late Senator Thomas Hennings of Missouri.

At that time I was circuit attorney of the city of St. Louis, then the eighth largest city in the country—a city with many of the same law enforcement problems as the District of Columbia. I came to testify as one of the very small minority of prosecutors opposed to wiretapping legislation.

Let me stress that I was well aware of the practical arguments in favor of electronic eavesdropping. I had heard the stories of cases broken with the aid of electronic eavesdropping and I had no doubt that some criminals could be apprehended as a result of it.

But, on balance, it seemed to me then—as it does today—that the good derived on the one hand simply did not outweigh the serious threat to civil liberties on the other.

Today much of what I said then continues to be valid. My statement then—it was May 22, 1958—was, in part, as follows:

> In the history and spirit of the Bill of Rights is the proposition that every person is entitled to a measure of privacy. These basic constitutional amendments insulate the individual from the vast powers of Government. They protect his right to communicate his thoughts freely. The Bill of Rights guarantees every person that he will not be deprived of his liberty without due process, and we know that this liberty includes freedom from arbitrary governmental interference in his normal activities.
>
> Wiretaping is an attack on this privacy. It removes the insulation between individual and government. Wiretapping hinders his freedom of communication and invades his liberty. In this sense, wiretapping constitutes an attack on the spirit of the Bill of Rights. Anything so out of harmony with our basic notions of constitutional rights cannot help but constitute a serious threat to all our constitutional rights. To view the problem otherwise is to take a highly technical and formalized view of constitutional rights.

In the 12 years since I delivered these remarks the country has seen many changes, but the requirements of the Bill of Rights have not been altered. Nonetheless, in the 1960's, technological advance and an absence of public watchfulness combined to allow successive encroachments on this fundamental right to privacy.

We have learned, for example, that our Federal tax returns—long thought to be confidential—are available to inquirers for a broad range of purposes—even purely political ones.

We have learned that Government investigators scrutinize the card files of our libraries looking for the names of borrowers of certain kinds of books.

We have learned that an impressive array of Government computers is used as a storehouse of information of all kinds on so-called persons of interest.

And, in 1968, Congress gave legal authority to Federal law enforcement officers to use electronic eavesdropping in certain cases under court order.

I am aware, of course, that we are not here today to debate the wisdom of title III of the Omnibus Crime Control and Safe Streets Act which grants this wiretapping authority to Federal officials. The fact is, they have that authority.

The question presented by this conference report is whether we want to extend that authority in the District of Columbia to local law enforcement officials as well.

In my view we do not.

Let us look at the practical effects of this bill as well as the constitutional objections.

What we are asked to do in this session of Congress is to deal legislatively with the very serious problems of street crime in the District. But electronic eavesdropping is not an appropriate tool for combating street crime.

Purse snatchers do not plan their activities on the telephone. They take advantage of opportunities as they are presented.

Nor do vandals plan by telephone to destroy property.

Yet the conference report gives the Chief of Police of the District the authority to seek court orders to eavesdrop

in cases of this kind. Street robbery, burglary, and destruction of property—offenses not in the Senate crime bill but accepted by the conference—are peculiarly individual offenses. They do not involve concert or conspiracy, and they are unlikely to be planned over the telephone wires.

If we must have legalized wiretapping, let us make every effort to limit it to situations in which we can expect some positive results. A case can be made for electronic eavesdropping in cases involving organized crime—particularly in the area of narcotics traffic, which is directly related to street crime. But surely these powers should not be extended to local police chiefs in such breadth as to cover the general range of crimes committed on the streets.

We must never become casual about intercepting telephone conversations. In this modern electronic age, the telephone has replaced the backyard fence as the chief medium for conversational exchange. As such, these exchanges are fully deserving of protection from unwarranted intrusion.

It is not enough to argue that because one set of officials can intercept our telephone conversations, we have no cause to prohibit a second set of officials from doing the same. I firmly believe that the extension of the wiretap authority to local officials increases still further the possibility that unwarranted eavesdropping will occur.

The extension of wiretap authority to the Metropolitan Police Department cannot stand on its merits. It will have a negligible effect on the problem of street crime in the District and, on the negative side, will pose a threat to the precious rights of privacy and free speech which every citizen of this country should enjoy.

The District of Columbia crime substitute measure has completely eliminated the wiretap sections of the conference report. In my view, that is yet another reason for Members of the Senate to oppose the conference report and support the substitute measure.

I will close with a quote from Justice Brandeis, as I did in 1958, because it seems to me to apply with equal force to the issues before us now, 12 years later. Justice Brandeis wrote:

> The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding.

Taking the warning of Brandeis to heart, I do not want to be overzealous and infer that our democracy will crumble if wiretapping is extended. Such is not the case. However, one more democratic safeguard will have been eroded.

Mr. MOSS. Mr. President, I shall vote to ratify the conference report on the District of Columbia crime bill.

It has not been an easy decision. I have doubts about the wisdom and constitutionality of several of the bill's more controversial provisions. On previous occasions I have voted against no-knock and the question of preventive detention has never previously been before the Senate. I would prefer that these two provisions not be in the bill.

But we must face legislative reality. If the Congress is this year to overhaul the archaic and hopelessly inadequate court system in the Nation's Capitol, we must do so with this bill now. The press of business makes it virtually impossible to get another District of Columbia crime bill through both houses of Congress this session.

If no-knock and preventive detention are unconstitutional, then the courts will nullify these provisions without throwing out the entire legislation as we would have to do here in Senate. No doubt a court test of these provisions can be arranged quickly. Unfortunately another crime bill without these controversial provisions cannot be arranged very quickly.

The citizens and visitors of the District of Columbia cannot wait. Unchecked crime ravages the streets and homes of Washington every day and every night. People are afraid. Look at the barred windows, the deserted nighttime streets, the empty stores, and the broken lives of the crime's victims.

Our primary concern must be for the potential victims of crime. Most of the victims of crime in Washington, by the way, are black, not white. These black people, who often cannot afford to escape to suburbs, are the ones who will suffer the most if the District of Columbia crime bill is not passed.

As a prosecuting attorney for 8 years, I dealt with criminals and the accused. I am sensitive to their rights. I know the single most important step we can take to protect the rights of the accused and to reduce crime is to speed up the bogged down judicial process. The court reform provisions in this bill will cut pretrial delays by 75 percent. The bill also provides for a 60-day trial guarantee which should mitigate against the dangers of pretrial detention.

In this imperfect legislative world we operate in, we cannot always have what we want. As I have indicated, I wish no-knock and preventive detention had been left out. If the House had not attached these controversial measures, we could have had an excellent District of Columbia crime bill many months ago. But we are faced with a choice of a bill with some bad sections or no bill at all. On that basis, I must vote to protect the victims of crimes. We simply cannot tolerate continued lawlessness.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

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

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;

S. 778. An act to amend the 1964 amendments to the Alaska Omnibus Act;

S. 885. An act to authorize the preparation of a roll of persons whose ancestors were members of the Confederated Tribes of Weas, Piankashaws, Peorias, and Kaskaskias, merged under the treaty of May 30, 1854 (10 Stat. 1082), and to provide for the disposition of funds appropriated to pay a judgment in Indian Claims Commission Dockets numbered 314, amended, 314–E and 65, and for other purposes; and

S. 3685. An act to increase the availability of mortgage credit for the financing of urgently needed housing, 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 the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the text of the bill (S. 2601) to reorganize the courts of the District of Columbia, and for other purposes.

Mr. MUSKIE. Mr. President, the Attorney General suggested to a congressional committee that "no-knock" had become a misunderstood catchword. He proposed that "no-knock" be renamed "quick entry."

I suppose that we should expect this sanitizing process to continue. Perhaps "wiretapping" should be renamed "acoustics assistance," and "preventive detention" might be more appetizing if we called it "delayed release."

The Attorney General should not try to fool the Congress, and Congress should not fool itself. No one can whitewash the provisions of wiretapping, no-knock, and preventive detention. They are bad no matter what they are called.

Mr. President, considering measures to control criminal activity is a delicate task for a legislature in a free society.

A local newspaper editorially suggested yesterday that this District of Columbia Crime Bill was an "acceptable legislative compromise." I cannot agree with that statement, and I caution my colleagues that the Bill of Rights is not something we should write off for the sake of a legislative compromise.

We are considering fundamental concepts of fairness, security, privacy, and individual rights. Horse trading here is inappropriate. It is as inappropriate for us today as it was for those who first demanded those rights in America.

At the same time, crime in America—street crime as well as organized crime—has not been effectively reduced in recent years. It has, in fact, increased. This is as true of the Nation's Capital as it is of America's other large cities.

In the District of Columbia the Congress has a clear responsibility to act to halt the rise in crime. At the same time, we can make the District a model for other cities. We can experiment, in a progressive manner, with new policies and programs aimed at restoring a sense of safety and security and freedom to go where one pleases, by day or night.

I think we all recognize that there is no good reason for delay in reporting out meaningful anticrime legislation. That is why I strongly support seven of the nine titles in the Conference Report of the District of Columbia Crime Bill.

The provisions dealing with court reorganization, the District of Columbia Bail Agency, the Public Defender's Office, and the Interstate Compact on Juveniles

are important contributions to law enforcement and should be approved by the Senate.

With some modifications, the provisions dealing with nighttime searches, criminal penalties, juvenile court procedures, moot and interlocutory appeals, and the insanity defense should improve the District's system of criminal justice.

These provisions may well serve as models to other communities faced with similar problems.

And so I have cosponsored amendments introduced by Senator ERVIN, and bills introduced by Senator GOODELL (S. 4080 and S. 4081), that embody these provisions of the conference report.

However, I cannot, in good conscience, accept the entire conference report itself.

For the provisions of the conference report dealing with wiretapping, with no-knock searches, and with preventive detention are—in my judgment—unwise and unnecessary infringements on our fundamental ideals of justice and freedom, our time-honored sense of privacy, and our constitutional Bill of Rights.

Because we must vote for or against all of the provisions of the conference report at once, this bill presents a difficult choice. We must ask ourselves whether this is an appropriate area for "legislative compromise" . . . whether we should look beyond "only a few" infringements on rights and liberties in exchange for much that is good.

The balance between what is right and what is wrong with the conference report is not a balance I can accept. It is not a balance that I would expect my constituents in Maine to accept. And it is not a balance which the citizens of the District of Columbia should be forced to accept.

We have a solemn obligation, in the Senate, to help preserve liberty as well as order, to show that we care about people as well as statistics, and to speak out about what we must not do as well as what we must do.

I think it essential that we keep in mind what the real and justifiable needs are in the field of law enforcement.

We must spend the money required to to provide better training, higher salaries, and more effective equipment for the police.

We must spend the money required to employ enough judges and supporting court personnel, so that the intolerable delays between arrest and trial—and between trial and appeal—become a thing of the past.

And we must spend the money required to reform, in a fundamental way, our penal institutions—so many of which have become breeding grounds of misery, and even more serious criminal behavior among the inmate population.

Our preoccupation with and our excessive commitment of resources to the SST, with the ABM, with military success in Indochina must stop—if we are to reverse the growth of crime in America by spending the money needed to do so.

We fool ourselves dangerously if we think we can improve our society and our way of life by endorsing the practice of electronic eavesdropping—by authorizing law enforcement officers to break into homes without warning—or by imprisoning persons in overcrowded jails while they are presumed to be innocent.

These are neither reasonable nor necessary law enforcement tools. They are instruments of fear. They are tools of repression. And they are measures which any free society must reject in no matter what guise they are presented.

WIRETAPPING

The wiretapping provision of the District of Columbia crime bill is unacceptable.

Until 1968, wiretapping was prohibited by Federal law. In that year, Congress authorized a limited exception to this rule directed at sophisticated criminal organizations, whose illegal activities often leave little physical evidence. This was considered necessary to unmask and prosecute organized crime.

The District of Columbia crime bill preserves and expands the exception but forgets the rule—the rule that we should protect and preserve our privacy. The bill authorizes electronic surveillance for arson, burglary, fencing stolen property, destruction of property in excess of $200 and second degree murder. And the bill authorizes it in advance of judicial approval.

I had serious reservations about extending Federal authority in this area in 1968. In fact, I voted for amendments limiting this expansion. I have even greater reservations about the inclusion of broad wiretap and bugging authorization for local authorities now.

I question whether crimes which are individual acts—rarely ones of concerted action or conspiracy—will be solved by electronic eavesdropping.

In many respects, the conference version of this bill is an improvement over the legislation originally passed by the House. Greater limitations have been placed on the scope of authority and on the use of these communications, and penalties are provided for the distribution of interception devices. The Senate also sought to limit the scope of criminal offenses covered, but ultimately were forced to recede.

However, I remain concerned over the potential widespread use of electronic eavesdropping and wiretapping. It is difficult to underestimate the number of people who will be subjected to government surveillance. How may third parties, not involved but merely mentioned in conversations, suppress information which could damage them and their reputations?

For every criminal heard by our official eavesdroppers, dozens of innocent people will have their privacy violated. For every shred of evidence gleaned, dozens of dialogs will be recorded imparting unfounded gossip, confidential communications, or scandalous—though noncriminal—information.

This is too high a price to pay. This is hardly an acceptable legislative compromise.

Under this proposed section, any law enforcement official may wiretap or bug if he unilaterally determines—without prior court approval—that an emergency situation exists with respect to conspiratorial activities characteristic of organized crime and further unilaterally determines that there are grounds upon which he may get court approval ex post facto. If he makes such a totally unsanctioned interception, he has 3 days before he must apply to the court for approval. Only when his application is denied must he terminate the interception. And, in the meantime, how much illegal and private information would he have received?

I have supported measures to give the Federal Government the resources and the tools to root out organized crime and drug traffic; but the principal duty of the District police is to control crime that is so destructive of the quality of life in this city—the muggings and murders, the robberies, rapes, and assaults. This wiretap provision will only drain manpower from those endeavors. I question whether even drug-related crimes on the retail level can be controlled by electronically assisted investigations of drug traffickers, and I hope that the Federal Bureau of Narcotics and Dangerous Drugs is well able to handle wholesalers of drugs.

The constitutionality of the proposed legislation has also been questioned, but one thing is certain. The fourth amendment guarantees the right of the people to be secure in their persons and houses against unreasonable searches. And central to that guarantee, said the Supreme Court in 1886 in Boyd against United States, is "the sanctity of a man's home and the privacies of life."

The Senate has an obligation in advance of judicial scrutiny and even independently of constitutional principles to consider "the sanctity of a man's home and the privacies of life" for the people of the District. We cannot ignore that responsibility by passing legislation with the thought that it may not matter because it may not be constitutional.

It is our duty to stake out an area where the privacy of the people is inviolate—areas where the individual is not inhibited by fear of the state's intrusion. That line must be drawn here.

THE NO-KNOCK ISSUE

I am perplexed and disturbed by the conference version concerning no-knock powers being presented to the Senate for approval. We are not presented with a narrow, sharply defined proposal. Instead, we are asked to enact into law a provision which one high Justice official has stated to be indispensable if law enforcement officers in the District of Columbia are to do their job properly, and which another high Justice Department official has declared does no more than codify existing law in this area. If our U.S. attorney and our Attorney General do not—appear to—agree on the nature of the proposal, we in the Senate have an added responsibility to know what we are doing.

I read this provision as allowing police to burst into private homes, day or night, so long as a single policeman thinks he has probable cause to believe that evidence is likely to be destroyed.

Those who favor the conference re-

port on the no-knock issue believe that it represents a proper balance between individual rights and the needs of law enforcement. They argue that the conference report does not really grant to the police additional powers to conduct "no-knock" searches. They argue that police officers have had such authority since common law times. They argue that they are merely continuing the existing authority and adding to it reasonable safeguards.

If that were all, I would be tempted to support the provision. But it is not all. Balancing the security of an individual's home against the security of society in general is not easy, but I must disagree with the supporters of this provision for the following reasons:

First. The trend of the law for decades has been to encourage the police to get prior judicial approval for search warrants. The import of this proposal, as it relates to no-knock, is to the contrary. Under certain conditions the bill expressly sanctions no-knock procedures without prior application for a warrant.

Second. The language of the bill is unclear with respect to the degree of probability that must be shown that evidence will be destroyed if a no-knock search is not made. The Senate conferees maintain that they reluctantly agreed to language implying only likelihood that evidence will be destroyed if a no-knock search is not made. They agreed to this language, they say, only on the clear understanding that it must be measured against the language of the Supreme Court in *Ker* v. *California*, 374 U.S. 23 (1963). This language and the expressed doubts of our conferees lead me to the conclusion that the provision is a retreat from our traditional notions of probable cause, leaving an officer in a position to conduct a no-knock search with little factual justification for the breaking and entering without notice.

Third. The use of the word "likelihood" raises in my mind a serious constitutional question. The fourth amendment to the Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and *no Warrants shall issue, but upon probable cause*, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

I do not think that the standard for a no-knock entry comports with the right of the people to be free from unreasonable searches. I cannot in good conscience support this provision. It is too casual a grant of power and it increases the danger to police officers who are thus encouraged to make "no-knock" entries into homes. It is too high a price to pay for an "acceptable legislative compromise."

My misgivings about the merits of this proposal are compounded by the recognition that effective law enforcement requires the full cooperation of the community. In cities like Washington and in our suburban communities, our society is becoming increasingly crowded. People are living closer together; our privacy is a value which we must carefully guard. Our responsibility in writing our laws should be to find ways to give people more privacy and security from intrusion, not less. Overcrowding and unsatisfactory conditions alone create tension. Such tension should not be enlarged by a provision in the law which undermines the security of one's home and threatens privacy while increasing the potential for intrusion.

The no-knock proposal has become a symbol of insecurity, endangered privacy and repression in this city. When the language of a proposal which intrudes upon the sanctity of an individual's privacy is unclear and when it has the potential for intensifying hostilities between the police and those whom the police seek to protect, we should subject it to searching examination.

The examination leads to conclude that we should furnish better police protection to our city and develop mutual confidence between our police and our citizens, rather than raise the specter of a police officer breaking into an apartment or a house without notice on the basis of personal conjecture.

PREVENTIVE DETENTION

Crimes committed by persons on court-ordered release or bail are a major impediment to effective law enforcement. The money bail system as it exists in this country does not now make sense and has never made sense. Under the leadership of Senator ERVIN, we have made progress, but our progress has been too slow. We have not devoted sufficient resources to the bail agencies, and we have not given bail reform a chance to work in the District because of the congested court calendar.

Court reorganization to promote speedy trials is indispensable and should reduce crime committed by those on bail. The District court system must be overhauled, and an adequate number of judges and court personnel must be assured. Those accused should be brought to trial within 60 or even 30 days.

With these needs in mind, I have examined the conference report provision for preventive detention, and I have considered the arguments made by those who support that provision. The supporters are satisfied that enactment of the conference report would constitute a major reform of existing bail practices and would result in a lower percentage of persons detained prior to trial. They argue that this will occur because the test will be the narrow question of "dangerousness" rather than the unavailability of adequate release conditions.

They also argue that this provision imposes procedural safeguards which now do not exist; that constitutional rights are preserved by using detention only for defendants who pose an appreciable danger to society; and that the provision assures procedural due process through a hearing of record.

I cannot accept these arguments. I am bothered by the fact that the proposal reflects a concept which runs counter to the presumption of innocence until guilt is proven beyond a reasonable doubt. Some may feel that there is nothing about the preventive detention provision which establishes guilt. But there is certainly a substantial restraint of liberty in the absence of proven guilt. This provision attempts to make society safer by removing from its midst those of alleged dangerous proclivities while they await trial. It assumes intolerable delays between arrest and trial, yet it further clutters the court calendar. In fact, this provision further congests the criminal calendar and will likely result in even longer delays between arrest and trial. These are practical considerations which the supporters have not answered.

In addition, there are problems of constitutional dimensions which concern me. The eighth amendment declares: Excessive bail shall not be required. There is some disagreement among constitutional experts as to the meaning of the eighth amendment. I do suggest, however, that the eighth amendment dictates a constitutional right to pretrial release limited only by conditions that may be reasonably imposed to assure that the trial of the accused will occur. I have always understood that denial of bail in capital cases is permitted in search of that assurance. Where a defendant is threatened with loss of life or life imprisonment, he would be more likely to flee than the one who knows that the most he may suffer is temporary imprisonment.

Preventive detention may also violate the due process clause of the fifth amendment, since the individual is deprived of his liberty on the mere possibility that he will be dangerous if released on bail, and the mere probability that he is guilty of the crime for which he has been charged.

We could all argue statistics about what percentage of persons are arrested while on bail for the same crime or for a crime of another category. The percentage is small. But how do we predict accurately which defendants are apt to be "dangerous" and which are not? We are gambling with a correctional system and detention facilities which are hardly models of training and rehabilitation. This provision would send to jail people who have not been convicted, people who may be guilty of nothing, and people who may have never committed a single crime. People would be sent to jails that do not have room for them, jails that may corrupt them, and jails to which convicted criminals with suspended sentences may not be sent at all. The District of Columbia prisons have been a conspicuous weakness in our law enforcement system. They are overflowing, they are archaic, they are infested with drugs, and most of their inmates go back to the streets trained only in the newer techniques of crime.

This is too high a price to pay for an "acceptable legislative compromise."

I am concerned with constitutionality, with our inability to predict behavior with certitude, and with the potential harm to innocent people of preventive detention.

There are ways, if we will, to shorten the time between arrest and trial and to supervise the accused who may be dangerous—the goals of preventive detention. Many of these alternatives are included in other titles of this legislation which I support and do not involve the potential abuses of individual rights that mark preventive detention. These are the alternatives I prefer. I doubt the effectiveness of preventive detention; I question its constitutionality; and I am apprehensive over its impact.

The tragedy of the District of Columbia crime bill is that it represents, in

part, bad bargains forced on the people of the District by quick answers and easy solutions which threaten our freedoms as well as theirs.

There are no quick answers and easy solutions. Yet the District of Columbia crime bill perpetuates the notion that crime fighting is principally a matter of stiffer penalties, greater government authority, and fewer freedoms. Such measures may have a slight effect on the crime rate but they cannot make up for courts that fall years behind, for prisoners that turn out criminals, for probation and parole services that have neither the money nor the personnel to supervise, and for police forces that are ill paid and overworked.

The Senate acts not only for the people of the District, but also for all Americans. The law we write for the District should be a model for all the 50 States. Instead, the provisions of this conference report make the people of the District subjects for an experiment in repression. It is far from certain that these provisions would reduce crime in the District; but it is certain that all the people of the District will find their privacy endangered, the security of their homes threatened, and just treatment before the law jeopardized.

The security and the privacy of our constituents are also at stake as we write laws for the District.

This is not merely a set of local ordinances we now consider. This is an act of Congress, and it carries that weight. If we pass ill-considered legislation for this jurisdiction, it will reverberate throughout the Nation. On the other hand, if we reject the conference report and pass constructive legislation, the Senate can offer effective leadership against crime for all Americans.

I cannot support enactment of the provisions to which I have referred. This has led to my decision to cosponsor the Ervin amendments and the Goodell bills and to vote to reject this conference report. The District of Columbia does need legislative assistance to reduce crime. There is a good deal of vital help in this bill. However, this conference report does not offer us an acceptable choice. We are forced to accept all or nothing.

I believe that the Senate can do better. We can reject the conference report and pass better legislation to provide effective law enforcement for the District.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMERICAN BAR ASSOCIATION ENDORSES S. 30, THE "ORGANIZED CRIME CONTROL ACT OF 1969"

Mr. McCLELLAN. Mr. President, on July 15, 1970, the Board of Governors of the American Bar Association met in Chicago in special session at the request of President Nixon to review various items of legislation in the criminal justice field now pending before the Congress. S. 30, the "Organized Crime Control Act of 1969," which passed this body on January 23, by a vote of 73 to 1, was among those items of legislation considered by the board of governors.

The Senate will, of course, recall that several individual titles of S. 30 were closely modeled on American Bar Association recommendations. Title II, dealing with general immunity, was patterned after the bar association's 1952 recommendations for general immunity legislation. Title IV, dealing with false declarations, was modeled on the American Bar Association's 1952 model perjury act. Title VII, dealing with syndicated gambling, was endorsed on February 23, 1970, by the house of delegates in its original form as S. 2022. Title IX, dealing with racketeer influenced and corrupt organizations, was modeled on the bar association's 1968 resolution endorsing "in principle" all legislation having as its purpose "the adopting of the machinery of antitrust laws to the prosecution of organized crime." And, finally, title X, dealing with dangerous special offender sentencing, was closely patterned after the bar association's minimum standards in the sentencing and appellate review field.

Nevertheless, the July 15 meeting in Chicago was the first occasion for the bar association's consideration of the actual text of S. 30 and the way in which the Senate had implemented the past positions of the bar association in a specific item of legislation. This meeting in Chicago was the culmination of a process within the bar association that covered several months. It began with the detailed consideration of S. 30 in both the individual rights and responsibilities and criminal law sections of the American Bar Association. In that connection, the Senate will recall that, on June 12, 1970, I had occasion to draw to its attention certain misleading newspaper stories appearing at that time that conveyed the impression that the bar association was in the process of raising major objections to the enactment of S. 30. I am especially pleased now, therefore, to tell the Senate that the board of governors has approved in principle the provisions of S. 30 and that they urge its enactment by the Congress as soon as possible. It is always gratifying to receive the approbation for one's labors of such a distinguished group as the American Bar Association, and I am grateful to the association for this endorsement of S. 30.

In recommending the passage of S. 30, the bar association also urged that the Congress give prompt consideration to seven specific amendments to the bill as it passed the Senate. In the main, I find these amendments generally acceptable. Indeed, they may be characterized as constructive contributions to the legislative process. For example, amendment No. 6 suggests that title IX of S. 30, dealing with racketeer-influenced and corrupt organizations, be amended to authorize private civil damage suits based upon the concept of section 4 of the Clayton Antitrust Act. This amendment, particularly, should prove, if accepted by the House, to be a major new tool in extirpating the baneful influence of organized crime in our economic life. Only one of the seven amendments do I find unacceptable. Unfortunately, in my judgment, the bar association, while approving the major provisions of title I, dealing with the special grand jury, suggested that those provisions of title I that authorize grand jury reports commenting on the noncriminal misconduct of government officials be stricken from the bill.

Mr. President, I recognize, of course, that these grand jury report provisions have been the subject of controversy. Nevertheless, I believe that, on balance, the provisions of title I in this area should be retained. Such reports are now possible under the law of 27 States, and they have proven, on the State level, to be effective and helpful in the administration of justice. I, am therefore, convinced that the right to file these reports should be clarified and restored on the Federal level under the sort of careful safeguards we have provided in title I.

Mr. President, I might say at this point that is the only major provision that the American Bar Association recommended be wholly stricken from the bill. The bar association therefore concluded that 98 percent of the real force of the bill, as far as law enforcement is concerned, should be retained. This grand jury reporting provision is not imperative; it is simply advisable. I think it should be retained, but even if the House should strike it, I would say without any reservation that 98 percent of the real effectiveness of this bill will have been retained and enacted into law.

Mr. President, what emerges from this meeting of the Board of Governors of the American Bar Association is the clear message to the Congress that the time for delay in the processing of S. 30 should end. No longer should it be possible for anyone to suggest that this bill is riddled through with defects or unconstitutional provisions. There are, of course, policy issues here on which reasonable men can disagree, but disagreement is not a grounds for delay. This bill should be processed so that the House and the Congress can work the will of Congress. I would hope that this course of action will now be followed in the other body.

The other body has had this bill now for 6 months. Procrastination in processing it from now on, if any, can only enure to the advantage of criminals in this country. The most expert counsel of our Nation's lawyers has been given with respect to it and little has been found wanting in the provisions of the bill. With the exception of the one provision, all other provisions are approved as drafted and passed by the Senate, subject to several minor amendments that have been suggested, and most of these amendments actually are constructive and strengthen the bill; they do not detract from its force and the effect or from its quality.

I am hopeful that the House will carefully consider and adopt the most important and wise of these amendments

thereby strengthening the bill, move it out, and let Congress work its will. The House has had the bill for 6 months. If the crime situation in this country were not so critical, and if there were not such an urgent need for this legislation—for all of the additional tools that Congress can provide—to strengthen the arm of our law enforcement officials and agencies, perhaps we could afford further time. But time, delay, and procrastination in this case work only to the advantage of the criminal and contribute nothing whatever to the security and protection of society in the person and property or civil liberties. I urge the swift passage of this bill now without unnecessary delay.

Mr. President, I ask unanimous consent to have printed in the RECORD a text of the resolution of the Board of Governors and a staff memorandum on the grand jury report provisions of title I.

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

AMERICAN BAR ASSOCIATION

Resolved, that the American Bar Association by action of its Board of Governors in meeting July 15, 1970, in Chicago, approves in principle the provisions of S. 30 (91st Congress, 2nd Session), the Organized Crime Control Act of 1969, and urges its enactment by the Congress as soon as possible, with the recommendation, however, that the Congress give prompt consideration to amending the measure in the following particulars:

1. To restrict the right of private persons to submit allegations of criminal offenses directly to a special grand jury as currently provided in Title I, Section 10(a) and, in lieu thereof, to adopt phraseology requiring such information to be channelled through the appropriate prosecutor, who should be required to communicate his action or recommendation thereon to the special grand jury.

2. To eliminate current provisions in Title I, Section 101(a), which empower special grand juries to submit reports criticizing public officials or employees without returning an indictment; and similarly to eliminate provisions authorizing special grand juries to exonerate public officials or employees by report; and to make other technical changes in this Title consistent with these amendments.

3. To amend Title IV, Section 401(a), by incorporating the language of the Model Perjury Act, approved by the American Bar Association in August, 1952, in order to clarify the language of S. 30 relating to false and contradictory declarations.

4. To amend Title VII, Part B, Section 702 (a), in order to provide for a more restricted disclosure of evidence to the defendant as provided therein, by permitting the prosecutor to make a written request for an in camera screening by the court when he believes that such disclosure would constitute situations enumerated in Part A, Section 701, for example, those which would affect the security of the United States, endanger the lives and safety of informants, Government agents or others, or cause unjustified harm to the reputations of third persons; and to grant discretion to the court to withhold any such information deemed justified by its in camera examinations.

5. To amend Title IX, Section 901(a), as recommended by the Judicial Conference of the United States, to give the court discretion to decide which proceedings relating to racketeer influence and corrupt organizations shall be open to the public.

6. To further amend Title IX, Section 901 (a), to include a provision authorizing private damage suits based upon the concept of Section 4 of the Clayton Antitrust Act.

7. To amend Title X, Section 1001(a), in order to incorporate into the provisions for increased sentences for dangerous special offenders the appropriate Standards relating to Sentencing Alternatives and Procedures, which were approved by the American Bar Association, August, 1968.

Resolved further, that the American Bar Association in furthering the objectives of S. 30, also recommends to the Congress prompt enactment of legislation such as S. 1624 and H.R. 322 (91st Congress) entitled Wagering Tax Amendments of 1969, which was approved by the Association in August, 1969.

Be it finally resolved, that the President of the American Bar Association, or other Officer designated by him, is authorized to present the above views to the appropriate committees of the Congress.

MEMORANDUM

To: Senator John L. McClellan.

From: G. Robert Blakey, Chief Counsel, Subcommittee on Criminal Laws and Procedures.

Subject: Grand jury reports under title I of S. 30, the "Organized Crime Control Act of 1969."

Date: July 21, 1970.

You asked for a briefing memorandum on the captioned subject in the context of some of the objections that have been raised to it:

(a) historical background: The grand jury originated in Anglo-American law, in a form in which it largely exists today, at the Assize of Clarendon in 1166. Henry II established it as a body whose function it was to report on and to accuse those who according to public knowledge had committed crimes. Indeed, its report writing and indicting function had been well established for over 500 years before it came to be seen also as a buffer between citizen and State, the function of the grand jury that first comes to mind today.[1]

(b) present law: The modern grand jury is, in the Supreme Court's words in *Blair* v. *United States*, 250 U.S. 273, 282 (1919) a "prototype" of its ancient British counterpart. Its investigative powers are virtually without limitation both on the State and Federal level. *Compare, Ward* v. *State*, 2 Mo. 120 (1829), *with Hale* v. *Henkel*, 201 U.S. No. 43 (1906). Its report writing functions, however, have not survived wholly intact or without substantial limitation. Twenty-one states have legislation similar to the New York statute which in *Jones* v. *People*, 101 App. Div. 55, 92 N.Y. Supp. 275, *appeal dismissed*, 181 N.Y. 389.[2]

74 N.E. 226 (1905) was construed to authorize reports, while six states explicitly authorize such reports by statute.[3] In addition, other states have sanctioned such reports on a common law basis. In 1952, Chief Justice Arthur T. Vanderbilt in *In Re Presentment by Camden County Grand Jury*, 10 N.J. 23, 89 A2d 416, 434 (1955), for example, upheld, over civil liberties objections, grounded on a fear of possible abuse of the rights of individuals, the power of the grand jury to file reports, observing:

A practice imported here from England three centuries ago as a part of the common law and steadily exercised ever since under three successive state constitutions is too firmly entrenched in our jurisprudence to yield to fancied evils.[4]

In similar fashion, the Supreme Court of Florida in upholding the report writing power of grand juries in that State in *In Re Report of Grand Jury*, 11 So 2d 316, 318 (Fla. 1945) observed:

It is the means whereby the people participate directly in the administration of their business and aids to a knowledge of why the grand jury has become such an important agency among free people.

(c) New York law: Practice and law, however, has varied from place to place and from time to time, making generalization about either practice or law difficult to make with assurance of accuracy. The shifting development of the law in New York is illustrative of the general picture. There are records of a New York grand jury as early as 1665. See 1 Hamlin and Baker, *Supreme Court of Judicature of the Province of New York 1691–1704*, 142 (1952). Nevertheless, attempts have been made to abolish the grand jury in New York as a means of instituting criminal prosecutions. A most recent unsuccessful attempt was made in the 1938 constitutional convention. See Heyting, "The Abolition of Grand Juries in England," 19 *A.B.A.J.*, 648–49 (1938). In addition, attempts have been made to abolish its report writing function. In 1946, for example, Governor Thomas E. Dewey vetoed a bill designed to curb this power, saying that such reports were "one of the most valued and treasured restraints upon tyranny and corruption in public office." *Public Paper of Governor Thomas E. Dewey*, 140–41 (1946). More recently, the Court of Appeals of New York in *Wood* v. *Hughes*, 9 N.Y. 2d 144, 212 N.Y.S. 2d 33 (1961) overruled its own *Jones* decision, noted *supra*, and curbed the New York grand jury's power to write reports critical of specific individuals. The response of the people of New York, through their state legislature, however, was promptly to enact comprehensive legislation authorizing such reports, but under limitations designed to overcome the civil liberties objections voiced by the court, see Laws of 1964, Ch. 250, Code of Crim. Proc. § 253–a, and such reports are now filed on a regular basis in New York.[5]

(d) Federal law: On the federal level, the grand jury is, of course, a legal institution whose indicting function is rooted in the Fifth Amendment itself; it is not, however, a requirement of due process under the Fourteenth Amendment. *Hurtado* v. *California*, 110 U.S. 516 (1884). As such, it is beyond the power of legislative abolition.

Nevertheless, the report writing functions of Federal grand juries have been substantially curtailed by district court level decisions, although grand juries continue to issue and district courts continue to accept reports, and the Supreme Court itself has never had occasion squarely to pass on the propriety of the report writing power. But cf. *Hannah* v. *Larche*, 363 U.S. 422, 420 (1960) ("investigates and reports"). The recent report of the January 1970 Grand Jury in the Northern District of Illinois critical of identified members of the Chicago Police Department and the raid they conducted on a Black Panther Party Headquarters is illustrative of the practice. The decision of United States District Judge Edward Weinfield in *Application of United Electrical, Radio and Machine Works*, 111 F. Supp. 858 (S.D. N.Y. 1953) is illustrative of the law. There, Judge Weinfield held beyond the power of the grand jury the issuance of a report that named officials of a union as "Fifth-Amendment Communists" and recommended to the National Labor Relations Board that the certification of the unions be withdrawn.[6]

(a) Recommendation of President's Crime Commission: It was in this context that the President's Commission on Crime and the Administration of Justice in 1967 undertook as a part of its study of crime in the United States to evaluate our Nation's past efforts to arrest and reverse the growth of organized crime. The Commission began by observing in its *The Challenge of Crime in a Free Society 196 (1967)*:

Investigation and prosecution of organized criminal groups in the 20th century has seldom proceeded on a continuous institu-

Footnotes at end of article.

tionalized basis. Public interest and demands for action have reached high levels sporadically, but, until recently, spurts of concentrated law enforcement activity have been followed by decreasing interest and application of resources.

It also commented: And yet the public remains indifferent. Few Americans seem to comprehend how the phenomenon of organiezd crime affects their lives. They do not see how gambling with bookmakers, or borrowing money from loan sharks, forwards the interests of great criminal cartels. Businessmen looking for labor harmony or nonunion status through irregular channels rationalize away any suspicions that organized crime is thereby spreading its influence. When an ambitious political candidate accepts substantial cash contributions from unknown sources, he suspects but dismisses the fact that organized crime will dictate some of his actions when he assumes office. (*Id.* at 188)

Finally, the Commission specifically found that a lack of public and political commitment to end the menace of organized crime was one of six major contributing causes to the failure of our society to deal with organized crime. The Commission observed:

The public demands action only sporadically, as intermittent, sensational disclosures reveal intolerable violence and corruption caused by organized crime. Without sustained public pressure, political office seekers and office holders have little incentive to address themselves to combatting organized crime. A drive against organized crime usually uncovers political corruption; this means that a crusading mayor or district attorney makes many political enemies. The vicious cycle perpetuates itself. Politicians will not act unless the public so demands; but much of the urban public wants the services provided by organized crime and does not wish to disrupt the system that provides those services. And much of the public does not see or understand the effects of organized crime in society. (*Id.* at 200)

Finding that "organized crime succeeds only insofar as the Nation permits it to succeed" (*Id.* at 209), the Commission proposed an "integrated package" of proposals touching on both governmental and private action. Included among these proposals was the recommendation that grand juries should be permitted by law to file public reports. (*Id.* at 200)[7]

(e) Title I of S. 30, the "Organized Crime Control Act of 1969": It was in this context, therefore, that title I of S. 30 was drafted and introduced on January 15, 1969, by Senators McClellan, Hruska and yourself. Recognizing the need for some institutionalized avenue through which information bearing upon the conditions that breed organized crime might be brought to the attention of the public on a systematic and fair basis, the special grand juries, established by title I, are empowered, not only to return indictments, but also to issue grand jury reports as an incident, *but only as an incident*, of the investigation of a Federal criminal offense: (1) concerning governmental misconduct, (2) making legislative or executive recommendations, and (3) regarding organized crime conditions. Where such reports are to be critical of identified public officials (private persons may not be named), however, elaborate safeguards, modeled on New York law (with suitable modification to fit Federal practice) are provided, including notice, opportunity to present evidence, and judicial review prior to publication. These safeguards exceed the limitations now found on the investigations conducted by other Federal bodies and sustained as consistent with constitutional due process. *See, e.g., Hannah* v. *Larche*, 363 U.S. 422 (1960) (Civil Rights Commission)[8]

As so drafted, the provisions of title I have attracted the support, among others, of the Department of Justice (Hearings at 369), the Association of Federal Investigators (*Id.* at 276 "applaud" giving "public" "whole picture"), the National Association of Counties (*Id.* at 330–31 "agree" "no greater deterrent to evil, incompetent and corrupt Government than publicity") and the International Association of Chiefs of Police (115 Cong. Rec., S12562 (daily ed. Oct. 14, 1969).) The support of these groups was most significant, both on the issue of need and fairness, since it would be primarily their work that the special grand juries would review. Nevertheless, restoring to Federal grand juries their historic report writing function was opposed in part by the Committee on Federal Legislation of the New York County Lawyers Association (Hearings at 216: comment on specific individuals) and without discrimination by the American Civil Liberties Union (*Id.* at 456–59).[9] Ths opposition in the hearings was continued on the floor and there led by Senator Goodell from New York.

Senator Goodell offered during the debate on S. 30 an amendment to title I which would have curbed the power of special grand juries to file reports naming public officials. (115 Cong. Rec. S474 (daily ed., Jan. 23, 1969).) His amendment left untouched power of the grand jury to file other reports. In essence, Senator Goodell's attempt to prevent the naming of officials in grand jury reports was based on a two-fold fear: that individuals would be held up to public defamation by false accusations carrying the weight of judicial findings, but made after an unfair, one-sided proceeding, and that they would be unable to reply effectively to such allegations. In addition, he objected to giving to Federal grand juries the authority to comment on state and local officials. He was supported in debate by Senators Cooper and Hart. Senator Cooper questioned the value of a public denunciation not amounting to a charge of criminal conduct in a democratic society. (*Id.* at S477).[10] Senator Hart concurred with the arguments of Senator Goodell and the question raised by Senator Cooper. (*Ibid*) Senator McClellan argued that the report writing power was necessary and that the procedural protections for civil liberties were fair. (*Id.* at S476).[11] The Senate rejected Senator Goodell's amendment; the vote was 59 to 13.[12]

Senator Goodell then offered another amendment which guaranteed the subject of a report the express right to have a "reasonable number of witnesses" called before the grand jury in his behalf. (*Ibid.*) The Committee Report already indicated that the failure to conduct "additional investigations" and call suggested "supplementary witnesses" cast doubt on the propriety of making a report public. S. Rep. No. 91–617, 91st Cong., 1st Sess. 143 (1969). Consequently, Senator McClellan said he saw no inconsistency between the amendment and the provisions of title I. He then indicated that he found it acceptable, and it was adopted by a voice vote. (115 Cong. Rec. S479 (daily ed. Jan. 23, 1970).) As so amended, title I was approved by the Senate as part of the overall bill by a vote of 73 to 1. (*Id.* at 481) Since that time twenty-two Senators not voting on final passage have announced that if present they would have voted for the Act. Only four Senators have not disclosed how they would have voted.

FOOTNOTES

[1] See generally Kuh, "The Grand Jury Presentment: Foul Blow or Fair Play" 55 *Colum-L. Rev.* 1103 (1955) for a review of the historical case, and statutory material.

[2] *Alabama*, Ala. Code 30, §§ 76–82; *Alaska*, Alaska Stat. § 12.40.030; *Arizona*, Ariz. Rev. Stat. Ann. § 13–1531; *Arkansas*, Ark. Stat. Ann. §§ 43–907 to 43–911; *California*, Cal. Penal Code §§ 914.1, 915, 917, 920, 921, 922, 925, 927, 928, 929; *Georgia*, Ga. Code Ann. 59 §§ 305, 306, 307, 308, 309, 310, 313, 314, 315, 316, 401; *Idaho*, Idaho Code Ann. §§ 19–1101, 19–1109, 19–1110; *Indiana*, Ind. Ann. Stat. §9–824; *Iowa*, Iowa Code Ann. §§ 771.1 to 771.3; *Michigan*, Mich. Comp. Laws Ann. § 767.3, 767.4; *Missouri*, Mo. Ann. Stat. § 540.020; *Montana*, Mont. Rev. Codes, Ann. 94 § 1405; *Nevada*, Nev. Rev. Stat. §§ 172.105, 172.115, 172.-125, 172.175, 172.185; *New Mexico*. N.M. Stat. Ann. §§ 41–5–16, 41–5–17; *New York*, N.Y. Code Cr. Proc. §§ 245, 253, 254; *North Dakota*, N.D. Cent. Code §§ 29–10–18 to 29–10–20; *Oklahoma*, Okla. Stat. Ann. 22 § 331; *South Dakota*, S.D. Code §§ 34.1215, 43.1216; *Tennessee*, Tenn. Code Ann. §§ 40–1605 to 40–1608; *Utah*, Utah Code Ann. §§ 77–18–7, 77–19–1; *Washington*, Wash. Rev. Code Ann. §§ 10.28.090 to 10.28.110.

[3] *California*, Cal. Penal Code §§ 929, 930, 933, 939.9; *Georgia*, Ga. Code Ann. § 59–317; *Nevada*, Nev. Rev. Stat. §§ 172, 175; *New York*, N.Y. Code Cr. Proc. § 253–a; *Oklahoma*, Okla. Stat. Ann. 22 § 34L and *Utah*, Utah Code Ann. 1967 Session Laws p. 575.

[4] Court developed rules restrict the power to issue reports, making its exercise consistent with a high regard for civil liberties. *See In Re Camden Co. Grand Jury*, 34 N.J. 378, 196 A2d 465 (1961). For an example of a New Jersey grand jury report dealing with organized crime, see 115 Cong. Rec. S15751 (daily ed. Dec. 5, 1969).

[5] For an example of a New York report, see 116 Cong. Rec. C122 (daily ed., Jan. 19, 1970).

[6] Specifically excluded from the holding were "reports of a general nature touching on condition in a community." 111 F. Supp. 869. These, Judge Weinfield observed, served "a valuable function and may not be amenable to challenge." *Id.*

[7] It has been suggested that this recommendation did not include reports that might comment on specific individuals, Remarks of Senator Charles Goodell, 115 Cong. Rec. S16162 (daily ed. Dec. 9, 1969), and it must be conceded that the text of the Commission Report itself is ambiguous. Nevertheless, when it is read in the context of its "legislative history," it is difficult, I suggest, to read it in so limited a fashion. The Commission's recommendation here was based on the work of its Task Force on Organized Crime, which had before a review of the law that specifically recommended that the "right to file reports should be restored" in Federal law. Since general reports were permissible, see *supra*, "restored" could only be taken to mean to include reports commenting on specific individuals. *See Task Force Report: Organized Crime* 83–85 (1967).

[8] *Measures Relating to Organized Crime*, Hearings before the Subcommittee on Criminal Laws and Procedures, Committee on the Judiciary, United States Senate 91st Cong. 1969 (hereafter cited Hearings).

[9] I note here that the spokesman for the Committee acknowledged that he had no "concrete experience," Hearings at 239, from New York to show that the New York law was not working well and that the spokesman for the Union was asked to provide for the record any indication of abuse in New York or elsewhere and failed to provide any. (*Id.* at 481)

[10] Chief Justice Arthur Vanderbilt in *In Re Camden County Grand Jury* 10 N.J. 23, 89 A 2d 416, 444 (1943) responded to the concern reflected in Senator Cooper's question in these terms:

There are many official acts and omissions that fall short of criminal misconduct and yet are not in the public interest. It is very much to the public advantage that such conduct is revealed in an effective way. No community desires to live a hairbreadth above the criminal level, which might well be the

case if there were no official organ of public protest. Such presentments are a great deterrent to official wrongdoing . . . [and] inspire public confidence in the capacity of the body politic to purge itself of untoward conditions.

[11] Senator Goodell's second point was commented on in the Hearings at 330, by Professor William Greenhalgh, who testified in behalf of the National Association of Counties:

The [Federal grand] jurors are citizens of those [state and local] communities just as much as they are citizens of the United States, and they have precisely the same interest in such matters as they would have if they were sitting on state or local grand juries.

[12] Voting for the amendment were Senators Brooke, Cooper, Dominick, Fong, Goodell, Hart, Hatfield, Kennedy, Metcalf, Mondale, Ribicoff, Stevens, and Young of Ohio.

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

Mr. McCLELLAN. I yield.

Mr. HRUSKA. Mr. President, I commend the Senator from Arkansas for the statement of progress made in the enactment of the organized crime control bill. The report he brings on the action of the American Bar Association is heartening and encouraging.

I join the Senator in calling for early action on this measure by the other body. It is true that further delay will not help, but as the Senator from Arkansas has stated, will hinder effective law enforcement.

Again I commend the Senator for bringing that to the attention of the entire Congress.

Mr. McCLELLAN. I thank the distinguished Senator. I think I might observe that in reference to almost every piece of legislation considered by the Congress in the category of criminal law or criminal procedures, constitutional questions are raised. It is proper that they are raised. Anyone has a right to raise them and to take his position. But I must observe, however, that there is no way to draft legislation in this field, in my judgment, so that everyone will be satisfied with it. That is why we have a Supreme Court to which the legislation may be carried for judicial review to determine if there is anything unconstitutional in it. This body cannot settle such questions. We can argue it and debate it but usually we come up with the same opinion we had before we started. Ultimately, most of the bills go to the courts, where the ultimate constitutional determination is made.

Again, I insist that the crime situation in America today is such, and is progressing so rapidly, that it is imperative that this branch of Government, at least, take every action, enact every law, fashion every tool it can possibly fashion, within the framework of the Constitution, to enable our law enforcement agencies and officials to combat the growing menace of crime.

NASA'S PROCUREMENT OF APPLICATIONS TECHNOLOGY SATELLITES

Mr. McCLELLAN. Mr. President, in April of this year, the Permanent Subcommittee on Investigations was requested to review the procurement competition conducted by the National Aeronautics and Space Administration for the design and construction of two Applications Technology Satellites. The competitors were the General Electric Co. and the Fairchild Hiller Corp. General Electric was selected as the company which would ultimately receive the contract and the decision was protested by Fairchild.

The subcommittee's staff made a preliminary inquiry into the basic facts about the source selection; however, public hearings were deferred pending the completion of a study of the procurement then being conducted by the General Accounting Office.

I reported on this matter to the Senate on July 9, 1970—see CONGRESSIONAL RECORD, page 23476—and also inserted a letter from the General Accounting Office to the Administrator of NASA, Dr. Thomas O. Paine. The General Accounting Office concluded that the established award selection procedures were not followed in this instance, and that the procedures which were followed were defective. GAO then recommended that the proposed award should be reconsidered.

Dr. Thomas O. Paine, NASA Administrator, then announced on July 10 that he had appointed a top level committee of NASA officials to reconsider the selection of General Electric for the Applications Technology Satellite procurement. At the same time, Dr. Paine wrote me in response to my statement of July 9 about this matter.

Mr. President, I ask unanimous consent to have his letters of July 10—with enclosure—and July 16, addressed to me, inserted in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. McCLELLAN. Mr. President, Dr. Paine has expressed agreement with me that it is absolutely essential to avoid not only impropriety itself in all Government procurements but even the appearance of impropriety. Dr. Paine's decision to reconsider this award is evidence of his belief in that principle, and I commend him for his prompt and affirmative action. I am sure that the individuals named by Dr. Paine are competent and will do their utmost to make an objective and impartial review.

Mr. President, last year the Congress passed legislation to establish a Commission on Government Procurement to make a comprehensive review of Government procurement statutes, policies, and regulations and to recommend appropriate changes. The cost and time delay attributable to the phased procurement system as operated by NASA and other agencies is a matter which I believe should be reviewed by the Commission to determine whether the best interests of the Government are being served by this procedure. I will take steps to see that this subject is brought to the attention of the Commission. I have also instructed the Permanent Subcommittee on Investigations to follow the ultimate disposition of the Fairchild protest and will keep the Senate advised of developments.

EXHIBIT 1

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
Washington, D.C., July 10, 1970.

Hon. JOHN L. McCLELLAN,
U.S. Senate
Washington, D.C.

DEAR SENATOR McCLELLAN: I am writing with reference to your statement in the Senate on July 9, 1970, concerning NASA's procurement of Applications Technology Satellites (ATS) F & G, based on the preliminary inquiry by the staff of the Subcommittee on Investigations of the Government Operations Committee.

With respect to the current status of the procurement, you will be pleased to know that we have secured the agreement of both General Electric and Fairchild Hiller to a procedure for reconsidering the award in accordance with the Comptroller General's recommendation in his letter to me of July 2, 1970, which summarized the findings of the GAO investigation made at my request. Under the procedure we will use I am designating an ATS Procurement Review Committee comprised of NASA officials not previously associated in any way with this procurement. This top-level Committee will review the selection made on April 7 and then recommend to an entirely new NASA selection panel whether the April 7 selection of General Electric should be confirmed or reversed in favor of Fairchild Hiller in light of all of the information now available on the situation that existed at that time. The committee's reconsideration will include the material set forth in the Comptroller General's letter of July 2, 1970, any material made available by your committee, and any other new material that the NASA Committee may bring to light. The committee will not consider any work done by General Electric or Fairchild Hiller after April 7 as bearing upon its recommendation. For your information, enclosed is a copy of the NASA release describing the procedure to the use.

With respect to the specific points you raised in your statement in the Senate of July 9, 1970, I would like to offer several comments. NASA fully shares your belief that in all government procurements it is absolutely essential to avoid not only impropriety itself but even the appearance of impropriety. However, in assessing the effectiveness of NASA's current procurement procedures and the lessons to be learned from the ATS F & G procurement experience, a number of factors not brought out in your statement are significant and, in my opinion, may lead, after full consideration, to conclusions somewhat different from those suggested in your statement.

With respect to the length of the competitive procurement process for ATS F & G under the NASA phased procurement system, I think it is important to recognize that the "phased project planning guidelines" outlined in our procedure NHB 7121.2 referred to in the Comptroller General's letter are directed at a total development process of which the selection of the ultimate contractor to fabricate the satellite is only a part. Phases A, B, and C (conceptual studies and preliminary and detailed design) consist of the necessary research and development work that must be completed before final system design and is funded by the government. The work carried out in these phases serves the dual purposes of advancing knowledge and understanding of the critical technological problems and their solution, and of placing the government in a sound position to select from several qualified competitive contractors a sound satellite design if a decision to proceed is warranted by the results of the earlier R&D phases.

The expenditure of time and money on Phases A, B, and C which affords the government successive decision points in the conduct of major development projects is

clearly in the best interest of the government, both to secure hardware systems that perform as required and to minimize overruns and other escalations in costs above those anticipated at the time the hardware development contract is let. There may well be room for improvement in NASA's system of phased project planning and its application in individual cases. However, our experience clearly shows that time and money well spent early in the process is the way to avoid the much more serious problems of technical inadequacies, increased costs, and lengthy delays that have so frequently characterized major hardware development projects.

Your second point relates to the propriety of adjustments made by the NASA Source Evaluation Board in cost estimates submitted by one of the competitors and to the fact that this action and the other proceedings of the Source Evaluation Board were not made known to the competitor concerned. This was inaccurately headlined by The Washington Post today as: "McClellan Says NASA Altered Fairchild Bid," which you did not say. I am sure you realize that one of the most difficult problems in evaluating contractor proposals for cost-reimbursable contracts is for the government to prevent a contractor from "buying in" with an antificially low cost estimate, which later produces program overruns. Hence, it is an essential part of the NASA source evaluation procedure for our cost experts to review contractor cost estimates in depth, to make an independent assessment of their validity, to review previous performance by the contractor on similar work, and to present to the selection officials both the contractor's and NASA's best estimates of what the actual cost to the government will be, with a detailed analysis of the reasons for the differences. This was done both with respect to General Electric and Fairchild Hiller at each stage of the evaluation. Since this analysis must include access to the private business records of each firm, it is our practice to keep these data confidential. NASA's normal practice has been to "debrief" unsuccessful proposers, upon their request, after the actual award of the contract. Because this has appeared to involve an undue delay in some cases which may inhibit the recourse of unsuccessful proposers, we are now changing this practice to provide for debriefings shortly after the selection decision has been made and prior to the award of the contract, as we did in this case.

Your third question relates to a conclusion of your staff that questionable reduction by General Electric of their estimated overhead costs, the validity of which was not questioned within NASA, resulted in G.E.'s selection as the contractor. This is incorrect: the validity of this reduction in G.E.'s estimated overhead, which was only one of several factors in the selection, was in fact carefully considered by NASA during the selection process. The conclusion was that the reduction should be accepted as proper since it was in accordance with accepted accounting principles approved by the resident Government auditor and with NASA's previous experience with G.E.'s overhead costs at Valley Forge during fluctuations in their space business.

I have commented on your statement at some length because I believe it is important to place the matters referred to in a more complete perspective. We will, of course, be glad to discuss any and all aspects of this procurement further with you or your staff to clarify them further, and will keep you fully advised of the further steps in our review of this procurement.

Sincerely,

T. O. PAINE,
Administrator.

COMMITTEE FOR ATS F & G

NASA Administrator Dr. Thomas O. Paine today announced the appointment of a top level committee to reconsider the selection of General Electric for the Applications Technology Satellite F & G (ATS F&G) procurement. The General Electric Company and the Fairchild-Hiller Corporation had previously competed for the Award.

Following the announcement of GE's selection on April 7, 1970, the Fairchild Hiller Corporation protested the selection and Dr. Paine requested the Comptroller General to review the events leading to NASA's selection of General Electric.

The review by the General Accounting Office was completed on July 2 and at that time Comptroller General Elmer Staats, in a letter to Dr. Paine, stated that in his view the award to General Electric should be reconsidered in view of an ambiguity in NASA's instruction to the competitors and a one-week extension granted GE to submit its revised proposal. Dr. Paine responded on July 2 that NASA would reopen the competition. Today's action, Dr. Paine said, follows an agreement between NASA, Fairchild Hiller and General Electric that a reconsideration of the selection made on April 7th is preferable to a recompetition.

Bruce Lundin, Director of NASA's Lewis Research Center in Cleveland, will head the ATS Procurement Review Committee. The committee will consider all the facts and circumstances surrounding the April 7, 1970 selection and then make its recommendation to a new selection panel of senior NASA officials. The selection panel will either reaffirm the original selection or reverse it.

Facts and circumstances to be considered by the Review Committee are all those now known to have existed on April 7, 1970, and all those which the Committee might through its additional work, ascertain to have then existed and been relevant. The Committee will not consider work done by GE or Fairchild since April 7 as bearing upon its recommendation. Funding by NASA of Fairchild's work was discontinued on April 16, and announcement was made today that funding of GE's work will be stopped on July 15.

The new Selection Panel is made up of Homer Newell, NASA's Associate Administrator; Willis Shapley, Associate Deputy Administrator; and Bernard Moritz, Acting Associate Administrator for Organization and Management. Dr. Paine has instructed the Review Committee to make its recommendation to the Selection Panel no later than August 3.

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION,
Washington, D.C., July 16, 1970.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: In my letter to you of July 10, 1970, regarding your statement in the Senate on July 10, 1970, concerning NASA's procurement of Applications Technology Satellites (ATS) F&G, I stated that NASA's practice has been to "debrief" unsuccessful proposers, upon their request, after the actual award of the contract. I further stated that we were changing this practice to provide for debriefings after the selection decision but prior to the award of the contract. In making the latter statement, I referred to the ATS F&G procurement. By this reference I meant that the ATS F&G procurement precipitated our change in policy regarding debriefings. I did not intend to state that we had actually provided either General Electric or Fairchild Hiller a debriefing in connection with the ATS F&G procurement. Of course, a debriefing will be accorded either Fairchild Hiller or General Electric upon the final selection of a contractor for ATS F&G so that either will have adequate time to consider its further legal recourse. Since there may have been some misunderstanding as to my letter, I feel that this clarification is appropriate.

Sincerely yours,

T. O. PAINE,
Administrator.

READING EMPHASIS OF DISTRICT OF COLUMBIA SCHOOL "DESIGN" ENCOURAGING

Mr. MCCLELLAN. Mr. President, on Saturday and Sunday, July 18 and 19, 1970, articles by James Repass and Lawrence Feinberg, respectively, appeared in the Washington Post. Both articles were based upon a "Design" for the District of Columbia school system adopted by the District of Columbia School Board, which would emphasize reading, communications, and math.

The design was prepared by the Metropolitan Applied Research Center, and referred to in the articles as the plan of Dr. Kenneth B. Clark, a New York psychologist. Dr. Clark has appeared before the Select Committee on Equal Educational Opportunity, but did not at that time discuss the design for the District of Columbia schools.

Dr. Clark has been active in the field of education for many years, and his work was cited in the controversial U.S. Supreme Court's Brown decision in 1954. That work has been subjected to intensive and, to my knowledge, unanswered, criticism. However that may be, and regardless of my agreement or disagreement with other areas of Dr. Clark's work or with the theoretical bases for the design submitted and adopted by the District of Columbia School Board, there are substantial areas of this report with which I am in agreement, and which I support.

Mr. Repass reports that a supplement to the design shows that reading ability is declining in the District of Columbia school system.

This decline in reading ability is continuing, and is apparently reflective of a national trend, even though the Federal Government simultaneously has made massive expenditures to support and supplement our educational system. I am encouraged by the fact that the District of Columbia design does not call for the usual and wasteful increased expenditure of Federal moneys as the answer to our Nation's or the District of Columbia's educational deficiencies. It, instead, calls for increased emphasis within the existing school system on the basic cognitive skills required for a person to complete and find fulfillment in our society:

The basic academic skills which must be effectively taught in the elementary grades are reading, oral and written communication and mathematics, since these skills are essential for academic success in the later grades and necessary for a constructive, competitive, and contributory adult role in the economy and the society as a whole. Certainly, they are imperative as the basis of any realistic pride, general competence, and self-respect.

Of these fundamental skills, probably the most basic in the elementary grades is the specific skill in reading, since it is clear that

success in math and in oral and written communication depends upon it. It is not likely that a child will be successful academically if he is permitted to be deficient in the reading skills of word recognition and reading comprehension.

It would follow, therefore, that in seeking to attain academic excellence in the public schools, concentrated emphasis in curriculum development and teaching be placed upon developing reading skills in the primary grades to the highest level of achievement possible.

I am not a professional educator. However, one does not need to be a professional educator to realize that the ability to read, the ability to communicate, and a grasp of mathematics are the basic indispensable tools with which an individual must confront our complex society if he wishes a reasonable probability of success in his chosen vocation. Apparently the ability to read has been determined to be the key skill in this group of interrelated tools. Therefore, improvement of the level of reading ability in the District of Columbia schools is the paramount objective of the design. I applaud this emphasis and wish the District of Columbia schools marked success in their endeavor. I believe that many of the assumptions concerning the achievable improvement in performance in the District of Columbia schools may be overoptimistic. However, that is inconsequential insofar as I do believe that reading ability can be measurably improved in the District of Columbia.

I was somewhat surprised to read the following statement in Mr. Fineberg's article:

In some ways, Clark's plan appeals strongly to conservatives. It emphasizes reading.

There is an implication in this statement that conservatives, as opposed to liberals, back the plan's emphasis on reading. If the ability to read is a "conservative position," then where, may I ask, does the "liberal" stand? What do the "liberals" view as a more important product of our educational system than the ability to read? Mr. Repass's article quotes a Chicago teacher as saying:

We graduate people that are functional illiterates. They couldn't mix up a bowl of Jello following the direction of the package.

If one cannot follow the directions on the Jello package, how realistic are our expectations that one can achieve any other goal where education is essential?

There are several other points about the article which I mention in passing. I state again that there are substantial theoretical points subject to controversy within this design. However, I do not wish at this time to discuss them.

Dr. Clark explodes the theory that big city problems are due to uneducated, culturally deprived blacks migrating to the North:

In fact, in recent years, the evidence suggests that there are now no differences in academic achievement between those children who have spent all their lives in Northern urban schools and those in these schools who have migrated from the South.

Dr. Clark appears to disagree with the conclusion of the Coleman report that economic and therefore racial integration is essential to effective learning. I would suggest that the research in this area is inadequate and that we must await the result of future studies before accepting or rejecting Coleman's thesis. I would agree with Dr. Clark in rejecting the idea that our educational system must accept the Coleman report as the blueprint for all future educational design. Hopefully future testimony before the Select Committee on Equal Educational Opportunity will provide a more meaningful evaluation of the Coleman report.

Dr. Clark reports that our teacher training is inadequate. That may or may be correct, but I have heard the statement so many times from such a variety of commentators that I am beginning to wonder if it does not have substance.

The design would encourage competition in the District of Columbia school system among both the pupils and the teachers. Competitiveness, whether we like it or not, is a primary element of human nature. To go against the grain of human nature and discourage competition is in my view to encourage a mediocre society and to produce a most ineffectual educational system. After leaving the school, as all of us are well aware, one will encounter aggressive, at times vicious, competition. Our educational system should prepare us for life in our society, not in Utopia.

The design relies greatly upon standardized tests. There is a great deal of nonsense current in educational circles suggesting that standardized tests are inappropriate for ghetto children. Mr. President, whether one likes it or not, we are a society in which ability is measured in largely standard terms. I agree with Dr. Clark's conclusion that the products of our educational system must be able to compete in that society or their time has been wasted. The inevitable product of conducting classes in "the prevailing dialect or permitting mispronunciations or grammatical license" is a person increasingly isolated from our society in terms of his ability to communicate outside his particular localized group.

Dr. Clark suggests that the classrooms should be heterogeneous in terms of background and ability levels of students. He apparently does not suggest that automatic promotion of persons below grade level should occur. This seems to suggest a school system in which ability levels may be heterogeneous but achievement levels are roughly homogeneous. If this is the case, then one would be acting on a modified "track" system wherein students are placed in grades or "tracks" according to achievement level. This would implement the theory that children learn best when grouped with other children at the same learning level.

Dr. Clark makes the supposedly radical suggestion that teachers should be rewarded for proven ability and effort. He would measure ability and effort in teaching, as in other areas of our society, by their measurable output. Standardized tests in terms of what children have learned from their teachers would provide a measurable work-output. I do not state that this method of implementation is necessarily the only method of evaluation, nor does Dr. Clark. I have always believed, however, that one should be rewarded according to one's performance, and I would certainly encourage District of Columbia efforts to move in that direction. This suggestion will no doubt meet opposition, alluded to in Mr. Fineberg's article, from the teacher's union—"who perceive quite correctly that any plan that provides extra pay to a successful few, offers less to the majority." That, of course, is elemental, but I reiterate my belief that a device that rewards those who labor and are successful in their labors is preferable to one that rewards equally the mediocre and indolent with the industrious and productive. Dr. Clark alludes to problems he foresees in dealing with education bureaucracies. To the degree these problems exist, I wish success to the District of Columbia School Board in combating them.

In any event, the day of pouring billions of Federal dollars into ill-conceived compensatory educational projects is hopefully at an end. Compensatory education has been attacked by persons of all ideological viewpoints. It largely has been rejected.

Also in Mr. Fineberg's article, Dr. Clark's staff is reported to have stated how useless ideological labels have become in education. With this I concur. Our primary education problem in the United States is that our system produces children who are seriously deficient in reading, communicating, and mathematics. One should not receive an ideological label for advocating acquisition of these basic skills, and I, for one, am hopeful that the press will avoid placing the label "conservative" on one who emphasizes reading. As I understand the meaning of that label I wear it proudly, but on others such as Dr. Clark, the label may not sit so well, nor would he be, I suspect, so happy to receive it. These labels are, in the field of education, and many other places, useless.

Mr. President, I ask unanimous consent that the text of the two articles to which I have referred be placed in the RECORD at this point as a part of my remarks.

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

PROMOTION RATE UP IN D.C. SCHOOLS WHILE READING ABILITY STILL DECLINES

(By James P. Repass)

Promotions from one grade to the next are becoming easier to obtain in the D.C. elementary schools, while test results show that reading ability—the main criterion for promotion—has been going down.

The trend is most apparent at the sixth-grade level. Last year, according to a table prepared by the statistical office of the D.C. school system, fewer than one out of every 100 sixth-graders failed to graduate to junior high. Six years ago, the number of retentions was eight times higher.

Six years ago, Washington sixth-graders were reading at a median fifth-grade, seventh-month level. In 1969–70, the level had dropped to fourth grade, eighth month.

For all elementary grades the percentage of students retained has dropped from 9.8 in 1963–64 to 4.7 in 1968–69.

"I can't account for it," states Dr. Dorothy Johnson, assistant superintendent of elementary education. "There has been no change in promotional policy in the last three years, to my knowledge." And promo-

tion policy before that, she states, was substantially the same.

Dr. Johnson said in an interview that she would appoint a committee to investigate immediately the cause of the low nonpromotion rate.

The table detailing nopromotions for each of the elementary grades was published in the appendix of a proposal for improving the D.C. school system prepared by Kenneth B. Clark and his associates at the Metropolitan Applied Research Center.

Dr. Johnson had not seen a copy of the table until supplied one by The Washington Post.

The Clark proposal, entitled "A Possible Reality," calls in part for the setting of minimum achievement standards for students. Those not measuring up would be held back until they did. The proposal was adopted in its entirety by the school board Monday night.

Current standards for promotion of sixth-graders to junior high are set out in a directive issued by Dr. Johnson and three other administrators. For promotion, a sixth-grader must be able to read—as a minimum—at a fifth-grade level. To be promoted, those sixth-graders reading below that level must have spent at least one additional year in elementary school and must read at fourth-grade level or better.

Results of a test given last November show that 25 per cent of all Washington sixth graders were reading below fourth-grade level. Dr. Johnson says it is unlikely that those students would have been able to read at the required minimum fifth-grade level by June.

Under school administration policy, teachers make the final decision on whether a student should be promoted. There is a widespread practice among teachers that once a child reaches 13.7 years of age, but is still in the sixth grade, he should be automatically promoted to junior high.

"WOULDN'T HELP THEM"

The automatic promotion practice—which Dr. Johnson says is not official administration policy—is one factor in the low nonpromotion rate. Teachers interviewed, all but one of whom refused to be quoted by name, believe the practice is a good one.

"We don't feel it's wise to retain children past the sixth grade. It wouldn't help them," one sixth-grade teacher explained. "What do you do with a child who's 6 feet tall and weighs 200 pounds?" asks Conway Perkins, a fifth-grade teacher at Patterson Elementary School.

Some teachers say they feel it is better to send a child along to junior high school, where he will be with children his own age, than to keep him in elementary school for another year.

Overcrowded classrooms and disciplinary problems may also contribute to the promotion of underachievers, teachers indicated. If a child is promoted, he takes up space in somebody else's classroom the next year. And, if problem children are promoted, they become someone else's problem.

BLAMES TEACHERS

A principal at one of Washington's elementary schools, who also asked not to be named, blames the teachers: "They're teaching the text. They're not teaching the reading."

The principal also says Judge J. Skelly Wright's 1967 decision, which abolished the track system in D.C. schools, abets nonretention. Because the decision did away with special education classes, she says slow learners were put in the same class with average learners, where they could not do the work.

As a consequence the child is retained once or more until he reaches the sixth grade, and then, when he reaches 13.7 years of age, he is promoted to junior high school, again regardless of achievement.

A report by Daniel U. Levine, associate director of the Center for the Study of Metropolitan Problems in Education, takes sharp issue with the practice of automatic promotion: ". . . it can be a useful device to avoid compounding the sense of failure of students who for one reason or another cannot live up to unrealistic expectations. Its effects are extremely harmful, however, when it is applied to the economically but not educationally disadvantaged student."

A Chicago teacher, quoted in the Levine report, sums up the problem of the automatic promotion practice:

"Many Chicago kids actually drop out when they are in second grade—just sit in the classes from then on, being pushed ahead each year. If such a child manages to stay in school long enough to graduate from high school, his diploma can't be interpreted as much more than a certificate of attendance. It doesn't mean he's learned anything. We graduate people who are functional illiterates. They couldn't mix up a bowl of Jello following the direction of the package."

CRITICS DISPUTE TWO BASIC TENETS OF CLARK PLAN ON READING

(By Lawrence Feinberg)

"The students in Washington are normal human beings," psychologist Kenneth B. Clark has told the D.C. school board. "If they are taught efficiently, they will learn."

These two points—noncontroversial on their face—underlie Clark's plan to upgrade achievement in the city's elementary and junior high schools.

They are also at the heart of the controversy about the plan for a "reading mobilization year," which was adopted by the board on Monday.

Although they hesitate to say so outright, critics of the proposal, led by the Washington Teachers Union, implicitly reject both of Clark's points. They contend that Washington's school children—94 per cent of them Negro and many of them poor—are different from the white middle-class youngsters whose achievements generally determine the national norms.

By ninth grade, according to tests given last November, Washington students average 2.2 years below these norms in reading. To expect them to achieve at "grade level" by next June, as Clark promises, is a "cruel hoax," teachers' union president William Simons believes.

With the problems the children bring into Washington's classrooms, Simons adds it is unfair to hold teachers responsible for what they learn. Yet, placing responsibility on the teachers—and offering more pay to those whose students learn more—is one of the crucial elements of Clark's plan.

"What do you do about the teacher who happens to have a group of students who do not get proper food at home or come from an environment that is not conducive to learning?" Simons asks. "A teacher has to do whatever she can to overcome the problems they bring with them from home."

Some school officials argue privately that the union opposition to Clark's plan stems basically from the nature of the union itself and not from any intellectual doubts.

As a democratic group, they argue, the union reflects the interests of the majority of its members, who perceive quite correctly that any plan that provides extra pay to a successful few, offers less to the majority.

But there is also a considerable amount of academic research to support Simons' arguments.

The most notable example probably is the massive survey of American schools conducted in 1966 for the U.S. Office of Education by James Coleman, a sociologist at Johns Hopkins University. The Coleman report shows a close connection between family background and educational achievement, and relatively little connection between learning and the resources in the schools themselves.

Clark, of course, does not dispute the reality or the painfulness of discrimination. He was raised in Harlem. His research on the damage done to Negro children by segregated education was cited by the Supreme Court in its 1954 desegregation decision.

But he believes the main reason for educational failure is bad education—poor teaching caused by low expectations of what children can learn and poor motivation for both teachers and students.

In his report to the school board he carefully discusses all the usual explanations of "why low-income and minority group children are not learning at national norms"—recent migrancy from the South, "cultural deprivation," over-activity, "alleged biological-genetic inferiority."

He concludes that "none of them is sustained by the evidence."

"Such excuses," he adds, "serve as an evasion of responsibility by any school system that relies upon them. Children, regardless of socio-economic class or race, can learn if they are effectively taught."

In some ways, Clark's plan appeals strongly to conservatives. It emphasizes reading, which Clark, sounding much like former D.C. Superintendent Carl F. Hansen, says must be "the first priority" because "all future learning depends on it."

The plan also emphasizes setting standards—"minimum systemwide floors on achievement" for each grade, and sticking to them instead of granting automatic "social promotions."

And it relies on tests—standardized nationwide test—to measure achievement.

But in the way it uses these tests, and much else, the plan is radical—a drastic change from the usual way of running a school system. And this, Clark's staff insists, shows how useless ideological labels have become in education.

Under the program, the tests will be given to all students three times a year, and their results will be made public—grade-by-grade, class-by-class, and school-by-school. They will be used as the primary means of evaluating teachers and schools to make them "accountable" to their communities.

However, the exact mechanics for evaluation—along with other details of the program—have not yet been worked out.

Clark does not prescribe how reading should be taught. Instead, it is up to "reading mobilization teams," comprised of teachers, reading specialists, and university consultants, to choose specific methods, and materials for each school—and to change them if they are not getting results.

The emphasis almost entirely is on results, which is where it was placed by former U.S. Education Commissioner James Allen when he proclaimed a national "right-to-read" campaign last year.

Rewarding teachers by their "output"—the achievement gains made by their students—is quite different, Clark's staff says, from the traditional forms of "merit pay," which tried to evaluate teacher competency.

Each classroom, in Clark's program, will be "heterogeneous," containing a mix of students at different levels of achievement—the opposite of Hansen's track system.

There will be group competitions between whole classes and schools for honors and prestige. The models for this are found partly in sports teams and partly in Soviet Russia and Cuba, where teams of workers compete to meet production standards.

Last Monday only one school board member, Charles Cassell, voted against Clark's plan. Cassell denounced its emphasis on competitiveness and its commitment to teaching standard English to children who speak a ghetto dialect.

CAN'T BE FOOLED

Clark replied, "The most insidious form of rejection of black youngsters is that based on the assumption that they cannot learn what other human beings can learn. You can't fool these youngsters no matter how you try to sugarcoat it . . .

"We cannot prepare our youngsters for a constructive and competitive role in this society—particularly because it is a racist society—without giving them the tools for single-standard competition . . ."

Many black teachers and administrators in the audience applauded loudly.

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. BIBLE. Mr. President, I support the conference report. I was a conferee on the bill. As Senators know, I am also a longtime member and past chairman of the Committee on the District of Columbia. I am well acquainted with—and deeply disturbed by—the crime and law-enforcement problems of our Nation's Capital City.

I daresay that during my long tenure on the District of Columbia Committee no single subject has occupied more time and energy than legislation to curb the crime rate and rid the streets of Washington of the hoodlums who prey on the law-abiding community. At intervals over the years, the District Committee has recommended, the Congress has passed, and the President has approved numerous measures to increase the judge power of Washington's juvenile and criminal courts, to strengthen the criminal laws, to stiffen the penalties imposable on convicted felons, to put more policemen on the streets, and in general to provide the District's law-enforcement authorities all of the tools needed to counter and quell the crime wave.

But what does the record show? The criminal element still runs rampant through the streets of our National Capital. Serious crimes in the District are increasing at the rate of 22 percent a year. The number of reported felonies has risen 122 percent over the past 5 years. Felony convictions in the District of Columbia courts in 1969 represented only 2.5 percent of the 56,419 felonies reported that year. Washington is more than ever a city of fear—deserted after dark downtown. A terror for its citizens and the hundreds of thousands of people from across the Nation who want—and are entitled—to enjoy the beauties of this great Capital in safety.

They cannot do so today. The situation is disgraceful. The mugger, the rapist, the armed robber, the hoodlum community in general are having a field day after dark, and they have got to be stopped.

The bill now before the Senate is a very good bill. It gets to the root of some very critical aspects of Washington's crime problem, and will go far toward curbing the criminal element.

Before turning to the major provisions of the bill, I want to comment concerning the tremendous amount of effort that has gone into its development. In particular, I want to commend our distinguished and very able colleague, the senior Senator from Maryland, and chairman of the District Committee. I know of no one more stanchly dedicated to the cause of individual liberty and freedom under law than Senator TYDINGS. His leadership on this bill has been outstanding. I have been privileged to serve on many conferences involving District legislation, and I have never seen greater dedication than that displayed by the Senator from Maryland in connection with this bill. There were some 24 meetings of the conferees over a 3-month period. Senator TYDINGS brought to his task all of his own considerable knowledge, plus some of the finest staff work I have ever seen. Needless to say, portions of this bill have generated a good deal of controversy and concern in the area of constitutional rights. JOE TYDINGS is an outstanding champion of those rights, and every portion of this legislation was carefully examined to assure their protection. I think he has done a magnificent job for the Senate and the people of the National Capital area. He has hammered out a much-needed bill that will strike a strong and effective blow against crime, and one which is carefully structured so as not to impinge upon constitutional rights and individual freedoms.

Turning to the bill itself, it is a massive piece of carefully drawn legislation. At its heart is a major overhaul of the court system of the District of Columbia.

In recent years, it has become apparent that the court system in the District of Columbia has been increasingly unable to provide the swift administration of criminal justice this city needs to stem the crime wave. Nothing demonstrates this fact better than the incredible backlog that exists in felony prosecutions. Despite the best efforts of the present court—including the use of a visiting judges program, the implementation of a more effective individual calendar system, and an unsurpassed number of days on the bench per judge—delays in felony trials now average from nine months to a year. The felony case backlog now stands at more than 1,600 cases.

This is intolerable. It robs the District's criminal justice system of any deterrent effect. It creates undue pressures to bargain for pleas in order to reduce the case backlog. The pressures are such that it is little wonder that some dangerous defendants charged with several serious felonies have their slates wiped clean by confessing to but one crime and sometimes only to a lesser included offense carrying only misdemeanor penalties.

As the court struggles with its backlog, too many dangerous defendants are free on the streets, either because they are on bail during months of trial delay or because they have been able to bargain and plead to lesser offenses and receive short prison sentences.

This bill will reform the District's present inadequate court system to speed up the processes of justice and to eliminate the evils of delay and the added crime that results when justice is delayed.

Current practice in the District of Columbia requires Federal trial and appellate judges to devote their time and effort to matters that are purely local and non-Federal in nature. The bill will permit the Federal judiciary to concentrate their full attention on Federal matters. It will overcome the split personality of the present system under which some cases must go to Federal court and some to the local courts. Under S. 2601, all District of Columbia offenses, felonies and misdemeanors, will be tried in a new superior court of the District of Columbia. The bill gives the District a court system comparable to those of the States and other large municipalities. It will end the jurisdictional problems that too frequently mark the present working relationship between the Federal and local courts. And it provides for a new emphasis on modern management techniques that should improve the day-to-day operation of the new court.

Perhaps most important of all, the bill provides for a major increase in judge power. Under the conference agreement, there will be 17 new judgeships created, 10 upon enactment and seven additional judges in 18 months.

I have said over and over, and I repeat again, that the one surefire remedy to a rampant crime wave is swift and certain justice. This new court system will have the necessary judges to man the bench and is a major step toward that type of justice. We have before us a court reorganization package structured to bring greater efficiency to the administration of criminal justice. I am confident that in passing this bill we will have launched a major assault against the criminal element.

The bill contains much more that is valuable and long overdue. As a part of the proposed court reorganization, Washington's hopelessly overloaded juvenile court system will be integrated into the superior court system. The present situation is a disgrace. Three judges are struggling to handle a juvenile court backlog of over 6,000 cases with a quarterly intake rate of over 2,000 new cases. By making the juvenile court a part of the family division of the new superior court, the bill will make it possible to direct more judge power and more resources to the juvenile crime problem. It provides a new up-to-date code of juvenile procedure incorporating new requirements imposed by recent court decisions. The new code will bring a vast improvement in the procedures for handling young offenders.

The legislation also provides for a modern and adequate public defender service—a major step forward to guarantee that every person charged with crime in the District will be fully and ably represented by experienced counsel.

Mr. President, while the much-needed court reorganization is the cornerstone of this legislation, the bill also under-

takes to modify some of the more unrealistic provisions of the criminal law that have hampered law enforcement and undermined the administration of justice in the District. I refer, of course, to the so-called no-knock entry and the pretrial detention provisions of the bill.

Because of the public controversy that has surrounded them—and especially because changes in the law in these two areas must be closely scrutinized to insure that there is no infringement of constitutional rights—I have examined both these features of the bill with special care.

I find that the no-knock warrant provision agreed to in conference meets the standards of the unanimously passed Senate bill. The conference bill simply conforms District of Columbia law with Supreme Court decisions on this subject. It merely states in clear statutory language the conditions the Court has already held to permit an officer to dispense with the standard notice of his identity and purpose when he executes a search or arrest warrant.

The bill in no way enlarges the authority of police officers to conduct a search without a warrant. It codifies the controlling Supreme Court decision in Ker against California which already specifies that an officer may enter without knocking when an announcement of his presence and purpose would endanger his life or result in the destruction of evidence for which the court has authorized him to search.

Indeed, the conference bill actually provides not less but more protection for the public by subjecting no-knock actions by police officers to greater judicial scrutiny and supervision. The bill requires prior court approval of any entry without notice when the circumstances which would justify such an entry are known by the officer at the time he applies for a warrant.

A further point to remember in this debate is the need for no-knock authority. All too often the necessary evidence in a narcotics raid or a gambling raid is destroyed during the time the officer spends announcing his presence and authority, and more than one police officer has met his death at the hands of a dangerous felon because he announced himself. Commonsense tells us that there are situations where no-knock authority is essential. The conference bill sets out those situations with precision and in detail.

The pretrial detention provision of the conference bill has also generated a great deal of concern. I think, however, that too little is understood or appreciated of the aims and purposes of this provision. The provision is not aimed at locking up droves of people as has been charged. It is not an affront to the Constitution, and it is not an effort to punish defendants in advance for crimes that they have not committed.

It is none of those things. It is, instead, a carefully drafted proposal that seeks to identify and hold for a limited time prior to trial the truly dangerous defendant; the one whose record demonstrates a past pattern of dangerous criminal conduct; the one where the case being pressed by the Government is strong and indicates a high probability of guilt; the one, for example, who was caught in the act of an armed holdup or serious mugging, and who by the dictates of commonsense ought to be brought to trial promptly and not released to prey again on the community. This provision is aimed only at those defendants who cannot be released on any condition or combination of conditions that will assure the safety of another person or the community.

There is nothing unique or original about the present proposal. It was recommended by a majority of the President's District of Columbia Crime Commission in 1965. It has been endorsed by the Judicial Council Committee of the District of Columbia. Our law has its roots in England, and pretrial detention has been a part of the British system of justice for hundreds of years.

Further, I am convinced that Congress must face the ugly fact that entirely too much serious crime is being committed by defendants released on bail in the District of Columbia. One study by the Metropolitan Police Department shows that of 130 persons indicted for armed robbery and given pretrial release 34.6 percent were indicted for at least one felony while on bail. Data developed by the U.S. attorney's office show that 70 percent of 345 defendants released before trial in 1968 were reportedly arrested for a new crime. The Judicial Council Committee reviewed the U.S. attorney's survey. They took a sample of robbery defendants and found that almost 64 percent of 106 defendants on pretrial release were rearrested while on bail. The report of the National Bureau of Standards released earlier this year showed that of the sample covered by that study 17 percent of 147 felony defendants were rearrested during pretrial. Twenty-five percent of the defendants charged with "dangerous crimes"—as defined in this bill—were rearrested while on bail.

I realize that some controversy surrounds the sampling techniques, statistical methodology, and conclusions reached in these studies. However, add to this individual cases too frequently reported in the press concerning the murdered storekeeper, the injured bus-driver or policeman, the threatened bank teller, the rape victim—who have fallen prey to hardened criminals who have been on pretrial release.

I submit that the case for the limited—carefully circumscribed—preventive detention provision contained in this bill has been well-made.

As has been pointed out earlier in the debate, the Senate conferees were highly alert to the constitutional questions raised against this part of the conference bill. I have examined this issue with some care. I recognize that there are constitutional arguments on both sides of the question—as is so often the case with legislation dealing with the criminal law. The issue will ultimately be taken to and decided by the courts. However, I am satisfied that under existing authorities this narrowly limited and fully protected detention provision is fully constitutional.

I think the ultimate test of constitutionality is due process of law. The detention authority confided to the courts by this bill is surrounded by due process protections. It is a measured and reasonable legislative response.

Mr. President, the need for effective action against the criminal element in the Nation's Capital has never been so urgent, and the time for action is now. The bill is well designed to bring to this crime-ridden city a rebirth of swift, fairly administered criminal justice. It will help to curb the present lawlessness. The specter of certain justice will, I think, have a strong deterrent effect on would-be criminals.

In sum, I think we have before us one of the most carefully constructed, comprehensive and effective legislative attacks on crime in the Nation's Capital ever presented to the Senate.

I urge that the conference report be agreed to.

SENATE JOINT RESOLUTION 222—A BILL TO AMEND THE WATERFRONT COMMISSION COMPACT

Mr. JAVITS. Mr. President, at the desk is Senate Joint Resolution 222, to amend the Waterfront Commission compact and to consent to an Airport Commission compact between New York and New Jersey, which was introduced last Thursday but has not yet been referred.

After conferring with the chairman of the Committee on Commerce, the Senator from Washington (Mr. MAGNUSON), and the Senator from Nebraska (Mr. HRUSKA), the ranking minority member of the Committee on the Judiciary, who has cleared the matter for me through the Judiciary Committee in the absence of its chairman, I ask unanimous consent that the bill may be referred to the Committee on the Judiciary, that the Committee on the Judiciary be requested to refer the bill in turn to the Committee on Commerce, which will have its reference limited to 30 days, and then to return the bill, with its recommendations, to the Committee on the Judiciary.

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

Mr. MAGNUSON. Mr. President, reserving the right to object—and I shall not object—I think this is a good solution with respect to a bill that happens to involve the jurisdiction of two committees. We handle air cargo and all transportation, but the bill also involves some judicial matters.

Mr. JAVITS. The compact.

Mr. MAGNUSON. It involves the jurisdiction of States. I think this is a good solution, and I shall not object. I appreciate the courtesy of the Senator from New York.

Mr. JAVITS. I greatly appreciate the cooperation of Senator MAGNUSON and Senator HRUSKA, without which this could not have been done.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States submitting

nominations were communicated to the Senate, by Mr. Geisler, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

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

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

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 the following bills of the Senate, each with amendments, in which it requested the concurrence of the Senate:

S. 3102. An act to amend section 4 of the Fish and Wildlife Act of 1956, as amended, to extend the term during which the Secretary of the Interior can make fisheries loans under the act; and

S. 3889. An act to amend section 14(b) of the Federal Reserve Act, as amended, to extend for 2 years the authority of Federal Reserve banks to purchase U.S. obligations directly from the Treasury.

The message also announced that the House had passed the bill (S. 3279) to extend the boundaries of the Toiyabe National Forest in Nevada, and for other purposes, with an amendment, in which it requested the concurrence of the Senate.

The message further announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 9164. An act to permit the use for any public purpose of certain real property in the State of Georgia;

H.R. 10837. An act to provide for the conveyance to Pima and Maricopa Counties, Ariz., and to the city of Albuquerque, N. Mex., of certain lands for recreational purposes under the provisions of the Recreation and Public Purposes Act of 1926;

H.R. 11953. An act to amend section 205 of the Act of September 21, 1944 (58 Stat. 736), as amended;

H.R. 12475. An act to revise and clarify the Federal Aid in Wildlife Restoration Act and the Federal Aid in Fish Restoration Act, and for other purposes;

H.R. 14114. An act to improve the administration of the national park system by the Secretary of the Interior, and to clarify the authorities applicable to the system, and for other purposes;

H.R. 15351. An act to authorize additional funds for the operation of the Franklin Delano Roosevelt Memorial Commission;

H.R. 16539. An act to amend the National Aeronautics and Space Act of 1958 to provide that the Secretary of Transportation shall be a member of the National Aeronautics and Space Council; and

H.R. 18253. An act to increase the availability of guaranteed home loan financing for veterans and to increase the income of the national service life insurance fund.

The message also announced that the House had agreed to a concurrent resolution (H. Con. Res. 689) providing for an adjournment of the House from August 14, 1970, until September 9, 1970, or sooner if reassembled by the Speaker, in which it requested the concurrence of the Senate.

HOUSE BILLS REFERRED OR PLACED ON THE CALENDAR

The following bills were severally read twice by their titles and referred, or placed on the calendar, as indicated:

H.R. 9164. An act to permit the use for any public purpose of certain real property in the State of Georgia; and H.R. 10837. An act to provide for the conveyance to Pima and Maricopa Counties, Ariz., and to the city of Albuquerque, N. Mex., of certain lands for recreational purposes under the provisions of the Recreation and Public Purposes Act of 1926; to the Committee on Interior and Insular Affairs.

H.R. 11953. An act to amend section 205 of the act of September 21, 1944 (58 Stat. 736), as amended; to the Committee on Agriculture and Forestry.

H.R. 12475. An act to revise and clarify the Federal Aid in Wildlife Restoration Act and the Federal Aid in Fish Restoration Act, and for other purposes; to the Committee on Commerce.

H.R. 14114. An act to improve the administration of the national park system by the Secretary of the Interior, and to clarify the authorities applicable to the system, and for other purposes; placed on the calendar.

H.R. 15351. An act to authorize additional funds for the operation of the Franklin Delano Roosevelt Memorial Commission; to the Committee on Rules and Administration.

H.R. 16539. An act to amend the National Aeronautics and Space Act of 1958 to provide that the Secretary of Transportation shall be a member of the National Aeronautics and Space Council; to the Committee on Aeronautical and Space Sciences.

H.R. 18253. An act to increase the availability of guaranteed home loan financing for veterans and to increase the income of the national service life insurance fund; to the Committee on Finance.

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. McGOVERN. Mr. President, I oppose adoption of the conference report on S. 2601, the District of Columbia omnibus anticrime bill. I join nearly two dozen other Senators in sponsoring an alternative District of Columbia crime package. The first part of the package retains the provisions of the conference bill on court reorganization, the District of Columbia Bail Agency, and adoption of the Interstate Compact on Juveniles by the District. This substitute includes all the noncontroversial parts of the conference measure. The second part of the package deals with criminal and juvenile law and procedure. It eliminates the conference provisions on preventive detention, no-knock searches, wiretapping, and mandatory minimum sentences.

I join other Senators in retaining provisions for crime control which criminologists, judges, prosecutors, and the bar have long recommended. The proposals we would eliminate are those which are the unique creation of the administration.

The crime problem is so serious, that we must all be inclined, as I know we are, to give any proposal for better crime control the most sympathetic consideration. But the evidence and argument that has been amassed leads simply and surely to the conclusion that what the administration would have us write into law will do much to curb freedom in America, and may heighten the crisis of crime and violence now ravaging the Nation.

The proposal for preventive detention is perhaps the most compelling demonstration of this. When preventive detention is proposed, it is always coupled with the recitation of horrible crimes committed by defendants while on bail release and statements, such as that of the Attorney General who said in proposing preventive detention:

> I believe that the pretrial release of potentially dangerous defendants constitutes one of the most serious factors in the present crime rate.

Well, the facts are now in and they make dramatically clear that the Attorney General's belief is unfounded. During the initial hearings on the District of Columbia bill, all sorts of pretrial recidivist rates from 6 to 45 percent were suggested, but there was no consensus on reliable data. Only after the serious questions were raised by the opponents of preventive detention, did the Justice Department decide to find out what really are the facts about pretrial crime. It was a curious procedure of first proposing policy, and only afterward, looking at the facts upon which the policy decision must be based. Anyway, the Justice Department, through the National Bureau of Standards, had a report prepared on pretrial crime in the District of Columbia. There was unexplained delay in its release. Commentators began to suspect that the Justice Department was surprised by the results. When the report finally was released, its remarkable conclusion was that the percentage of persons in the District of Columbia arrested for violent crimes and then released who are later rearrested for serious crimes while on bail is only 5 percent. As Senator ERVIN has pointed out, this 5-percent figure is an inescapable conclusion of the Justice Department's own report. And this figure refers to the entire 10-to-12 month period it presently takes to reach trial in the District of Columbia. The proposal for preventive detention provides for a 2-month detention period. So actually, even assuming that judges could determine which defendants are fit subjects for preventive detention, roughly one-fifth of the minimal pretrial crime is the maximum that could be prevented.

However, the other key fact about preventive detention, the fact which the Justice Department report and the commentators verify, is that there is no way that judges can come even reasonably close to selecting out of all the criminal repeaters, the ones who will actually commit pretrial crime. Thus, for every 100 criminal defendants, about 99 will be subjected to the jeopardy of imprisonment without bail to stop the one. That is 99 out of every 100 who could lose their rights as American citizens for crime they would never commit. That is 99 innocent people out of every 100, who may

be subject to the loss of their jobs, the dissolution of their families, and all the other usual results of incarceration which flow from the physical and psychological degradation of jail life.

There may be further arguments about the exact figures, but this much is clear. Preventive detention means putting some people in jail for crimes they would never commit. And for all the improvements, the District of Columbia jails, like most jails in the United States, are places where crime is taught among the inmates. By keeping innocent people in these crime factories, preventive detention, an alleged solution to the crime problem, will serve to encourage even more crime.

The real solutions to pretrial crime are less flamboyant but more just: for instance, conditional release whereby release on bail could be revoked if certain conditions are violated, such as regular employment and reporting to supervisory personnel. Another partial solution would be the deterrent effect of special additional penalties for crime committed while on bail. Most important of all would be speedier trials. The witnesses on the bill have agreed that trials within 60 days could virtually eliminate pretrial crime, and would of course ensure better justice. The tragic irony of the proposal for preventive detention is that it means a horrendous additional burden for the already clogged court system and the crowded jails. By further slowing the time to trial and degrading the administration of justice, preventive detention will only increase the opportunity for pretrial crime.

In sum, the facts, as established by the Justice Department's own Report, and simplest logic, end the debate even before we can reach all the constitutional reasons for rejecting preventive detention. It is clear that preventive detention, even in the terms of its sponsors, just will not do the job promised. The Justice Department and news reports may continue to find and display the outrageous crime committed by a defendant while on bail; but the hard fact is there is no way to identify that person without endangering the well-being of a large part of the very community most oppressed by street crime. My colleague, Senator TYDINGS, has remarked:

> To those who say this bill is antiblack, I say crime in this 70 percent black city is antiblack.

But that is no answer for the innocent man who sits in jail tormented with wondering whether his children will eat or be clothed without his support.

It is a key principle of our constitutional heritage that whenever constitutional rights are involved in the provision for crime control, legislators and judges must look not only to how a particular measure may work out in the ideal, but also to the potential for abuse. I repeat that on the basis of the former alone, there is conclusive reason to reject preventive detention. But consider also how preventive detention can actually be used with respect to the black community. Judges will tend to find the "dangerousness" that legitimizes detention most easily where an individual's background reflects the worst social conditions.

I call to your attention a very revealing item that passed unnoticed in the Senate committee hearings on preventive detention. District of Columbia Police Chief Wilson had just testified, asserting the fairness of the proposal. He then submitted, as examples for the record, a dozen or so case histories selected to show appropriate individual subjects for preventive detention. Each case history begins, "Negro, male." I do not doubt for a moment that preventive detention, with all the injustice that it means, will impinge primarily on the black ghetto. My colleague, the Senator from Maryland (Mr. TYDINGS), has voiced the hope and expectation that present apprehension in the black community is ill founded and will be dispelled when there is better education as to the operation of preventive detention. I say the ghetto understands very well what preventive detention means—much better than most of us. Living in the ghetto is the best possible instruction as to the impact of extreme and irrational response to the crime problem.

That preventive detention would deny justice should not really come as a surprise. For in theory alone the proposal never made much sense. If the public safety justifies detention to prevent future crime, it is just as reasonable to extend jail terms. No doubt if we never let any offender out of jail, the crime rate would be significantly reduced. This is, of course, the absurd logic of preventive detention. It would seem to have no place in a society where laws are supposed to represent the rational side of man. But, of course, the administration's crime proposals are supposed to represent a change in philosophy.

The change in philosophy is perhaps nowhere more evident than in the proposals for dealing with juvenile offenders. From the very beginnings of criminology, indeed, since the earliest studies of social development, it has always been recognized that rehabilitative efforts are most hopeful and successful where the youthful offender is concerned. Yet, under the conference measure, as it grew out of the administration proposals, the term "child" is to be defined so that persons 16 years old charged with certain crimes must be excluded from the jurisdiction of Family Court. They must be tried by an adult court and will be subject to imprisonment in an adult jail. The conference measure also makes it possible to transfer any 15-year-old to adult court for the commission of any felony. This provision was opposed by all the hearing witnesses except the Department of Justice. Opposing witnesses included the people in the District most intimately acquainted with the juvenile treatment process and the District's juveniles, such as the District of Columbia Department of Public Welfare and the District of Columbia Bar Association's Juvenile Court Committee. Altogether, the direction of the juvenile offender provisions is to make permanent social evil of youthful tendency that could be reversed by more rational treatment. The long-range dividend is absolutely negative.

What will be accomplished in the short run? The testimony also established that judges and prosecutors are not generally willing to send young offenders to adult jails. Judges and prosecutors are understandably reluctant to send a young offender to crime school. They are reluctant to destroy his life. They are reluctant to give society a permanent enemy. Thus, instead of more protection for the community, these proposals will severely increase the immediate danger. The charges against the young criminal will be more often dropped. Society and the offender will lose the benefit of the supervision and correctional controls of the juvenile authorities.

By myopic rejection of rehabilitation for repression, the administration thus promises order and gives us social disaster. They forget Justice Burger's wise admonition—

> We must proceed, even in the face of bitter contrary experience, in the belief that every human being has a spark somewhere hidden in him that will make it possible for redemption and rehabilitation. If we accept the idea that each human being, however "bad," is a child of God, we must look for that spark.

If the juvenile offender provisions and other provisions such as mandatory minimum sentences are enacted, we lose not only this spiritual commitment, but also the real possibility for a better society through rehabilitation.

The District of Columbia crime bill as proposed is probably most disturbing in the range and degree of its attack on civil liberties. This seemingly is the aspect of the bill that is most disturbing to the Senator from North Carolina (Mr. ERVIN). The Senator from North Carolina has been caused to remark:

> This bill might be better entitled "A bill to repeal the fourth, fifth, sixth, and eighth amendments to the Constitution."

For instance, the administration intends to bring better crime control by extending the use of the wiretap to the widest range of street crime. While the wiretap sometimes yields results in the surveillance and investigation of narcotics distribution and organized crime, police experience as well as commonsense both indicate that the wiretap has almost no utility with respect to the ordinary street crime which leads to cries for law and order. The administration's proposals are aimed at blanket authority to use the wiretap. The practical result would be to make the wiretap a ubiquitous presence and conventional assumption in this society.

The extended wiretap is the proposal of politicians who decried "big Government" on their way to the White House. Big Government? This bill has the makings of the "big brother" of 1984.

The effect of the no-knock proposal is to give the police the authority to break into your home, any time, day or night. Oh, yes. There is provision for a warrant. But besides the fact that a police officer will be generally allowed to break in without a warrant, the warrant provided for is a giant step into 1984. It is a new kind of warrant. Instead of requiring a

sworn statement as to present fact, it requires only a declaration of prophecy that if the police officer knocks and informs the occupants of a house of his presence, a life will be threatened or evidence will be destroyed. As Senator ERVIN has pointed out, this is pure prophecy by an officer miles away from the point of entry. It requires him to swear to what he cannot possibly know.

Most important, once this warrant is issued, no-knock procedures is legitimized no matter what the actual facts when the officer is later present at the point of entry. Under the present common law rule, there can be post facto review by a court, review at which the actual circumstances of the entry can be presented and judged. The risk of this review serves as a deterrent to unjustifiable no-knock entry. But under the no-knock proposal in this bill, once the oracle has spoken and the policeman is armed with this unique warrant, or modern version of the Sibylline leaves, nothing will be disallowed.

The no-knock proposal is couched in terms of prevention of violence. But think for a moment what will occur when policemen charge into citizens' homes, any time, day or night. Consider the deadly weapons and attack trained dogs available to many District of Columbia residents, and the likely response of an average citizen when someone, he probably would not know who, breaks into his home in the middle of the night. No-knock means extreme physical danger to all of us, including the police. It is incredible that this is the proposal of an administration publicly dedicated to law and order.

We have before us what Senator ERVIN rightly entitled on its initial presentation, "a garbage pail of some of the most repressive, nearsighted, intolerant, unfair, and vindictive legislation that the Senate has ever been presented."

What is particularly remarkable is that the administration's bill, as originally presented, contained proposals which were in blatant violation of well established constitutional law. The bill, as it appeared in the House, permitted appeals by the Government to resolve substantial questions, even after a defendant is acquitted. Any first-year law student knows that the quality of our legal process depends on adversary presentation of the issues, that the Constitution requires an "actual case or controversy," and that American courts do not sit to render advisory opinions. It is beyond belief that trained lawyers in the Justice Department could have sincerely expected this proposal to stand as law in this country. That this proposal could withstand a line of precedent stretching at least as far as Marbury against Madison in 1803 is surpassed in absurdity only by the provision added in the House, and later modified, which stated that in any civil action for unlawful arrest against a police officer, the plaintiff is required to pay the attorney's fees of the defendant officer, even if the plaintiff wins the case.

This is some war on crime. In truth, it is only a war dance; with all the pounding and the shouting, but no real commitment to battle.

The reason is not a lack of toughness. The administration is getting tougher, but for a different war—a political war. All these apparently hard-nosed proposals, which would actually result in making reduction of crime harder to accomplish, are part of a great illusion that has been fostered ever since Richard Nixon began to campaign for the Presidency in 1968. It is the illusion that crime is ravaging the Nation because the police, the prosecutors and the judges are too soft on the criminals. The reasoning of the administration was never more clear than when a few weeks ago, the President threatened the Congress that if we did not pass his crime legislation, the people would hold those rejecting his proposals responsible for the continuing crime crisis. He thereby laid the groundwork for reaping the political benefit of his crime program.

Why, then, were some proposals made which were so obviously doomed to failure? The only reason that appears is reflected in President Nixon's threat. The administration hopes to blame Congress and the courts for striking down an alleged attempt to stop crime. This will be the administration's response to the inevitable demonstration that the Nixon promise to end the crime crisis is to be unfulfilled.

The promise will be unfulfilled because the harder constructive task has been largely avoided. There has been no major effort to make the basic change and improvement in correctional facilities that is the precondition for eliminating the high proportion of repeater crime. There is no major new effort on the part of the administration to secure better gun control, to develop police community relations programs, to professionalize and educate police. But we have seen a slowdown in the effort to eradicate a major source of the crime problem, the decaying urban environment that deprives and demoralizes the individual.

The plan in the District of Columbia crime bill for an improved court system represents a long requested positive effort. But even here the conference bill provides about one-tenth the funds that Senator ERVIN and others who have studied the problem in depth regard as critically necessary. The court reorganization proposals should be saved and improved, and the garbage must be dumped. This is what the substitute measure which I have cosponsored will accomplish.

It is our duty to dispel the Nixon mythology which substitutes political expediency for any real attack on crime. For the bill before us shows that indulging in illusions means failure in fighting crime and the loss of precious freedom.

We must face up to the challenge of crime by providing the thoughtful constructive solutions and the necessary resources. We must not cower before the political threat. We cannot build wise policy on fear. I for one believe in the good sense of the American people. Those who sow deception and fear will not profit. "For they have sown the wind, and they shall reap the whirlwind." Mr. President, I shall vote against the conference report.

EXTENSION OF BOUNDARIES OF THE TOIYABE NATIONAL FOREST IN NEVADA

Mr. ALLOTT. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3279.

The PRESIDING OFFICER (Mr. SAXBE) laid before the Senate the amendment of the House of Representatives to the bill (S. 3279) to extend the boundaries of the Toiyabe National Forest in Nevada, and for other purposes which was on page 3, line 14, strike out "Funds" and insert "Not to exceed $12,500,000 of the funds".

Mr. ALLOTT. Mr. President, I move that the Senate concur in the amendment of the House.

The motion was agreed to.

DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970

The Senate resumed the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to 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 (Mr. SAXBE). The Senator from Maryland.

Mr. TYDINGS. Mr. President, I rise once more in support of the report of the conference on S. 2601, the District of Columbia Court Reform and Criminal Procedure Act of 1970.

It might be expected that any defense of this strong anticrime measure would be prefaced by an extended discussion of the problem the report is designed to meet. I will refrain from repeating the appalling statistics relating to crime in the National Capital, however, for several important reasons:

First, too much rhetoric, too much emotionalism has already beclouded the debate on the conference report on S. 2601.

Second, I do not choose to waste words when I know that every Senator knows the impact of crime on the citizens of this city. In fact, hardly an office in the entire U.S. Senate has not actually felt the impact of the crime crisis of this city.

This bill is the keystone of President Nixon's program against crime in the Nation Capital. The court reorganization it provides is indispensable to any permanent reduction in the criminal case backlog in the Capital. Its codification of portions of criminal law in the city is the first in half a century. Its expansion of the Public Defender Service and the Bail Agency are long overdue steps to provide an adequate representation and supervision of criminal defendants. The pretrial detention provisions are essential to protect law-abiding citizens from dangerous criminal defendants. The second offense minimum mandatory and "wiretap" provisions simply make applicable to local crimes in the District of Columbia the same penalties and procedures prescribed by Congress

for the Nation in the omnibus crime bill and the Gun Crime Control Act of 1968.

This bill should be enacted because it is a good bill; because it is an essential tool for law enforcement; and because the alternative suggested by the bill's critics are illusions which promise only continued delay and inaction on the District of Columbia crime crisis.

Now, Mr. President, turning to the substance of the bill, most of the debate on this legislation has centered on the issues of so-called no-knock warrants and pretrial detention. I wish to remind the Senate, however, that all of the controversial features in the conference report on S. 2601 in the aggregate do not amount to so much as 10 percent of the substance or bulk of the bill. I vigorously urge the Senate not to lose sight of the fact that the conference version of S. 2601 is 100 percent a monumental compendium of important and much-needed reforms. Moreover, 90 percent of the bill is wholly noncontroversial.

Among other reforms, the conference report provides—

An efficient, merged local court system with divisions of flexible size capable of adjusting to exact court needs.

A nearly two-thirds increase in the number of local trial judges, along with numerous other means for expanding the city's judicial resources.

Increased tenure, salaries, retirement benefits, and the like, to attract high quality personnel to the local bench.

A refined mechanism for ridding the bench of unfit judges.

Modern court management, with centralization of non-judicial, administrative duties in a top-level court executive.

A modern juvenile code codifying recent developments in the law of juvenile court proceedings.

A telescoping of numerous juvenile proceedings, and other means for assuring juvenile court expedition.

Three distinct modes of adjudication and treatment for three distinct categories of juveniles.

A full-fledged Public Defender Service for the District of Columbia, greatly expanded beyond the size and scope of the operation of the existing Legal Aid Agency.

An expanded bail agency, with new supervisory capacity and functions regarding persons released prior to trial.

Authorization for increased police mutual assistance between the District and the suburbs.

A Federal payment of $5,000,000 to assist the District of Columbia government in meeting the costs of S. 2601 and certain other crime-related programs, notably the city's Narcotics Treatment Agency.

Among the many other reforms less frequently mentioned, the conference report also provides—

A percentage method for computing local judges' salaries, with such salaries to be fixed at 90 percent of Federal judges' salaries—thereby extending to District of Columbia judges the benefit of quadrennial review by the Kappell Commission.

Individual law clerks for all local judges, as well as a pool of three additional law clerks to serve the local court of appeals.

Authorization for the assignment of Federal district judges to serve temporarily, as the need arises, on the local trial bench.

A corps of active "senior" judges, by establishing a mandatory retirement age of 70 and repealing the 60-day limit on the fully compensated annual active service of retired local judges.

A requirement that all judges file annually with the removal commission a detailed financial statement much like the confidential report required in the U.S. Senate.

Authorization for the Public Defender Service to accept public grants and private contributions to facilitate research and continuing educational assistance on the part of the Service for members of the private bar inexperienced in criminal defense work and the like.

Elimination of the requirement that an indigent plaintiff in an uncontested divorce proceeding pay the attorney's fees of the defendant.

In the place of the ancient coroner system, a modern office of medical examiner with purely scientific, and no longer quasi-judicial, functions.

Elimination of the criminal and quasi-criminal incidents of paternal and non-support proceedings.

In cases involving offenses among members of the same family, special proceedings for a civil protection order as a preferred alternative to criminal process.

Procedure for sealing—expunging—juvenile records, in appropriate cases, apart from the familiar rules of codification.

Right of juvenile to appeal directly, and on an expedited basis, from the entering of a detention or shelter care or transfer order.

The "beyond a reasonable doubt" standard for factfinding in delinquency cases.

Precise statutory criteria to be applied in juvenile transfer proceedings.

Authorization for disclosure of the presentencing report in criminal proceedings.

Right of a defendant in a criminal proceeding to address the court and adduce information in mitigation of his sentence.

Right of discovery for a defendant in a criminal proceeding, as to information to be adduced by the prosecution in connection with sentencing.

Codification of the case law requirement of pretrial notice of the prosecution's intent to rely on any repeated offender statute.

Mr. President, each of the items in this summary list of reforms constitutes an historic development, promising great and important benefit for the administration of justice in the National Capital.

I hope that my fellow Senators by now have studied the conference report on S. 2601 and the Senate statement of managers; I hope that they appreciate fully the extraordinary breadth and depth of the reforms incorporated in the pending report.

In the course of this debate it has been asserted that the Senate went down in defeat on most of the major issues before the conference on S. 2601. That assertion, Mr. President, is both untrue and unfair. It reflects a lack of familiarity, a lack of a grasp of the facts, with the scores of important issues before the conference—that same lack of familiarity, in fact, that has led the opponents of this report into exaggerations and misstatements both of the facts and of the law.

Some critics have alluded to the House debate on the pending conference report, during which one of the House conferees claimed that the conference report was very much akin to the House-passed version of the District of Columbia crime bill. I ask my distinguished colleagues to look at the real motivation behind that claim: the House conferees were quite obviously wary of their own House statement of managers—of its potential for embarrassment, its detailed description of the repeated failure of the House conferees to exact Senate recession. The House statement of managers was not even introduced into the record in the House until one of the opponents of the conference report, minutes before House passage, made a great issue of the statement's absence.

Mr. President, the plain fact for anyone who cares to read is that the House conferees carried away from the conference less than one third—less than one-third—of the agenda items in the form in which they were passed by the House. Anyone who has checked against the list of 68 major differences—between the original House and Senate versions of the crime bill—the list published in volume 9 of the Senate District Committee's "Crime in the National Capital" series, the list which my distinguished colleague, the senior Senator from North Carolina, himself, addressed when he testified before us on the subject of the House-passed crime bill—anyone who has checked against that list knows that the Senate prevailed on 50 percent of the most important items; the House prevailed on only 32 percent; and the remaining 18 percent in the conference report represents genuine compromises departing substantially from both the Senate and House positions.

Mr. President, the Senate conferees on the District of Columbia crime bill have labored long: for 3 months we reasoned, cajoled, persuaded, and pleaded with House conferees whose convictions to all appearances were as deep and fixed as those of any Member of this body. We have produced a score of 50 wins, 32 losses, and 18 ties. I call that a major victory which the U.S. Senate should certainly endorse.

So that our colleagues in the Senate can get a better idea of the extent and significance of the differences which were resolved in favor of the Senate, I want to enumerate a sample, a dozen of the items from the House bill deleted in conference. Unlike the House version of S. 2601, the conference report on the District of Columbia crime bill does not provide:

Presidential appointment and removal of the court executive officer, which would have rendered the day-to-day operations of the judiciary subject to the influence of the executive branch of Government.

Automatic transfer of 16- and 17-year-olds to criminal court when charged with manslaughter, mayhem, arson, kidnaping, second-degree burglary, breaking into vending machines, assault with a dangerous weapon, "unarmed" robbery—including common purse snatching and yoking—and assault with intent to commit any of the above.

Juvenile "waiver" proceedings with the burden on the child to establish that he should not be sent to the criminal court for trial and punishment.

Termination of juvenile court jurisdiction over a child after "waiver," even if the pending charges were to be dropped or the child found innocent.

Conditioning of the defendant's right to take depositions in criminal cases on the express permission of the prosecution.

Mandatory life sentences—with no possibility of parole for 20 years—for third and subsequent "violent" crimes—including all of the principal common law felonies.

Notice of prior convictions, and of the prosecutor's intent to proceed under a repeated offender statute, to be given after trial and only prior to time of sentencing.

Authorization for the prosecution to take appeals from judgments of acquittal in criminal cases—with no reversal of judgment in such cases—that is to say, "moot" appeals.

General authority for an officer executing a search warrant to perform "chemical, scientific, medical, or other tests or experiments" on persons.

Authority for an officer executing a search warrant to seize any property believed to be subject to seizure "discovered in the course of" the execution "even if the property is not enumerated in the warrant or the application therefor."

In civil actions against a police officer for wrongful arrest, payment by the injured plaintiff of the defendant police officer's attorney's fees, and even if the judgment in the wrongful arrest action is entered in favor of the plaintiff.

Dismemberment of the District of Columbia government's Department of Corrections, with the transfer of the city's Lorton Reformatory complex to the Federal Bureau of Prisons.

Mr. President, the Senate conferees fought long and hard to root out these many shortsighted features from the House-passed version of the District of Columbia crime bill. We cannot now risk unraveling the 50 percent of the conference issues which have been finally tailored to the Senate's expressed wishes, nor can we risk unraveling the additional 18 percent of the issues which have been compromised on neutral ground.

Most important, Mr. President, it is essential that the Senate distinguish carefully between fiction and fact in assessing the few controversial provisions in the conference bill. I have implored the Senate and the public: Study the conference report; it is a complex and highly technical document. Likewise, I have urged upon my colleagues, the public, and the communications media: Study the comprehensive Senate statement of managers. Nevertheless, as late as this weekend just past, indeed even today, nearly every statement in opposition to the conference report on S. 2601 has been riddled with misstatements and misunderstanding.

Let me enumerate a few examples:

MANDATORY MINIMUMS

On the floor of the Senate last Thursday, a Senator attacked the conference report on S. 2601 claiming that it imposes a mandatory minimum penalty for first offenses relating to incendiary devices—see CONGRESSIONAL RECORD of July 16, 1970, page 24709. I suggested to that distinguished Senator that he was in error. Nevertheless, he continued to press this mistaken criticism—see CONGRESSIONAL RECORD of July 16, 1970, page 24709. In addition other commentators have asserted that the conference report on S. 2601 provides a multiplicity of repressive mandatory minimum penalties.

Such is the fiction. The fact is as it is stated in the Senate statement of managers on page 22:

> The conference bill contains no mandatory minimum sentences for first offenders in any case . . . Mandatory sentences were limited to a provision for second-offender armed violent felons only, comparable to a provision already contained in Federal law (18 U.S.C. sec. 924(c)).

The error which the critics have made is in not studying the conference report in its entirety or with adequate care. On page 96 of the report it provides, in paragraph (6), that "Superior Court of the District of Columbia" is to be substituted in the place of "District of Columbia Court of General Sessions" in District of Columbia Code section 16–710. Therefore, the latter section will now provide as follows:

> In criminal cases in the Superior Court of the District of Columbia, the court may, upon conviction, suspend the imposition of sentence or impose sentence and suspend execution thereof, for such time and upon such terms as it deems best, if it appears to the satisfaction of the court that the ends of justice and the best interests of the public and of the defendant would be served thereby. In each case of the imposition of sentence and the suspension of the execution thereof, the court may place the defendant on probation under the control and supervision of a probation officer.

In other words, the general power to suspend any sentence or the imposition thereof, and to order probation, is effective in all cases except where the statute defining the offense in question specifies otherwise. The only instance of such "specification otherwise" in the conference report on S. 2601 occurs on page 144 and relates exclusively to, as I have stated previously, second-offender armed violent felons.

Again, the only mandatory sentencing provision which survived the conference negotiations is the requirement of a 5-year mandatory penalty for a second offense of committing a crime of violence while armed with a dangerous weapon. Critics of the conference report have recoiled from this provision as if such a proposal had never been made on the Senate floor. Yet, a similar 5-year mandatory penalty was approved by this body for second offender firearms crimes in the Federal Firearms Act of 1968. Just 8 months ago the Senate passed by voice vote S. 849 which contained a mandatory minimum sentence for second offenders.

CONSECUTIVE SENTENCES

Contrary to the unfounded assertion of the critics, nothing in the conference report creates a presumption that sentences for two or more offenses shall run consecutively rather than concurrently. Both the Senate statement of managers and the original House committee report express an intent to overturn the result reached in *Borum* v. *United States*, 409 F.2d 433 (D. C. Cir. 1967), *cert. denied*, 395 U.S. 916 (1969), where two sentences were required to run concurrently, although based upon entirely unrelated offenses, because the trial judge by oversight failed to specify that the sentences should be consecutive.

This provision does not create a preference or presumption for consecutive sentences. It merely avoids the irreparability of such judicial oversight. The critics are simply wrong in assuming that a contrary oversight to the detriment of the defendant cannot be corrected: Failure to specify that sentences should run concurrently, as is the usual practice, may be easily and quickly rectified on a motion to correct the sentence under rule 35 or rule 36 of the Federal Rules of Criminal Procedure.

SPECIAL SENTENCING PROCEDURES

On the floor of the Senate last Friday, Senator ERVIN made allusion to another so-called inequity meriting the attention of the Senate, and proceeded to attack the conference report provisions relating to discretionary increased sentences for repeated offenders—see CONGRESSIONAL RECORD of July 17, 1970, starting at page 24838. Mr. President, I respectfully submit that much of what my distinguished colleague has suggested is mistaken—both on the law and on the facts.

For example, there is no violation here of the due process requirement of the highest order of proof by the prosecution as to all facts underlying a criminal judgment. Proposed District of Columbia Code section 23–111(c)(1), on page 154 of the conference report, states quite specifically that, except as provided in paragraph (2), "the prosecuting authority shall have the burden of proof beyond a reasonable doubt on any issue of fact" relating to special sentencing. Paragraph (2), meanwhile, merely provides that, where the defendant alleges constitutional invalidity, the defendant must support his allegations, his motion, by a preponderance of the evidence. Consistent with its plain meaning, its limited application, paragraph (2) in no way diminishes the requirement that the prosecution make its showing, including proof of prior convictions, "beyond a reasonable doubt."

The clear implication of Senator ERVIN's remarks was that the provisions on pages 142, 143, 154, and 155 of the conference report constitute a clear departure from precedent and right thinking. Such, of course, is fiction. The fact is that

the provisions on the sentencing of repeated offenders are much more tightly drawn and are much more carefully safeguarded than title X, "Dangerous Special Offender Sentencing," of the President's organized crime bill, S. 30, which passed the Senate in this very session with only one dissenting vote—not Senator ERVIN's.

TRANSFER OF JUVENILES

It was with profound dismay that I read this past week end in one of the Nation's leading newspapers an article attacking the District of Columbia crime bill on the basis of a supposed general lowering of the age limit for juvenile court jurisdiction from 18 to 16.

This attack, Mr. President, was based on misunderstanding pure and simple. The fact is that the overwhelming majority of 16- and 17-year-olds presently handled in the juvenile court system will be unaffected by the conference report on S. 2601. The District of Columbia crime bill merely provides that in the unusual case where a 16- or 17-year-old is the subject of a bona fide charge of murder, forcible rape, first-degree burglary, or armed robbery—or felonious assault with intent to commit one of the aforesaid serious offenses—the 16- or 17-year-old must be sent to adult court for trial and sentencing—like an 18-year-old.

I have stated it before; let me state it again; unlike the House version of S. 2601, the list of offenses for which the age limit may be lowered does not now include manslaughter, mayhem, arson, kidnaping, second-degree burglary, breaking into vending machines, assault with a dangerous weapon, "unarmed" robbery—including purse snatching and yoking—and assault with intent to commit one of these offenses.

Critics have complained that basing the automatic transfer on charges brought by the prosecution places undue discretion in the hands of the United States attorney. This is nonsense. In fact, as is made eminently clear in the Senate Statement of Managers, the basic thrust of this new definition of "child" is to see to it that persons convicted of the few most serious offenses listed in the report, are given the benefit of the more intensive rehabilitation programs available to more mature persons; ordinarily the preferred method for shifting a child to the adult court is by the traditional means of formal transfer proceeding. The Senate conferees fully expect that the Criminal Division will turn back or dismiss the indictment in any case where the prosecutor categorizes, as one of the few most serious offenses, acts which under other circumstances would not be similarly categorized—whenever, in other words, the prosecutor seeks unfairly to circumvent the preferred transfer proceeding. In fact, the discretion left to the prosecutor with the new definition of "child" can only operate in the child's benefit: the courts will protect against abuses in the nature of unnecessarily high charges, while the prosecutor himself can exercise his customary discretion and in appropriate cases refrain from bringing serious charges even when in law they might be well-founded.

INSANITY DEFENSE

Mr. President, opponents of the conference report on S. 2601 have characterized as a Constitutional curiosity that provision in the District of Columbia crime bill which renders the issue of the defendant's insanity at the time of the offense an affirmative defense in a criminal case. The claim is made that the due process clause of the Constitution requires that the prosecution prove the defendant's sanity beyond a reasonable doubt—whenever sanity is in issue.

This claim of unconstitutionality, Mr. President, runs counter to the ruling of the United States Supreme Court in *Leland* v. *Oregon*, 343 U.S. 790 (1952). The provision under S. 2601, whereby the defendant must establish the defense of insanity by a preponderance of the evidence, adheres to the rule of law in force, moreover, in approximately 20 States. Indeed, I believe that the Senate would find illuminating an opinion of the supreme court of the State of North Carolina, written by my esteemed colleague, the senior Senator from North Carolina, during the time that he served as a justice of that court—one *State* v. *Swink*, 229 N.C. 123, 77 S.E. 2d. 852 (1948), in which Mr. Justice ERVIN held that, following a celebrated common law ruling, the defense of insanity is to be established by the defendant by a preponderance of the evidence—and not beyond a reasonable doubt.

I ask unanimous consent that the opinions in those cases be printed in the RECORD at this point.

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

[Appeal from the Supreme Court of Oregon]

LELAND v. OREGON

No. 176—Argued January 29, 1952—Decided June 9, 1952

In a criminal prosecution in an Oregon state court on an indictment for murder in the first degree, appellant pleaded not guilty and gave notice of his intention to prove insanity. Oregon statutes required him to prove his insanity beyond a reasonable doubt and made a "morbid propensity" no defense. Appellant was found guilty by a jury and was sentenced to death. *Held:* These statutes did not deprive appellant of life and liberty without due process of law in violation of the Fourteenth Amendment of the Federal Constitution. Pp. 791–802.

1. The trial judge's instructions to the jury, and the charge as a whole, made it clear that the burden was upon the State to prove all the necessary elements of guilt, of the lesser degrees of homicide as well as of the offense charged in the indictment. Pp. 793–706.

2. The rule announced in *Davis* v. *United States*, 160 U.S. 469, that an accused is "entitled to an acquittal of the specific crime charged if upon all the evidence there is reasonable doubt whether he was capable in law of committing the crime," established no constitutional doctrine but only the rule to be followed in federal courts. P. 797.

3. Between the Oregon rule requiring the accused, on a plea of insanity, to establish that defense beyond a reasonable doubt, and the rule in effect in some twenty states, which places the burden on the accused to establish his insanity by a preponderance of the evidence or some similar measure of persuasion, there is no difference of such magnitude as to be significant in determining the constitutional question here presented. P. 798.

4. That a practice is followed by a large number of states is not conclusive as to whether it accords with due process, but may be considered in determining whether it "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." P. 798.

5. The instant case is not one in which it is sought to enforce against the State a right which has been held to be secured to defendants in federal courts by the Bill of Rights. Pp. 798–799.

6. Oregon's policy with respect to the burden of proof on the issue of sanity cannot be said to violate generally accepted concepts of basic standards of justice. P. 799.

7. *Tot* v. *United States*, 319 U.S. 463, does not require a different conclusion from that here reached. P. 799.

8. The contention that the instructions to the jury in this case may have confused the jury as to the distinction between the State's burden of proving premeditation and the other elements of the crime charged and appellant's burden of proving insanity, cannot be sustained. P. 800.

9. Due process is not violated by the Oregon statute which provides that a "morbid propensity to commit prohibited acts, existing in the mind of a person, who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor." Pp. 800–801.

10. The "irresistible impulse" test of legal sanity is not "implicit in the concept of ordered liberty"; and due process does not require the State to adopt that test rather than the "right and wrong" test. Pp. 800–801.

11. The trial court's refusal to require the district attorney to make one of appellant's confessions available to his counsel before trial did not deny due process in the circumstances of this case. Pp. 801–802.

190 Ore. 598, 227 P. 2d 785, affirmed.

Appellant's conviction of murder, challenged as denying him due process in violation of the Fourteenth Amendment, was affirmed by the State Supreme Court. 190 Ore. 598, 227 P. 2d 785. On appeal to this Court, *affirmed*, p. 802.

Thomas H. Ryan argued the cause for appellant. With him on the brief was *Harold L. Davidson*.

J. Raymond Carskadon and *Charles Eugene Raymond* argued the cause for appellee. With them on the brief was *George Neuner*, Attorney General of Oregon.

Mr. JUSTICE CLARK delivered the opinion of the Court.

Appellant was charged with murder in the first degree. He pleaded not guilty and gave notice of his intention to prove insanity. Upon trial in the Circuit Court of Multnomah County, Oregon, he was found guilty by a jury. In accordance with the jury's decision not to recommend life imprisonment, appellant received a sentence of death. The Supreme Court of Oregon affirmed. 190 Ore. 598, 227 P. 2d 785. The case is here on appeal. 28 U.S.C. § 1257(2).

Oregon statutes required appellant to prove his insanity beyond a reasonable doubt and made a "morbid propensity" no defense.[1] The principal questions in this appeal are raised by appellant's contentions that these statutes deprive him of his life and liberty without due process of law as guaranteed by the Fourteenth Amendment.

The facts of the crime were revealed by appellant's confessions, as corroborated by other evidence. He killed a fifteen-year-old girl by striking her over the head several times with a steel bar and stabbing her twice with a hunting knife. Upon being arrested

Footnotes at end of article.

five days later for the theft of an automobile, he asked to talk with a homicide officer, voluntarily confessed the murder, and directed the police to the scene of the crime, where he pointed out the location of the body. On the same day, he signed a full confession and, at his own request, made another in his own handwriting. After his indictment, counsel were appointed to represent him. They have done so with diligence in carrying his case through three courts.

One of the Oregon statutes in question provides:

"When the commission of the act charged as a crime is proven, and the defense sought to be established is the insanity of the defendant, the same must be proven beyond a reasonable doubt. . . ." [2] Appellant urges that this statute in effect requires a defendant pleading insanity to establish his innocence by disproving beyond a reasonable doubt elements of the crime necessary to a verdict of guilty, and that the statute is therefore violative of that due process of law secured by the Fourteenth Amendment. To determine the merit of this challenge, the statute must be viewed in its relation to other relevant Oregon law and in its place in the trial of this case.

In conformity with the applicable state law,[3] the trial judge instructed the jury that, although appellant was charged with murder in the first degree, they might determine that he had committed a lesser crime included in that charged. They were further instructed that his plea of not guilty put in issue every material and necessary element of the lesser degrees of homicide, as well as of the offense charged in the indictment. The jury could have returned any of five verdicts: [4] (1) guilty of murder in the first degree, if they found beyond a reasonable doubt that appellant did the killing purposely and with deliberate and premeditated malice; (2) guilty of murder in the second degree, if they found beyond a reasonable doubt that appellant did the killing purposely and maliciously, but without deliberation and premeditation; (3) guilty of manslaughter, if they found beyond a reasonable doubt that appellant did the killing without malice or deliberation, but upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible; (4) not guilty, if, after a careful consideration of all the evidence, there remained in their minds a reasonable doubt as to the existence of any of the necessary elements of each degree of homicide; and (5) not guilty by reason of insanity, if they found beyond a reasonable doubt that appellant was insane at the time of the offense charged. A finding of insanity would have freed appellant from responsibility for any of the possible offenses. The verdict which the jury determined—guilty of first degree murder—required the agreement of all twelve jurors; a verdict of not guilty by reason of insanity would have required the concurrence of only ten members of the panel.[5]

It is apparent that the jury might have found appellant to have been mentally incapable of the premeditation and deliberation required to support a first degree murder verdict or of the intent necessary to find him guilty of either first or second degree murder, and yet not have found him to have been legally insane. Although a plea of insanity was made, the prosecution was required to prove beyond a reasonable doubt every element of the crime charged, including, in the case of first degree murder, premeditation, deliberation, malice and intent.[6] The trial court repeatedly emphasized this requirement in its charge to the jury.[7] Moreover, the judge directed the jury as follows:

"I instruct you that the evidence adduced during this trial to prove defendant's insanity shall be considered and weighed by you, with all other evidence, whether or not you find defendant insane, in regard to the ability of the defendant to premeditate, form a purpose, to deliberate, act wilfully, and act maliciously; and if you find the defendant lacking in such ability, the defendant cannot have committed the crime of murder in the first degree."[8]

These and other instructions, and the charge as a whole, make it clear that the burden of proof of guilt, and of all the necessary elements of guilt, was placed squarely upon the State. As the jury was told, this burden did not shift, but rested upon the State throughout the trial, just as, according to the instructions, appellant was presumed to be innocent until the jury was convinced beyond a reasonable doubt that he was guilty.[9] The jurors were to consider separately the issue of legal sanity *per se*—an issue set apart from the crime charged, to be introduced by a special plea and decided by a special verdict.[10] On this issue appellant had the burden of proof under the statute in question here.

By this statute, originally enacted in 1864,[11] Oregon adopted the prevailing doctrine of the time—that, since most men are sane, a defendant must prove his insanity to avoid responsibility for his acts. That was the rule announced in 1843 in the leading English decision in *M'Naghten's Case:*

"[T]he jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and . . . to establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing. . . ." [12]

This remains the English view today.[13] In most of the nineteenth-century American cases, also, the defendant was required to "clearly" prove insanity,[14] and that was probably the rule followed in most states in 1895,[15] when *Davis* v. *United States* was decided. In that case this Court, speaking through Mr. Justice Harlan, announced the rule for federal prosecutions to be that an accused is entitled to an acquittal of the specific crime charged if upon all the evidence there is reasonable doubt whether he was capable in law of committing crime." [16] In reaching that conclusion, the Court observed:

"The views we have expressed are supported by many adjudications that are entitled to high respect. If such were not the fact, we might have felt obliged to accept the general doctrine announced in some of the above cases; for it is desirable that there be uniformity of rule in the administration of the criminal law in governments whose constitutions equally recognize the fundamental principles that are deemed essential for the protection of life and liberty." [17]

The decision obviously establishes no constitutional doctrine, but only the rule to be followed in federal courts. As such, the rule is not in question here.

Today, Oregon is the only state that requires the accused, on a plea of insanity, to establish that defense beyond a reasonable doubt. Some twenty states, however, place the burden on the accused to establish his insanity by a preponderance of the evidence or some similar measure of persuasion.[18] While there is an evident distinction between these two rules as to the quantum of proof required, we see no practical difference of such magnitude as to be significant in determining the constitutional question we face here. Oregon merely requires a heavier burden of proof. In each instance, in order to establish insanity as a complete defense to the charges preferred, the accused must prove that insanity. The fact that a practice is followed by a large number of states is not conclusive in a decision as to whether that practice accords with due process, but it is plainly worth considering in determining whether the practice "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder* v. *Massachusetts*, 291 U.S. 97, 105 (1934).

Nor is this a case in which it is sought to enforce against the states a right which we have held to be secured to defendants in federal courts by the Bill of Rights. In *Davis* v. *United States, supra,* we adopted a rule of procedure for the federal courts which is contrary to that of Oregon. But "[i]ts procedure does not run foul of the Fourteenth Amendment because another method may seem to our thinking to be fairer or wiser or to give a surer promise of protection to the prisoner at the bar." *Snyder* v. *Massachusetts, supra,* at 105. "The judicial judgment in applying the Due Process Clause must move within the limits of accepted notions of justice and is not to be based upon the idiosyncrasies of a merely personal judgment. . . . An important safeguard against such merely individual judgment is an alert deference to the judgment of the state court under review." Mr. JUSTICE FRANKFURTER, concurring in *Malinski* v. *New York*, 324 U.S. 401, 417 (1945). We are therefore reluctant to interfere with Oregon's determination of its policy with respect to the burden of proof on the issue of sanity since we cannot say that policy violates generally accepted concepts of basic standards of justice.

Nothing said in *Tot* v. *United States*, 319 U.S. 463 (1943), suggests a different conclusion. That decision struck down a specific presumption created by congressional enactment. This Court found that the fact thus required to be presumed had no rational connection with the fact which, when proven, set the presumption in operation, and that the statute resulted in a presumption of guilt based only upon proof of a fact neither criminal in itself nor an element of the crime charged. We have seen that, here, Oregon required the prosecutor to prove beyond a reasonable doubt every element of the offense charged. Only on the issue of insanity as an absolute bar to the charge was the burden placed upon appellant. In all English-speaking courts, the accused is obliged to introduce proof if he would overcome the presumption of sanity.[19]

It is contended that the instructions may have confused the jury as to the distinction between the State's burden of proving premeditation and the other elements of the charge and appellant's burden of proving insanity. We think the charge to the jury was as clear as instructions to juries ordinary are or reasonably can be, and, with respect to the State's burden of proof upon all the elements of the crime, the charge was particularly emphatic. Juries have for centuries made the basic decisions between guilt and innocence and between criminal responsibility and legal insanity upon the basis of the facts, as revealed by all the evidence, and the law, as explained by instructions detailing the legal distinctions, the placement and weight of the burden of proof, the effect of presumptions, the meaning of intent, etc. We think that to condemn the operation of this system here would be to condemn the system generally. We are not prepared to do so.

Much we have said applies also to appellant's contention that due process is violated by the Oregon statute providing that a "morbid propensity to commit prohibited acts, existing in the mind of a person, who is not

Footnotes at end of article.

shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor." [20] That statute amounts to no more than a legislative adoption of the "right and wrong" test of legal insanity in preference to the "irresistible impulse" test.[21] Knowledge of right and wrong is the exclusive test of criminal responsibility in a majority of American jurisdictions.[22] The science of psychiatry has made tremendous strides since that test was laid down in *M'Naghten's Case*,[23] but the progress of science has not reached a point where its learning would compel us to require the states to eliminate the right and wrong test from their criminal law.[24] Moreover, choice of a test of legal sanity involves not only scientific knowledge but questions of basic policy as to the extent to which that knowledge should determine criminal responsibility.[25] This whole problem has evoked wide disagreement among those who have studied it. In these circumstances it is clear that adoption of the irresistible impulse test is not "implicit in the concept of ordered liberty." [26]

Appellant also contends that the trial court's refusal to require the district attorney to make one of appellant's confessions available to his counsel before trial was contrary to due process. We think there is no substance in this argument. This conclusion is buttressed by the absence of any assignment of error on this ground in appellant's motion for a new trial. Compare *Avery* v. *Alabama*, 308 U.S. 444, 452 (1940). While it may be the better practice for the prosecution thus to exhibit a confession, failure to do so in this case in no way denied appellant a fair trial. The record shows that the confession was produced in court five days before appellant rested his case. There was ample time both for counsel and expert witnesses to study the confession. In addition the trial judge offered further time for that purpose but it was refused. There is no indication in the record that appellant was prejudiced by the inability of his counsel to acquire earlier access to the confession.

Affirmed.

MR. JUSTICE FRANKFURTER, joined by MR. JUSTICE BLACK, dissenting.

However much conditions may have improved since 1905, when William H. (later Mr. Chief Justice) Taft expressed his disturbing conviction "that the administration of the criminal law in all the states in the Union (there may be one or two exceptions) is a disgrace to our civilization" (Taft, The Administration of Criminal Law, 15 Yale L. J. 1, 11), no informed person can be other than unhappy about the serious defects of present-day American criminal justice. It is not unthinkable that failure to bring the guilty to book for a heinous crime which deeply stirs popular sentiment may lead the legislature of a State, in one of those emotional storms which on occasion sweep over our people, to enact that thereafter an indictment for murder, following attempted rape, should be presumptive proof of guilt and cast upon the defendant the burden of proving beyond a reasonable doubt that he did not do the killing. Can there be any doubt that such a statute would go beyond the freedom of the States, under the Due Process Clause of the Fourteenth Amendment, to fashion their own penal codes and their own procedures for enforcing them? Why is that so? Because from the time that the law which we have inherited has emerged from dark and barbaric times, the conception of justice which has dominated our criminal law has refused to put an accused at the hazard of punishment if he fails to remove every reasonable doubt of his innocence in the minds of jurors. It is the duty of the Government to establish his guilt beyond a reasonable doubt. This notion—basic in our law and rightly one of the boasts of a free society—is a requirement and a safeguard of due process of law in the historic, procedural content of "due process." Accordingly there can be no doubt, I repeat, that a State cannot cast upon an accused the duty of establishing beyond a reasonable doubt that his was not the act which caused the death of another.

But a muscular contraction resulting in a homicide does not constitute murder. Even though a person be the immediate occasion of another's death, he is not a deodand to be forfeited like a thing in the medieval law. Behind a muscular contraction resulting in another's death there must be culpability to turn homicide into murder.

The tests by which such culpability may be determined are varying and conflicting. One does not have to echo the scepticism uttered by Brian, C. J., in the fifteenth century, that "the devil himself knoweth not the mind of men" to appreciate how vast a darkness still envelopes man's understanding of man's mind. Sanity and insanity are concepts of incertitude. They are given varying and conflicting content at the same time and from time to time by specialists in the field. Naturally there has always been conflict between the psychological views absorbed by law and the contradictory views of students of mental health at a particular time. At this stage of scientific knowledge it would be indefensible to impose upon the States, through the due process of law which they must accord before depriving a person of life or liberty, one test rather than another for determining criminal culpability, and thereby to displace a State's own choice of such a test, no matter how backward it may be in the light of the best scientific canons. Inevitably, the legal tests for determining the mental state on which criminal culpability is to be based are in strong conflict in our forty-eight States. But when a State has chosen its theory for testing culpability, it is a deprivation of life without due process to send a man to his doom if he cannot prove beyond a reasonable doubt that the physical events of homicide did not constitute murder because under the State's theory he was incapable of acting culpably.

This does not preclude States from utilizing common sense regarding mental irresponsibility for acts resulting in homicide—from taking for granted that most men are sane and responsible for their acts. That a man's act is not his, because he is devoid of that mental state which begets culpability, is so exceptional a situation that the law has a right to devise an exceptional procedure regarding it. Accordingly, States may provide various ways for dealing with this exceptional situation by requiring, for instance, that the defense of "insanity" be specially pleaded, or that he on whose behalf the claim of insanity is made should have the burden of showing enough to overcome the assumption and presumption that normally a man knows what he is about and is therefore responsible for what he does, or that the issue be separately tried, or that a standing disinterested expert agency advise court and jury, or that these and other devices be used in combination. The laws of the forty-eight States present the greatest diversity in relieving the prosecution from proving affirmatively that a man is sane in the way it must prove affirmatively that the defendant is the man who pulled the trigger or struck the blow. Such legislation makes no inroad upon the basic principle that the State must prove guilt, not the defendant innocence, and prove it to the satisfaction of a jury beyond a reasonable doubt.

For some unrecorded reason, Oregon is the only one of the forty-eight States that has made inroads upon that principle by requiring the accused to prove beyond a reasonable doubt the absence of one of the essential elements for the commission of murder, namely, culpability for his muscular contraction. Like every other State, Oregon presupposes that an insane person cannot be made to pay with his life for a homicide, though for the public good he may of course be put beyond doing further harm. Unlike every other State, however, Oregon says that the accused person must satisfy a jury beyond a reasonable doubt that, being incapable of committing murder, he has not committed murder.

Such has been the law of Oregon since 1864. That year the Code of Criminal Procedure defined murder in the conventional way, but it also provided: "When the commission of the act charged as a crime is proven, and the defense sought to be established is the insanity of the defendant, the same must be proven beyond a reasonable doubt. . . ." General Laws of Oregon, 1845–1864, p. 441 *et seq.*, §§ 502, 204. The latter section, through various revisions, is the law of Oregon today and was applied in the conviction under review.

Whatever tentative and intermediate steps experience makes permissible for aiding the State in establishing the ultimate issues in a prosecution for crime, the State cannot be relieved, on a final show-down, from proving its accusation. To prove the accusation it must prove each of the items which in combination constitute the offense. And it must make such proof beyond a reasonable doubt. This duty of the State of establishing every fact of the equation which adds up to a crime, and of establishing it to the satisfaction of a jury beyond a reasonable doubt is the decisive difference between criminal culpability and civil liability. The only exception is that very limited class of cases variously characterized as *mala prohibita* or public torts or enforcement of regulatory measures. See *United States* v. *Dotterweich*, 320 U.S. 277; *Morissette* v. *United States*, 342 U.S. 246. Murder is not a *malum prohibition* or a public tort or the object of regulatory legislation. To suggest that the legal oddity by which Oregon imposes upon the accused the burden of proving beyond reasonable doubt that he had not the mind capable of committing murder is a mere difference in the measure of proof, is to obliterate the distinction between civil and criminal law.

It is suggested that the jury were charged not merely in conformity with this requirement of Oregon law but also in various general terms, as to the duty of the State to prove every element of the crime charged beyond a reasonable doubt, including in the case of first degree murder, "premeditation, deliberation, malice and intent." Be it so. The short of the matter is that the Oregon Supreme Court sustained the conviction on the ground that the Oregon statute "casts upon the defendant the burden of proving the defense of insanity beyond a reasonable doubt." *State* v. *Leland*, 190 Ore. 598, 638, 227 P. 2d 785, 802. To suggest, as is suggested by this Court but not by the State court, that, although the jury was compelled to act upon this requirement, the statute does not offend the Due Process Clause because the trial judge also indulged in a farrago of generalities to the jury about "premediation, deliberation, malice and intent," is to exact gifts of subtlety that not even judges, let alone juries, possess. See *International Harvester Co.* v. *Kentucky*, 234 U.S. 216, 223–224. If the Due Process Clause has any meaning at all, it does not permit life to be put to such hazards.

To deny this mode of dealing with the abuses of insanity pleas and with unedifying spectacles of expert testimony, is not to deprive Oregon of the widest possible choice of remedies for circumventing such abuses. The multiform legislation prevailing in the different States evinces the great variety of the experimental methods open to them for dealing with the problems raised by insanity defenses in prosecutions for murder.

To repeat the extreme reluctance with

Footnotes at end of article.

which I find a constitutional barrier to any legislation is not to mouth a threadbare phrase. Especially is deference due to the policy of a State when it deals with local crime, its repression and punishment. There is a gulf, however narrow, between deference to local legislation and complete disregard of the duty of judicial review which has fallen to this Court by virtue of the limits placed by the Fourteenth Amendment upon State action. This duty is not to be escaped, whatever I may think of investing judges with the power which the enforcement of that Amendment involves.

FOOTNOTES

[1] Ore. Comp. Laws, 1940, §§ 26–929, 23–122.

[2] *Id.*, § 26–929.

[3] *Id.*, §§ 26–947, 26–948.

[4] Six possible verdicts were listed in the instructions, guilty of murder in the first degree being divided into two verdicts: with, and without, recommendation of life imprisonment as the penalty. Since the jury in this case did not recommend that punishment, the death sentence was automatically invoked under Oregon law. *Id.*, § 23–411.

[5] The agreement of ten jurors would also have been sufficient for a verdict of not guilty, a verdict of guilty of second degree murder, or a verdict of guilty of manslaughter. R. 333–334.

[6] Ore. Comp. Laws, 1940, §§ 23–401, 23–414, 26–933; cf. *State* v. *Butchek*, 121 Ore. 141, 253 P. 367, 254 P. 805 (1927).

[7] R. 321, 323, 324, 330, 331, 332.

[8] R. 330. Again:

"I instruct you that to constitute murder in the first degree, it is necessary that the State prove beyond a reasonable doubt, and to your moral certainty, that the defendant's design or plan to take life was formed and matured in cool blood and not hastily upon the occasion.

"I instruct you that in determining whether or not the defendant acted purposely and with premeditated and deliberated malice, it is your duty to take into consideration defendant's mental condition and all factors relating thereto, and that even though you may not find him legally insane, if, in fact, his mentality was impaired, that evidence bears upon these factors, and it is your duty to consider this evidence along with all the other evidence in the case." R. 332.

[9] R. 321, 324.

[10] Ore. Comp. Laws, 1940, § 26–846 (requiring notice of purpose to show insanity as defense); *id.*, § 26–955 (providing for verdict of not guilty by reason of insanity and consequent commitment to asylum by judge). After defining legal insanity, the trial court instructed the jury:

"In this case, evidence has been introduced relating to the mental capacity and condition of the defendant . . . at the time [the girl] is alleged to have been killed, and *if* you are satisfied beyond a reasonable doubt that the defendant killed her in the manner alleged in the indictment, or within the lesser degrees included therein, *then* you are to consider the mental capacity of the defendant at the time the homicide is alleged to have been committed." R. 327 (emphasis supplied).

[11] Deady's Gen. Laws of Ore., 1845–1864, Code of Crim. Proc., § 204.

[12] 10 Cl. & Fin. 200, 210 (H.L., 1843).

[13] Stephen, Digest of the Criminal Law (9th ed., Sturge, 1950), 6; cf. *Sodeman* v. *The King*, [1936] W. N. 190 (P. C.); see *Woolmington* v. *Director of Public Prosecutions*, [1935] A. C. 462, 475.

[14] Weihofen, Insanity as a Defense in Criminal Law (1933), 151–155. "Clear proof" was sometimes interpreted to mean proof beyond a reasonable doubt, *e.g. State* v. *De Rancé*, 34 La. Ann. 186 (1882), and sometimes to mean proof by a preponderance of the evidence, *e.g., Hurst* v. *State*, 40 Tex. Cr. R. 383, 50 S. W. 819 (1899).

[15] See Wharton, Criminal Evidence (9th ed. 1884), §§ 336–340.

[16] 160 U.S. 469, 484 (1895); see *Hotema* v. *United States*, 186 U.S. 413 (1902); *Matheson* v. *United States*, 227 U. S. 540 (1913).

[17] *Id.*, at 488.

[18] Weihofen lists twelve states as requiring proof by a preponderance of the evidence, four as requiring proof "to the satisfaction of the jury," two which combine these formulae, one where by statute the defense must be "clearly proved to the reasonable satisfaction of the jury," one where it has been held that the jury must "believe" the defendant insane, and one where the quantum of proof has not been stated by the court of last resort, but which appears to follow the preponderance rule. Weihofen, Insanity as a Defense in Criminal Law (1933), 148–151, 172–200. Twenty-two states, including Oregon, are mentioned as holding that the accused has the burden of proving insanity, at least by a preponderance of the evidence, in 9 Wigmore, Evidence (3d ed. 1940 and Supp. 151), § 2501.

[19] Weihofen, Insanity as a Defense in Criminal Law (1933), 161; 9 Wigmore, Evidence (3d ed. 1940), § 2501.

[20] Ore. Comp. Laws, 1940, § 23–122.

[21] *State* v. *Garver*, 190 Ore. 291, 225 P. 2d 771 (1950); *State* v. *Wallace*, 170 Ore. 60, 131 P. 2d 222 (1942); *State* v. *Hassing*, 60 Ore. 81, 118 P. 195 (1911).

[22] Weihofen, Insanity as a Defense in Criminal Law (1933), 15, 64–68, 109–147.

[23] 10 Cl. & Fin. 200 (H. L., 1843).

[24] Compare *Fisher* v. *United States*, 328 U.S. 463, 475–476 (1946).

[25] See *Holloway* v. *United States*, 80 U.S. App. D.C. 3, 148 F. 2d 665 (1945); Glueck, Mental Disorder and the Criminal Law (1925); Hall, Mental Disease and Criminal Responsibility, 45 Col. L. Rev. 677 (1945); Keedy, Insanity and Criminal Responsibility, 30 Harv. L. Rev. 535, 724 (1917).

[26] *Palko* v. *Connecticut*, 302 U.S. 319, 325 (1937).

[229 N.C. 123]

STATE v. SWINK

No. 649—Supreme Court of North Carolina—May 19, 1948

1. CRIMINAL LAW—48

An accused is legally "insane" and exempt from criminal responsibility if he commits an act which would otherwise be punishable as a crime, and at time is laboring under such a defect of reason, from disease of the mind, as to be incapable of knowing nature and quality of act he is doing, or, if he does know this, incapable of distinguishing between right and wrong in relation to such act.

See Words and Phrases, Permanent Edition, for all other definitions of "Insane".

2. CRIMINAL LAW—311

Everyone is presumed to be sane until the contrary appears.

3. CRIMINAL LAW—311

The presumption of sanity applies to persons charged with crime, but is rebuttable.

4. CRIMINAL LAW—331, 570(2)

The burden of proof upon a plea of insanity in a criminal case rests upon the accused, but he is merely required to prove his insanity to the satisfaction of the jury and not beyond a reasonable doubt.

5. CRIMINAL LAW—570(2), 782(14), 1172(2)

In prosecution for rape of a 9 year old girl, defendant was only required to establish his defense of insanity to the satisfaction of the jury, and instruction imposing upon defendant burden to establish insanity beyond a reasonable doubt entitled defendant to a new trial. G.S. § 14–21.

Appeal from Superior Court, Guilford County; John H. Clements, Judge.

John Thomas Swink was convicted of rape upon a girl of the age of 9 years, and he appeals.

New trial.

The prisoner, a boy of the age of eighteen years, was tried upon a bill of indictment alleging that he perpetrated the capital felony of rape upon a girl of the age of nine years. G.S. § 14–21. Answering the charge preferred against him by the State, the accused entered two pleas, namely: first, a general plea of not guilty upon the ground that he did not commit the capital felony of rape or any of the lesser offenses included in the charge set forth in the indictment; and, second, a special plea of not guilty upon the ground that he was insane at the time specified in the indictment.

The evidence of the State and that of the prisoner were in sharp conflict with respect to the issue raised by the general plea of not guilty. The State adduced testimony tending to show that the accused raped the prosecuting witness in manner and form as charged in the bill of indictment, and the prisoner replied thereto with evidence indicating that this could not have been so because he was not at the place where the alleged crime was committed at the time of its alleged commission.

The evidence of the State and that of the accused were likewise in substantial conflict in respect to the issue arising upon the prisoner's special plea of not guilty upon the ground of insanity. We refrain from setting forth the conflicting testimony relating to the prisoner's mental condition with particularity because a detailed statement of such evidence is not necessary to an understanding of the only question involved on this appeal. For present purposes, it is sufficient to say that the prisoner presented testimony tending to show that he was mentally irresponsible at the time named in the indictment, and that the State countered with evidence indicating that the accused was mentally accountable at such time.

The jury returned a verdict finding the prisoner "guilty of rape as charged in the bill of indictment", but recommended "that the State of North Carolina not take his life." The trial judge thereupon pronounced sentence of death against the accused, and he appealed.

Lyon & Johnson, and T. W. Albertson, all of High Point, for prisoner, appellant.

Harry M. McMullan, Atty. Gen., and T. W. Bruton, Hughes J. Rhodes and Ralph M. Moody, Asst. Gen., for the State.

ERVIN, Justice.

[1] It is a well settled rule in the administration of criminal justice in this State than an accused is legally insane and exempt from criminal responsibility by reason thereof if he commits an act which would otherwise be punishable as a crime, and at the time of so doing is laboring under such a defect of reason, from disease of the mind, as to be incapable of knowing the nature and quality of the act he is doing, or, if he does know this, incapable of distinguishing between right and wrong in relation to such act. State v. Matthews, 226 N.C. 639, 39 S.E.2d 819; State v. Harris, 223 N.C. 697, 28 S.E.2d 232; State v. Hairston, 222 N.C. 455, 23 S.E.2d 885; State v. Terry 173 N.C. 761, 92 S.E. 154; State v. Cooper, 170 N.C. 719, 81 S.E. 50; State v. English, 164 N.C. 497, 80 S.E. 72; State v. Cloninger, 149 N.C. 567, 63 S.E. 154; State v. Spivey, 132 N.C. 989, 43 S.E. 475; State v. Potts, 100 N.C. 457, 6 S.E. 657; State v. Haywood, 61 N.C. 376; State v. Brandon, 53 N.C. 463.

By his special plea of not guilty upon the ground of insanity, the prisoner invoked this principle for his protection, and put directly in issue for the determination of the jury the question of fact as to whether he was sane or insane in a legal sense at the time mentioned in the indictment. It

has already been pointed out that the testimony of the State and that of the accused concerning this matter were in sharp conflict. The trial judge charged the jury, in substance, that to establish the prisoner's plea of insanity it must be "clearly established" that he did "not know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong." The accused duly preserved an exception to this instruction on the theory that it imposed too high a degree of proof upon him in respect to the defense of insanity.

[2–4] Since soundness of mind is the natural and normal condition of men, every one is presumed to be sane until the contrary is made to appear. This presumption of sanity applies to persons charged with crime, but it is rebuttable. State v. Harris, supra; State v. Cureton, 218 N.C. 491, 11 S.E.2d 469; State v. Bracy, 215 N.C. 248, 1 S.E.2d 891; State v. English, supra; State v. Cloninger, supra; State v. Potts, supra; State v. Starling, 51 N.C. 366. These considerations give rise to the firmly established rule that the burden of proof upon a plea of insanity in a criminal case rests upon the accused who sets it up. But he is not obliged to establish such plea beyond a reasonable doubt. He is merely required to prove his insanity to the satisfaction of the jury. State v. Harris, supra; State v. Stafford, 203 N.C. 601, 166 S.E. 734; State v. Jones, 203 N.C. 374, 166 S.E. 163; State v. Wilson, 197 N.C. 547, 149 S.E. 845; State v. Walker, 193 N.C. 489, 137 S.E. 429; State v. Jones, 191 N.C. 753, 133 S.E. 81; State v. Terry, supra; State v. Potts, supra; State v. Starling, supra.

[5] When the trial judge instructed the jury, in effect, that the prisoner's plea of insanity must be "clearly established," he imposed upon the accused the burden of proving his insanity by a higher degree of proof than that required by law. 14 C.J.S. Clearly, p. 1200, 11 C.J. § 37; Beeler v. People, 58 Colo. 451, 146 P. 762; McEvony v. Rowland, 43 Neb. 97, 61 N.W. 124; People v. Wreden, 59 Cal. 392.

Undoubtedly, the learned judge in the court below fell into this error because of a too literal reliance upon the language used by Lord Chief Justice Tindal in the celebrated English decision known as Macnaughten's Case. See 16 C.J. 100, 22 C.J.S., Criminal Law § 59. The present action is distinguishable from State v. Manning, 221 N.C. 70, 18 S.E.2d 821, where a similar erroneous instruction was given. In Manning's case, however, the trial judge recalled the jury after it had been out a short while and corrected his error. Nothing of this sort happened here.

For the reason given, the prisoner is entitled to a new trial. It is so ordered.

New trial.

POLICE STATE BLUEPRINT?

Mr. TYDINGS. Mr. President, it has become fashionable in some quarters for critics of the District of Columbia crime bill to refer to the provisions on so-called no-knock warrants as a "blueprint for a police state." This claim, Mr. President, merely constitutes more fiction, more emotionalism, evidencing a lack of familiarity with existing law and with the precise proposal of the conferees on S. 2601.

As I have stated many times before, the so-called no-knock provisions in the pending legislation are calculated to be a codification of existing law as sanctioned by the Supreme Court of the United States in the case of *Ker* v. *California*, 374 U.S. 23 (1963), together with an additional protection not afforded under the law at present—namely, a requirement that no-knocking be conducted whenever possible on the basis of court approval only. The conferees have sought to take the no-knocking decision out of the streets and place it in the courts. This is hardly a "blueprint for a police state"; rather, this is a blueprint for a state regulated by a more objective rule of law rather than a rule of men.

Mr. President, I am particularly puzzled by the fact that the junior Senator from New York (Mr. GOODELL) has alined himself with the critics of the conference report provisions on no-knock. I cannot imagine what the grounds for the Senator's criticism may be: the no-knock provisions in the pending conference report, both in terms of the literal language of the statute and in the context of the wealth of restrictive legislative history, these provisions are so much narrower in scope, so much more carefully safeguarded than the New York State no-knock: statute and case law. Section 799 of the New York Code of Criminal Procedure states:

> 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*. (Emphasis added.)

The leading New York case affirms authority substantially broader than that which is provided expressly and intended in the pending conference report. Mr. President, I refer to the case of People of the State of New York against Anthony De Lago, decided by the highest court of the State of New York, the New York State court of appeals—reported at 16 N.Y. 2d 289 (1965) and printed in the CONGRESSIONAL RECORD of July 20, 1970, at pages 25042 and 25043.

The characterization "blueprint for a police state" is totally unfounded. I have not noticed the emergence of such a police state in any of the United States to date, even though a vast majority of the States expressly authorize no-knocking in case law or by statute. Indeed, I would challenge any man who chose to so characterize—as a police state—the great State of New York.

NO-KNOCK PRECEDENT

It has been charged that the Senate, on the issue of the no-knock provisions, is taking an unprecedented step. This fiction cannot stand up to facts, to the record, plain for all to see: not only do a vast majority of the States clearly permit no-knocking in the limited circumstances set forth in the conference report, not only has this practice been approved by the Supreme Court of the United States—but, also, this very body, the U.S. Senate, approved what was basically the same no-knock provision without a single dissenting vote in S. 2869 in December of 1969 and in the Senate-amended S. 2601 in March of 1970. Indeed the Senate overwhelmingly approved a no-knock provision in S. 3246, the administration's Controlled Dangerous Substances Act, in January of this year.

Mr. President, I would urge my colleagues to desist from this endless rehashing of the same basic issues. The Senate has three times in a single Congress approved no-knock warrants; let us not continue as the expression goes, "beating a dead horse." I trust, moreover, that the crtics of the pending no-knock provision will not occasion the anomaly of rejecting a conference report on the basis of the Senate version—twice approved—of a particular issue.

EXIGENCY

In his impressive, and extensive, remarks of last Friday on the no-knock provisions in the pending conference report, the senior Senator from North Carolina made the intellectual argument that the exigent circumstance which justify no-knocking cannot be known in advance.

Mr. President, as a matter of commonsense, and based on my own experience as a prosecutor, I must take exception once again to the views of my distinguished colleague. The fact is that in perhaps as many as 99 percent of the cases where no-knocking is and should be allowed, the basic facts, the so-called exigent circumstances, are known to the police well in advance of the execution of the warrant.

For example, in a gambling case, if it is known that the prospective defendants regularly use water-soluble paper, that they conduct their operation near a disposal facility, that they have defeated searches previously by immediately and effectively disposing of all evidence upon receiving preentry notice from the police, and that the prospective defendants are aware of the police surveillance and are primed to effect the disposal of the necessary evidence—if these so-called exigent circumstances are known at the time of the execution of the search warrant, they are almost invariably also known at least 1 hour in advance of the execution, in time for the police to apply for court permission to depart from the knock-and-wait rule.

Let me give another example: in a case involving armed robbery, if it is known that the prospective defendant is armed and will shoot it out rather than surrender to the police, if for example he has just shot and killed a police officer in the process of escaping, if his recent conduct in escaping has made it evident that he knows the police are close on his trail—if these so-called exigent circumstances are known at the time of the execution of the arrest warrant, they are almost invariably also known the 1 hour or so in advance, in time for the court to rule on whether complete surprise is warranted and on whether the knock-and-wait rule must be complied with strictly.

Again, Mr. President, I recognize the theoretical appeal of Senator ERVIN's argument. I submit, however, that consideration of concrete, practical examples makes it quite clear that exigency need not be conceived of simply in terms of time.

UNRELIABLE PROPHECY?

Now and then in the course of his prodigious discourse of last Friday, the senior Senator from North Carolina had occasion to decry the apparent slender showing which might serve, or have to serve, as grounds for the issuance of a no-knock warrant. As I have described already, however, just as a substantial quantum of sound information must be and is available in advance for the issuance of an arrest or search warrant; similarly, a substantial quantum of sound information is also usually available in advance—if at all—to enable judicial scrutiny of the appropriateness of no-knocking.

Moreover, if it has not been made clear heretofore, let me stress once again that the Senate conferees intend no mere slender showing as grounds for court-ordered no-knocking. I ask that the critics again consult the relevant passage in the Senate statement of managers, at pages 28 to 29, which states as follows:

Fifthly, the Senate conferees did not recede from their original position that only particular facts, bearing upon any given particular case, may serve as grounds for "no-knocking." The House conferees urged to the contrary that particular facts are unnecessary; they urged, for example, that "no-knocking" would be appropriate in nearly all narcotics and gambling cases, based on the destructibility of the evidence usually involved. The issue was resolved in favor of neutral language, adaptable to either the House or the Senate interpretation; but with the limitation of specific reference to the *Ker* case. Just as the Senate conferees are of the view that the particularity requirement is affirmed in *Ker* and rooted in the Constitution, in like manner the Senate conferees contemplate implicit incorporation of the requirement in the S. 2601 provision.

My remarks in colloquy with the junior Senator from Indiana (Mr. BAYH) at pages 24743 to 24744 of the RECORD of July 16, 1970, should provide further clarification on this point.

VIOLENCE

In the past 6 months or so, since the no-knock issue has become the focus of political controversy, I have been most troubled, Mr. President, by the repeated suggestion that the pending legislation will somehow heighten the level of violence in this community. Critics have suggested that when police officers depart from the knock-and-wait rule, occupants of the premises to be searched will, and perhaps should, respond with a blast from a rifle.

If I believed that the net effect of the conference report would be an increase in shoot-outs with the police—if I did not believe that this legislation will have a net effect of reducing the incidence of such violence in this community—I would immediately align myself in opposition to S. 2601. My support of the conference report, however, reflects my judgment, based in large measure on observation and experience in the world of law enforcement, that the effect of this legislation will not be what the critics have suggested.

It is an observable fact, as well as a matter of commonsense, that the danger of shoot-outs arises more out of strict adherence to the knock-and-wait rule, rather than out of the limited no-knock authority in existing law codified in S. 2601. Shoot-outs, violence, death, occur more frequently when the police signal their presence and purpose, and give a dangerous suspect time to get his weapon—not when the police take the dangerous suspect by surprise before he can arm himself to shoot. We need only reflect on the recent, publicized case of the local bank robber, Billy Austin Bryant. Bryant killed two FBI agents at the door of his wife's apartment after the agents identified themselves as police—and clearly not because he mistook them for burglars. Again, I am convinced that on balance the consequence of limited no-knocking is less violence, not more. And I am equally confident that the police, especially with increased court supervision, will continue to utilize their law enforcement tools so as not to endanger human lives, including their own.

I submit, Mr. President, that the critics of the pending so-called no-knock provisions tend to view the legislation entirely out of context. Realistically, the context in which no-knock warrants are designed to be and will be executed is one narrowly defined by: First, the probable cause showing made to a judge in support of the underlying warrant application, second, the further probable cause showing made to establish the presence of exigent circumstances, and third, not the least of all, the sound judgment of a full-fledged judicial officer. In actual fact the context will be one where last-minute surprise is requisite; and where the greatest danger is that notice will occasion the occupant's locating a weapon and meeting the executing officer with a bullet. In sum, again, the limited no-knock provisions in S. 2601 are calculated to stem local violence, not to foster it.

PRETRIAL RELEASE AND DETENTION

Mr. President, a great deal has been said on the subject of pretrial detention, much of it based upon misinformation. I do not wish to belabor the issue needlessly, but certain facts must be made clear.

Few of the critics of formal pretrial detention have cast their arguments in constitutional terms. Both the junior Senator from Missouri and the junior Senator from New York, who refused to sign the conference report, have conceded that pretrial detention legislation can be drafted to conform to the Constitution. These and other critics have argued, however, that pretrial detention is not needed to protect the community or that the provisions on pretrial detention in the conference report do not include sufficient safeguards to protect the due process rights of the individual.

Mr. President, every Member of the Senate should be made aware that no less than 18 important safeguards are included in the conference version for the protection of the individual. Let me simply list them:

First. Detention eligibility is restricted to persons charged with one of a limited number of specific offenses.

Second. Detention eligibility is further conditioned upon a showing of prior criminal activities, at the very least consisting of a provable pattern of dangerous behavior.

Third. Detention cannot be ordered unless the court holds an adversary hearing.

Fourth. The defendant has the right to counsel at the hearing.

Fifth. The court must find that no condition or combination of conditions of release will reasonably assure the safety of the community.

Sixth. In making such finding, the court must exhaust a searching list of possible release conditions, including third-party custody, restrictions on travel, association, or place of abode, daily narcotics use testing, employment requirement, daytime work release, and so forth.

Seventh. The expansion of the Bail Agency will make third-party custody a realistic and preferred alternative.

Eighth. Use of money bond in dangerousness cases is prohibited.

Ninth. The prosecution must establish that there is a substantial probability of conviction.

Tenth. An immediate and expedited appeal from a detention order is permitted.

Eleventh. Detention orders are limited to a nonrenewable 60-day maximum period, unlike the 6, 10, or 12 months now actually experienced.

Twelfth. The maximum detention period is not tolled by timely defense motions.

Thirteenth. An expedited trial calendar must be provided for all cases involving pretrial detention.

Fourteenth. Both House and Senate statement of managers urge appropriations adequate to provide at least 25 additional assistant U.S. attorneys for the District of Columbia, to assure trial in 60 days.

Fifteenth. A new and expanded Public Defender Service will assure readily available defense counsel to promote speedy trial. Greatly expanded judicial manpower will contribute to the same speedy trial goal.

Sixteenth. Pretrial detainees must be confined apart from convicted persons.

Seventeenth. Liberal access to counsel while in detention is assured.

Eighteenth. Even in detention cases, the defendant may be released for short periods of time under custody to assist counsel in preparation of the defense.

Mr. President, I have outlined some 18 different safeguards which the conference report builds into the pretrial detention procedure which fulfills the promise of due process of law. Yet, critics of the concept of formalized pretrial detention have argued that these safeguards are insufficient, illusory, or meaningless. These arguments are unfounded.

PRETRIAL DETENTION CATEGORIES

Each of the four pretrial detention categories is premised upon factors in addition to the current charge which must be found to exist before a defendant can be ordered detained.

The crimes of violence category requires that the person must be charged with a violent crime and be previously

convicted or awaiting trial with respect to an earlier violent crime.

The narcotics addict must be charged with a violent crime and be shown to have a narcotics addiction which is so costly that the defendant will ordinarily be forced to continue to engage in crime to support it.

The obstructor of justice must be charged with an offense and then engage in provable threats, intimidations, or injuries against witnesses or jurors in order to influence the outcome of his trial.

The dangerous crime category couples the current charge with a required finding by the court that the defendant exhibits a provable pattern of dangerous behavior.

Moreover, the dangerous crime category is narrowly drawn to include only the most serious life-threatening offenses: First, only robbery by force against resistance is meant to be included as a dangerous crime—taking property by stealth or sudden snatching, defined as robbery in the District of Columbia Code, is not within the dangerous crime category; second, burglary and arson are specifically limited to those offenses in the first degree—entering or burning of nonoccupied buildings is excluded; third, forcible rape eliminates consensual and lesser sex crimes; and fourth, narcotics offenses are limited to reach felonious selling or distribution—the professional pusher.

PATTERN OF DANGEROUS BEHAVIOR

A pattern of dangerous behavior not only must be premised upon a prior criminal record of criminal acts of a serious and dangerous nature but upon an identifiable pattern of such acts which suggests that the dangerous activity will be continued into the future. Thus, a series of arrests or of minor offenses will not indicate dangerous behavior and an isolated felony (other than a "dangerous crime" or "crime of violence") will certainly depict no pattern.

EXHAUSTION OF RELEASE CONDITIONS

In every case, detention shall not be ordered unless the court, with the assistance of the Bail Agency and counsel for the prosecution and defense, thoroughly exhausts the available release alternatives and finds that no condition or combination of conditions will reasonably protect the community. A repeated failure of the courts under the Bail Reform Act of 1966 has been the lack of resourcefulness and imagination in devising adequate and minimally restrictive release conditions. See *Banks* v. *United States*, 414 F. 2d 1150 (D.C. Cir. 1969).

The expansion of the Bail Agency's functions to include devising and recommending release plans and serving as a third-party supervisor will contribute to correcting this failure. But the courts and counsel must be held to an even higher standard of resourcefulness in setting release conditions before detention is ordered, and appellate courts should insist that every avenue of adequately supervised release has been explored, including but not limited to the hierarchy of conditions suggested in section 23–1321, before a detention order will be sustained. Compared *Long* v. *United States*, 422 F. 2d 712 (D.C. Cir. 1970).

MEANING OF "DANGEROUSNESS"

Critics have argued that protection of the safety of the community is an unlimited concept, that a court could order detention in order to protect the community from minor offenses, property offenses, nuisances, or, worse, from political dissent. No proponent of pretrial detention has suggested this unwarranted construction. The emphasis must be placed upon the term "safety," and momentary reflection upon the types of crime contained in the dangerous and violent crime categories will disclose that the only concern of the proponents of the conference report on S. 2601 is the protection of the public from the risk of death or serious bodily injury, not from property-related offenses or political disruption.

MEANING OF "SUBSTANTIAL PROBABILITY"

Even after the defendant is found to fall within a detainable category and after the court unavailingly exhausts all release alternatives in order to assure the safety of the community, detention cannot be ordered unless the court finds by a substantial probability that the defendant committed the offense. Critics have argued that the standard of certainty adopted by the conference report departs from due process requirements and has no accepted content.

The law requires different quanta of proof to justify detention depending upon the onerousness of the restraint. Thus, no person may be convicted of crime and subjected to extended incarceration except upon proof beyond a reasonable doubt. But a person may be arrested and detained until he can be brought before a magistrate on proof that rises to only probable cause to believe. And certain stop-and-frisk laws permit brief restraint to search for weapons on merely a reasonable belief.

The substantial probability formulation is not new to the law. In a civil action when a request for a stay pending appeal is made, the movant must show by a "substantial likelihood that he will ultimately prevail on the merits." See *Virginia Petroleum Jobbers Association* v. *F.P.C.*, 259 F. 2d 921 (1958). A similar standard is incorporated in the conference report. It depicts a quantum of proof which is somewhat less than the classic reasonable doubt standard, but is greater than the mere probable cause standard. The judge must be convinced to a substantial certainty that the person before him will be ultimately convicted.

RULES OF EVIDENCE

The critics have further suggested that evidence in the bail process will permit the court to base its findings—particularly with reference to the issue of guilt—upon matters which would never be admissible at trial. This fear is based on fiction.

As is current law and practice, information offered at a bail hearing need not conform to the technical rules of evidence. This does not mean, however, that the Government can build its case for detention solely on evidence which would clearly be inadmissible at trial.

Thus, if the Government by proffer or by witnesses shows nothing more than evidence which was illegally seized, a coerced confession, or an eyewitness identification at an impermissibly suggestive lineup, no court could predict by a substantial probability that the person will be ultimately convicted. All the Government's evidence need not conform to technical rules, but it must be sufficient in the aggregate for a court to make its finding on the issue of guilt.

The required finding that there is a substantial probability that the defendant committed the offense must be translated into a prediction of the likelihood of ultimate conviction in order to pass constitutional muster. Equal protection of the laws would forbid a court to order the detention of a person when the prosecution fails to produce, by proffer or otherwise, probative evidence which will be admissible and sufficient to justify conviction at the trial on the merits. The term "committed the offense" is thus to be understood not in the lay context of having done the act, but in the legal context of being criminally accountable before the law.

THE PREDICTION OF DANGEROUSNESS

In spite of these safeguards, critics of the conference report have urged that it is still impossible to predict future dangerousness.

The objection to permitting judges to make such determinations suggests that there is something novel or unusual and unreliable about predictions within our judicial system and that the pretrial detention plan will unwisely turn the judge into a prognosticator of future behavior. Yet, our system calls on the trial judge to make numerous predictions of future behavior. No one objects to the prediction made in every release under the Bail Reform Act on the question of the likelihood of flight, which is the crime of bail jumping, but he is said to be incapable of predicting other future criminal acts. Yet if a capital offense is charged, the same judge is directed by the Bail Reform Act to take danger to the community into consideration and thus predict the chance of crime on bail. To say that a judge can predict in one of these situations and not in another defies logic.

Further, every time a judge imposes or suspends a sentence or grants or denies probation, he makes a prediction as to future behavior and the possibility of rehabilitation. If a judge can predict reliably and constitutionally in these areas, he can also predict the dangerousness of a defendant before him with equal reliability.

Indeed, based on a person's past conduct and prior criminal record, it is more likely that a judge can predict with greater accuracy the likelihood of a defendant to pose a danger than that he can predict the likelihood of a defendant to flee.

Moreover, by reason of the hearing provided, which is specifically directed to a defendant's dangerousness, we can expect a degree of accuracy as high, if not higher, than in many other areas

where daily predictions are made under our judicial system.

THE LIMITS ON PRETRIAL DETENTION

The revision of the Bail Reform Act of 1966, as contained in the conference report, is proposed not only to permit the courts to detain certain highly dangerous defendants, but to correct the injustices of present bail practice which, in spite of the Bail Reform Act, continue to detain between 30 percent and 40 percent of all arrested persons without a meaningful inquiry into the realistic risks of danger or flight.

There is no denying the fact that over 1,400 persons are today being held in pretrial detention facilities in the District of Columbia, some for over a year awaiting trial.

This practice can no longer be tolerated. It permits an approach to pretrial detention that is both overinclusive and underinclusive in effect.

It is overinclusive because the process is committed solely to the unreviewable discretion of the trial judge's mental processes. As a result, through the lack of procedural safeguards, many persons who should be released are often detained.

It is underinclusive because the hypocrisy of present bail practices does not permit the courts to focus directly, forthrightly, and in adversary proceedings, upon the question of dangerousness. As a result, many persons are being released to commit new crimes while on bail.

In both instances, in addition to being arbitrary, the present practice is totally discriminatory, since it permits the detention of the poor but allows the rich defendant to be released regardless of what may be his greater danger to society.

Yet, critics of the conference report argue that our proposal does not end the hypocrisy of present bail practices. First, it is suggested that there is nothing in the report to preclude a person from being detained beyond the 60-day maximum simply by repeating the detention process with successive detention orders. This reading is completely false. Second, it is urged that the statutory pretrial detention procedure merely supplements and does not replace the sub rosa form of detention through unreachably high money bond. This too is incorrect.

As to the first criticism, Mr. President, the conference report clearly expresses the intent that a detained person's trial must begin within 60 days of arrest or he must be released. Sec. 23–1322(d)(2) requires that upon the expiration of 60 days, if the trial is not in progress, the defendant must be treated under the general release section 23–1321, the entire thrust of which is directed to release and conditions of release.

The court is directed by the statute at the end of 60 days to treat the defendant pursuant to the section entitled "Release in noncapital cases prior to trial," not directed to treat the person under either the release section or the section entitled "Detention prior to trial," as the court may choose. If the 60-day time limit section envisioned continued detention as a possibility, the section would direct the court to treat the person in accordance with section 23–1322 or 23–1323, as well as section 23–1321. The detention sections are not specified for good reason.

It is the clear intention of the report and the intention of the conferees in both Houses, that the detention process cannot be repeated. A similar view was expressed by Deputy Attorney General Kleindienst at the Constitutional Rights Subcommittee hearings.

It has been suggested that the court can extend a detention period by the presently existing high money bond subterfuge. It is a hard fact that many honest and sincere judges have been forced to disobey the literal reading of the Bail Reform Act of 1966 by setting unreachable money bond because they cannot in good conscience close their eyes to the danger which some defendants would pose if released. The pretrial detention provision will afford a visible and protected technique by which these judges may consider dangerousness.

Of course, there may always be a few judges who will bypass statutory procedures and use devious and unreviewable means to achieve the same results. It is impossible to draft legislation which will force all judges to obey the letter and spirit of the law. Hypocrisy cannot be eliminated even by eliminating money bail entirely; as a condition of release unscrupulous judges can as readily impose unreachable nonfinancial conditions as financial ones.

It is the firm intention of your conferees in recommending this bail reform measure that the practice of imposing unreachable money bond or other intentionally unreachable conditions under any circumstances, must stop.

If a judge sets a money bond to assure the appearance of the defendant and the bond proves to be beyond the financial means of the particular defendant, the judge should make an exhaustive search of release conditions which the defendant can meet. With the expansion of the Bail Agency to include supervisory functions, the judge will have an immediately available competent third-party custodian which can supervise a person released on bail as well as, if not better than, any public bail bondsman. In the more difficult cases, more rigorous supervision will be available from community resources such as Offender Rehabilitation project, Bonabond Narcotics Treatment Agency, and Black Man's Development Center.

Prior to the expansion of the Bail Agency, courts often would find the condition of third-party custody to be available only in theory. In reality, there have not been enough custodians to go around. This bill changes that reality. In the future we should expect and demand that our judges will construct plans of release with resourcefulness and imagination. The many release conditions which have been ignored in the past must be utilized in the future.

In the rare case when a judge determines that an unreachable money bond should stand, he should give his reasons why the financial condition imposed, if it could be met, would assure appearance, whereas no other reachable condition would provide the adequate assurance. I am confident that the appellate courts will insist that such a showing be made; in this way, the bail system will not continue to discriminate against persons solely on the basis of their poverty.

Under these circumstances, if an occasional case runs beyond the 60-day limit—which I have been assured will almost never happen—it is inconceivable that a judge will resort to the use of financial conditions, on the dishonest theory of risk of flight, in order to extend a detention which has been premised all along on a theory of dangerousness. It is the clear intent of the conferees that this result not be tolerated.

Mr. President, last Friday the supporters of the President's District of Columbia crime bill completed most of their arguments for the bill. In the statement of Senate managers regarding the bill and in our presentations last week, we spelled out the provisions of the bill and their meaning. I have offered these remarks to clarify the record as to the debate to date.

I see no further need for arguments on our part for the bill. It is a sound bill. It is a constitutional bill. It stands on its own two feet.

Let me warn once again of the delusion and futility inherent in the "end-run strategy" embraced by the opponents of this bill. Some Senators seek to defeat this conference report in hopes of sending another watered-down bill back to the House for its consideration. Do they imagine that the House will not amend any bill we send it to once more include all of the undesirable features the Senate conferees succeeded in deleting from the original House bill in achieving the conference report?

How can they ignore that the House passed this conference report by a vote of 5 to 1 just 1 week ago and passed, by an even wider margin, just a few months ago, the original House bill which the Senate conferees successfully revised and perfected?

Do these critics not recognize that the seniority and influence of the members of the House District Committee will enable them to block action on any bill referred to any other committee in the House on this matter?

Do the proponents of the "end-run strategy" realistically take into account the months and months of further delay their strategy involves?

Mr. President, we need no reminder that Congress has two Houses. We have returned from conference with the other House with a sound, constitutional, and effective bill. The other House made enormous concessions to us in achieving this conference report. Do we really think now that they will make even further concessions because some of our Members do not like some of those which they insisted upon?

The blunt fact is, Mr. President, no matter how much anyone may wish to delude himself about it, that if this conference report fails, there will be no District of Columbia crime legislation in this Congress. Any District of Columbia crime legislation in the future will in all probability have in it every feature this bill contains and perhaps even some of the odious features the Senate con-

ferees eliminated from the House-passed bill in conference.

Let us be frank and realistic. Let us recognize the strategy of the opponents of this bill for what it is: a stall, a dream, a bitter risk for the citizens of the National Capital who are suffering the scourge of the crime lash which is destroying the very basis of this city.

Let us face our responsibilities. Let us promptly ratify this conference report on its merits and get it on to the President for his signature.

Mr. President, I wish to invite the attention of Senators to an editorial published in the Washington Sunday Star of July 19, 1970, printed at page B–1; this editorial in large part affirms the view that I have expressed here today. I ask unanimous consent to have the editorial printed at this point in the RECORD.

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

THE SENATE CASE FOR THE D.C. CRIME BILL

The Senate's climactic debate on the D.C. Crime Bill, which resumes with a full head of steam tomorrow, needs to be viewed in two distinct frames of reference.

The more obvious consideration concerns the merits of the bill. Some 22 senators—and the number probably will grow—believe that certain features of a House-Senate conference agreement on the omnibus anti-crime measure are so odious that they want to scrap the conference report, with the idea of starting anew to salvage parts of it.

The more subtle and more important consideration is, however, that if this move should succeed the result almost certainly would be not a new start, but the end of any significant anti-crime legislation in this session of Congress. In that event, more than a year of hard work, which has produced a wealth of vitally needed new weapons to combat crime and to improve this city's fabric of justice would go down the drain. The price is one which neither the Congress nor the District of Columbia can afford.

That price would not be too high, perhaps if this were actually a bad bill—if the bombastic criticism leveled against it really stood the test of scrutiny. But the rhetoric does not hold up. The bill, in our view, is an acceptable legislative compromise in every major respect. Moreover, its most controversial features—the police no-knock provision and the preventive detention authorization—are both enveloped in a great deal of misunderstanding and confusion. More of that later.

The procedural dilemma which has evolved in the Senate, and which jeopardizes the entire legislation, springs mainly from the immense size and complexity of the bill. To comprehend the problem fully, it is necessary to retrace how that came about.

From the start there has been no dispute over the need to expand and reorganize Washington's archaic court system, to develop a true public defender program, to modernize certain provisions of criminal law and, among other things, to restructure the skeleton-like D.C. Bail Agency. Accordingly, following specific proposals last year by President Nixon, the Senate promptly passed five separate bills, embodying these reforms.

Across Capitol Hill, however, the House District Committee pursued a quite different course—wrapping this maze of legislation, for strategic reasons, into a single omnibus bill. The strategy was clear: The House committee, while dealing with most of the same subjects covered in the Senate bills, favored a harder, more repressive line on many of them. Besides which it desired to add some features of its own—most notably preventive detention—which the Senate had ignored. And the veterans of the House committee reasoned that they would have a much better chance to carry their pet projects in the give-and-take bargaining of a House-Senate conference on the total package than by fragmentation—in which the most controversial items could very likely be lost. However one viewed the merits of their proposals—and we disliked many of them—their strategy, politically speaking, was unimpeachable.

For the ultimate conference agreement, with preventive detention included, is not subject to partial acceptance by the Senate. If the Senate votes it down, the entire package dies. And if the Senate should elect to return the bill to conference to seek changes, Senator Tydings has warned flatly that no further gains could be expected—and that gains already achieved might well be lost. No one, to our knowledge, challenges the validity of that prediction.

Nor does the counter-strategy which is actually developing on the Senate floor, under the usually canny leadership of North Carolina's Senator Sam J. Ervin, seem to us to hold any better prospect of success. In essence, the Ervin appeal is to vote down the conference report, and to send the House two entirely new Senate bills—stripped of the most controversial features. Or, as a final alternative, Ervin says, the two bills might be attached to some House-passed measure already pending in the Senate in an effort to end-run the hard-line leaders of the House.

In the initial debate on this strategy move the other day, Senator Tydings commented, accurately in our judgment, that Ervin was "only kidding himself and kidding the Senate" if he thought his approach could prevail—or that any crime bill could pass Congress this year devoid of preventive detention. In rebuttal, Ervin shouted his unwillingness "to knuckle under to the House"—to "buy a lot of rotten apples in order to get some good ones."

And that, of course, moves to the real crux of the Senate struggle. How rotten, truly, are Ervin's apples? Consider the prime target of dissent—preventive detention.

The issue, on purely constitutional grounds, is a subject of valid argument. The First Congress of this nation, in the first federal bail law, specifically provided that a judge could refuse bail and could jail any suspects accused of a number of specified crimes. In Great Britain, that rule still prevails. Yet we concede, in the context of today, that we have no more idea than does Senator Tydings or Senator Ervin precisely how the Supreme Court might rule on this provision of the D.C. Crime Bill.

But we are entirely convinced that the court should have an opportunity to rule. Present law provides that the only basis for denying bail is whether a criminal defendant is likely to appear for trial—a criterion which in practice is abused day after day under the subterfuge of money bonds set too high for defendants to pay. Yet, under the letter of the law, many defendants accused of the most heinous crimes are supposed to be turned loose, their prior records of criminal activity notwithstanding, even if it is clear to any reasonable person that they are likely to commit further violent crimes. That law ought to be changed. The pending proposal's provisions for due-process hearings, for rights of appeal, for the assurance of trials within 60 days, all envision preventive detention as a last resort, in the gravest of situations. In our view, they also provide ample protection of individual rights.

As to the second dominant controversy, this newspaper holds no brief for the police no-knock provision. We regret its inclusion in the bill. Yet, it is fair to say that a great deal of hypocrisy also surrounds this imbroglio. From the laments last week, one would assume that many senators had never before heard of this proposal. But the truth is that the Senate, only a matter of months ago, approved the proposal without a single vote of dissent. What has happened in the meantime, however, is that this issue has taken on a symbolic status of protest against generalized fears of repressive police actions which has completely overshadowed the substantive points of debate.

In other vital points of controversy, however, as in these two, we believe the Senate conferees have achieved compromises which fully justify the Senate's approval. As one final example, the conference report permits mandatory jail sentences only in the case of second offenders convicted of armed violent crimes. That is surely a minimum protective device for society, which any member of Congress should be able to support. And it is such details, not as yet well publicized, which should occupy the Senate's primary attention this week.

In any bill 400 pages long, extending over the full spectrum of criminal justice in the District of Columbia, a total absence of flaws would be nothing short of miraculous. It is not merely possible, but likely, that instances will arise in which Congress may want to enact refinements later. But the immediate question before the Senate is whether any of these isolated subjects of doubt or disappointment justify a scuttling of the enormous gains of the bill as a whole.

The answer, in our opinion, is a resounding no.

S. 3889—AMENDMENT OF SECTION 14(b) OF THE FEDERAL RESERVE ACT

Mr. SPARKMAN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3889.

The PRESIDING OFFICER (Mr. SAXBE) laid before the Senate the amendments of the House of Representatives to the bill (S. 3889) to amend section 14(b) of the Federal Reserve Act, as amended, to extend for 2 years the authority of Federal Reserve banks to purchase U.S. obligations directly from the Treasury, which were in line 5, strike out "1972" and insert "1971". In line 7, strike out "1972" and insert "1971". And amend the title so as to read: "An act to amend section 14(b) of the Federal Reserve Act, as amended, to extend for one year the authority of Federal Reserve banks to purchase United States obligations directly from the Treasury."

Mr. SPARKMAN. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alabama.

The motion was agreed to.

THE CON SON ISLAND PRISON

Mr. NELSON. Mr. President, tens of thousands of American lives and billions of American dollars have been invested in a futile war in Vietnam that has divided the Nation with angry dissent and name calling.

It has been argued that monolithic communism is again threatening all of Southeast Asia and the United States, and that it is "patriotic" to support the Thieu-Ky government in Saigon to bring democracy to the South Vietnamese peo-

ple. There is, however, no democracy in Vietnam, and the Thieu- Ky government has no intention of being a democracy.

The Thieu-Ky government is proving to be a repressive government, refusing to tolerate dissent and brutally punishing those who disagree.

Just this month, the newest horror story of repression was published in the Nation's press when former congressional staff member Thomas Harkin disclosed examples of brutality against South Vietnamese "political prisoners" in the Conson Island prison.

While the stories of inhuman beatings and torturing of men and women whose only crime was to disagree with the policies of the South Vietnamese government were new to the national press, they were not new in Appleton, Wis.

On July 27, 1969, nearly 1 year ago, Mark E. Oliva wrote an enterprising expose in the Post-Crescent in Appleton, Wis., telling about acts of brutality and inhumanity in Conson. Unfortunately, his well-documented report, now well substantiated by American officials there who are attempting to disassociate themselves from the oppressive prison system, was not widely circulated.

Oliva and the editors of the Post-Crescent are to be commended for their enterprising leadership in exposing a situation that should and must embarrass this country, because the United States is in the position of financing the Thieu-Ky government and, in the logic of world opinion, is supporting the oppression and brutality at Conson.

I ask unanimous consent that the Post-Crescent article by Mark Oliva be printed in the RECORD.

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

DETENTION BASED ON SUSPICION: VIETNAM CONCENTRATION CAMP OPERATES WITH U.S. APPROVAL

(By Mark Oliva)

CON SON ISLAND, VIETNAM.—History again is witnessing the horrors of the concentration camp, this time with a helping hand from the United States.

Con Son, the French "Devil's Island of Indochina," now is South Vietnam's barbed-wire home for more than 7,000 Vietnamese who "had to be removed" but couldn't be convicted in a trial.

Long beds, malarial mosquitoes and a host of diseases with no effective medical program, no shelter from the tropical monsoon rains and a diet not much better than silage greet the unfortunates interned in the concentration camps here.

The United States provides both financial and advisory assistance to the Con Son island prison.

On March 1, Con Son housed in excess of 9,000 prisoners. Of these, more than 7,000 were detainees. A detainee is an individual suspected of being a Viet Cong sympathizer or supporter who never has been convicted or tried.

KING OF CON SON

Vietnamese Lt. Col. Nguyen Van Ve, a brash man who illustrates his every point with a swing or sway of his swagger stick, is the commander here. He calls himself the "King of Con Son," and the title fits his power. He has total rule over the island and its prison population.

Lt. Col. Ve explains the "detainee" system simply.

He says his government needs a means to remove the potential or possible enemy from causing or contributing to trouble. When a man is suspected of giving food, shelter or information to the Viet Cong, he cannot be convicted without evidence, according to Lt. Col. Ve.

Instead, he says, these Viet Cong suspects are brought before district security committees. The committee, according to Lt. Col. Ve, does not require evidence, only grounds to believe the individual may be aiding the Viet Cong. The committee then has the power to order the suspect sent to Con Son or one of several other detention centers for a period of six months.

Lt. Col. Ve says this dispenses with the need for a trial, conviction and evidence. He also admits that almost all of the detainees would be acquited for lack of evidence if they were to be tried.

When questioned, Lt. Col. Ve said that he has the authority to detain these prisoners beyond the six-month period based upon his observations, and that very few actually are released after their initial six months' detention.

Our study group's tour of the prison included Camps Six and Seven, the camps that house all but 200 of the detainees.

BARBED WIRE

Each of these camps is surrounded by double fences strung heavily with barbed wire. Within, the camps are divided into many small sections, each also ringed with double fences of heavily-barbed wire. The main sections consist of two 60-foot rows of rough logs, each log five feet long, with the entire row elevated two feet off the ground. Canvas, perforated with holes is stretched about six feet overhead.

These rows of logs serve as bed, home and recreation area for the detainees. They are not allowed to leave the compound at any time. There is no shelter from malarial mosquitoes or monsoons.

At the end of each camp is a small dispensary stocked only with aspirins, salt tablets and anti-malaria pills that are ineffective against the fatal strains of malaria found on the island, according to the U.S. Army doctor accompanying our study group. These dispensaries are staffed with untrained personnel.

On the side of each dispensary is a disciplinary area used for detainees found guilty of even the smallest infraction of prison rules. It, too, is encircled with a double barbed wire fence. Barbed wire also is strung the length and width of the disciplinary area about 16 inches above the ground, with the strand about six inches apart.

Detainees being disciplined are forced to crawl under this layer of barbed wire and lie on their backs for the duration of their sentences, often several days. They are allowed only bread and water.

We were permitted to interview individual prisoners, but Lt. Col. Ve insisted the detainees be interviewed only in the presence of a guard. Detainees interviewed refused to answer questions, apparently in fear that a "wrong" answer, after being reported by the guard, would lead to days and nights under the barbed wire.

It. Col. Ve stated that the detainees come from all walks of life but mainly are farmers from the provinces. He listed the three main ways in which these prisoners come before the security committees:

They are reported by a neighbor as aiding or being sympathetic to the Viet Cong.

All persons in an area are held when an Army commander in the area states someone has been aiding the Viet Cong.

When a village is being force-evacuated and relocated prior to being destroyed to eliminate Viet Cong havens, all persons in the village who resist in any way are brought before the committees.

As with most of the other prisoners on Con Son, according to Lt. Col. Ve, the majority of the detainees continue to be held there.

Basic living conditions in the Con Son concentration camps are extremely bad, but the island's prisoners also are faced with even worse medical problems.

Malaria is the major disease. The island's mosquitoes carry two strains, one which usually is fatal and the other which the victim usually survives, but with his strength sapped. The prison dispensaries are stocked, though inadequately, with chloroquine-primaquine anti-malarial pills. These combat only the non-fatal strain. No preventative for the usually-fatal strain is available to the prisoners.

Con Son's prison population also has severe problems with beriberi and tuberculosis, as well as year-round epidemic levels of diarrhea and dysentery. Almost non-existent latrine and sewage facilities contribute to this.

All the prison dispensaries are staffed by prisoners, mostly captured Viet Cong medics. None has been trained beyond the level attained by a student nurse in the U.S.

ONE DOCTOR

The island has one doctor, a first lieutenant in the Vietnamese Regional and Popular Forces (roughly equivalent to our National Guard). However he treats only the civil servants, national police and military.

A Vietnamese public health nurse also is assigned to Con Son, mainly to treat the non-prisoner population. The nurse makes a monthly visit to each of the seven prison dispensaries.

The government provides air evacuation for members of the non-prisoner population requiring mainland treatment, but prisoners requiring such treatment must wait for the monthly supply boat.

The public health nurse admits that several prisoners have died due to lack of proper medical attention.

In addition to the detainees, Con Son also houses about 2,000 other prisoners including Viet Cong, political, religious and criminal prisoners and military prisoners from the South Vietnamese forces. All these categories have been tried and convicted.

Convicted Viet Cong are considered civil prisoners and are held at Con Son. North Vietnamese prisoners of war are held at another island prison, Phu Quoc. The U.S. is not involved in the operation of Phu Quoc because the South Vietnamese government does not abide by the Geneva prisoner-of-war conventions.

With the exception of 200 detainees, the regular prisoners only are confined in Camps One through Five. Strangely, the convicted prisoners fare much better than the detainees. Camps One through Five consist of the old French prison buildings, and provide adequate though unpleasant shelter.

These prisoners leave the camps each day to go out in work parties. Although some of the prisoners still split rocks, the majority work on fishing teams or on the farms which produce most of the food other than rice which is consumed on the island. The prisoners raise mainly papaya, coconuts, pigs and chickens.

A large number of the sentenced prisoners have attained trustee status and are allowed to live outside the camps. All the prisoners except the detainees are allowed monthly three-day visits with their families, who are taken to the island on the supply boat. A beach home has been set up to house these families.

PRISONER DIET

All the prisoners, detainees included, are on the same diet. The catch of the fishing teams is laid out and salted on tin sheets placed on the streets daily. After a day in the sun, the fish, well-dried, are fed to the prisoners. Prisoners cook the fruits, vegetables and meats raised on the island as well as rice brought in from the mainland. The cooking is done in extremely unsanitary and antiquated outdoor kitchens surviving from French days.

Many of Con Son's political prisoners were sentenced several Vietnamese regimes ago but never were released by succeeding governments, including the current Thieu government.

One prisoner interviewed on death row had been there for 13 years, sentenced for political opposition to the late President Ngo Dinh Diem in the early days of his rule.

Another death row prisoner interviewed stated he has been confined seven years for the same reason, since the latter days of Diem.

A Buddhist monk stated he has served 11 years of a 15-year political sentence, also a Diem victim still on Con Son.

A student monk said he came here three years ago on a one-year sentence, for giving sanctuary to a Viet Cong in a pagoda. He too has been forgotten.

Prisoner interviews also produced some surprising opinions. Many of the regular prisoners from rural Vietnam stated they were not too dissatisfied with their confinement because the prison living conditions were better than those they had experienced in the country side. Other prisoners said they felt relieved to be at Con Son and away from the war.

But no prisoner was willing to say he is happy.

DDT RULED ENVIRONMENTAL POLLUTANT IN WISCONSIN

Mr. NELSON. Mr. President, 18 months ago, one of the landmark cases in environmental protection began in Madison, Wis.

Citizen groups and the environmental defense fund joined forces in a petition asking the State department of natural resources to ban the use of DDT in the State under any circumstances where the pesticide can enter world circulation patterns and further contaminate the biosphere. With EDF, the petitions groups were the Citizens Natural Resources Association of Wisconsin and the Wisconsin Division of the Izaak Walton League.

In the State hearing which began December 1968, the alliance of concerned scientists and lawyers presented extensive testimony outlining the growing pollution of the environment by persistent pesticides in the chlorinated hydrocarbon family.

Dr. Robert W. Risebrough, an environmental scientist at the University of California at Berkeley, stated that the effect of pesticides on man may be very serious. He said that man accumulates 12 parts per million of DDT in his fatty tissues before the body discharges. He said that this is enough to stimulate enzyme production, which acts as a catalyst for bodily processes, such as digestion. Risebrough added that the death of some birds has been traced to enzyme induction by DDT, impairing their ability to reproduce.

Dr. Charles F. Wurster, Jr., an organic chemist at the State University of New York, Stonybrook, testified on the range of the pesticide residues through the world.

Other witnesses have testified that DDT goes into the atmosphere along with evaporating water, builds up to extremely high levels in predator birds and animals, and has caused new insect problems by killing predators that once held those inserts in check.

Dr. Joseph Hickey, a University of Wisconsin wildlife ecologist, said that DDT has been linked to reproduction failures of certain birds, including the eagle, the osprey, and the peregrine falcon. Dr. Hickey and other researchers have traced the presence of pesticide residues to a decrease in weight and thickness of the shells of eggs produced by these birds.

In related testimony, Lucille Stickel, the pesticide research coordinator of the Interior Departments Patuxent Wildlife Research Center, stated that the presence of small quantities of DDT and its derivative DDE in the diets of mallard ducks decreased eggshell thickness, increased egg breakage, and decreased overall reproductive success.

Although the second half of the hearings, held last spring, was billed as the time for the defense against the arguments of the environmentalists, the pesticide industry, which historically has promoted more pesticide use and fought new controls, made a weak defense.

Industry witnesses who were knowledgeable about the environmental impact of pesticides were few and far between. Instead, defense witnesses relied on shopworn repetitions of the past triumphs of DDT and trotted out research from a decade ago which purported to show that the health of pesticide workers was not impaired by constant exposure to the compounds.

In fact, witnesses for the defense often provided the environmentalists with valuable evidence to support their contentions. For example, a Shell Development Co. scientist confirmed the fact that DDT does not remain in the soil, but has a great deal of mobility and persistence which enables it to infiltrate the atmosphere, the waters, and the total environment.

Another witness for the DDT defense, a U.S. Department of Agriculture pesticide official, admitted that his agency relies almost totally on industry claims regarding health and environmental effects.

The initial decision has been made and the Department found DDT to be guilty as an environmental pollutant, which is "contaminating and rendering unclean and impure the air, land and waters of the State and making the same injurious to public health and deleterious to fish, bird and animal life.

I ask unanimous consent that the hearing examiners summary of evidence and proposed ruling be printed in the RECORD.

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

[Before the State of Wisconsin Department of Natural Resources]

EXAMINER'S SUMMARY OF EVIDENCE AND PROPOSED RULING

(Petition of Citizens Natural Resources Association, Inc., and Wisconsin Division, Izaak Walton League of America, Inc., for a Declaratory Ruling on Use of Dichloro-Diphenyl-Trichloro-Ethane, Commonly Known as DDT, in the State of Wisconsin)

[3-DR-1]

On October 28, 1968, the Citizens Natural Resources Association, Inc., by Frederick L. Ott, Wauwatosa, Wisconsin, and on November 1, 1968, the Izaak Walton League of America, Inc., Wisconsin Division, by J. Michael Borden, Elm Grove, Wisconsin, filed petitions with the Department of Natural Resources requesting a declaratory ruling in respect to the use of Dichloro-Diphenyl-Trichloro-Ethane, commonly known as DDT, in the State of Wisconsin.

The Department issued its Notice of Hearing on November 5, 1968, and held hearing on the matter December 2, 1968, and on days thereafter at Madison, Wisconsin, before Examiner Maurice H. Van Susteren.

APPEARENCES

Petitioners: Citizens Natural Resources Association, Wisconsin Division Izaak Walton League of America, Michigan Audubon Society, Inc., by Paul J. Burbach, Attorney, 710 North Plankinton Avenue, Milwaukee, Wisconsin 53203, and Victor J. Yannacone, Jr., Attorney, of Counsel, P.O. Box 109 — 39 Baker Street, Patchogue, New York 11772.

In support of the petition: Institute of Marine Resources, University of California, Berkeley, California, by Robert W. Risebrough, PhD, Specialist.

Lewis T. Mittness, State Assemblyman, 1st District, Rock County, 730 North Ringold Street, Janesville, Wisconsin 53545.

National Audubon Society, Inc., 1130 Fifth Avenue, New York, New York 10028, by Edward M. Brigham, III, Regional Representative (Michigan, Wisconsin, Iowa, Minnesota, Northern Illinois), Box 125, Atlas, Michigan 48411 (Also President, Michigan Audubon Society, Inc.).

Charles F. Wurster, Jr., PhD, Assistant Professor, Biology Department, State University of New York, Stony Brook, New York 11790.

Lawrence G. Monthey, Asst. Professor, University of Wisconsin, Extension Specialist, Travel-Recreation Industry, Home Address Route 1, Verona, Wisconsin 53593 (As Intervenor in Support).

Wisconsin Resource Conservation Council, by Hugh H. Iltis, PhD, Professor of Botany, Department of Botany, University of Wisconsin, Madison, Wisconsin.

In opposition: Buckley Tree Service and Wisconsin Arborist Association, by Patrick Buckley, 608 East Broadway, Waukesha, Wisconsin 53186.

Egelhoff Tree Service, Inc., by Theodore C. Egelhoff, Secretary, P.O. Box 31, Thiensville, Wisconsin 53092.

Industry Task Force for DDT of the National Agricultural Chemicals Association, 1155 Fifteenth Street, NW., Washington, D.C., by Louis A. McLean, Attorney and Representative, 525 Happ Road, Northfield, Illinois 60093, and by Willard S. Stafford, 204 S. Hamilton Street, Madison, Wisconsin, and by Fredrik S. Waiss, Rm. 2525, 650 California Street, San Francisco, California.

Rudolph F. Lange, 115 Vine Street, Delavan, Wisconsin 53115.

City of West Allis, by John A. Cahill, Superintendent of Forestry, 2406 South 76th Street, West Allis, Wisconsin 53219, (and for self).

Wisconsin Farm Bureau, by William Kas-

akaitas, Legislative Counsel, 801 West Badger Road, Madison, Wisconsin 53711.

Rollins, Inc., by Donald R. McCallum, Attorney, 111 South Fairchild Street, Madison, Wisconsin 53703.

As interests may appear, John Brian Dennis, Student, 2667 Milwaukee Street, Madison, Wisconsin 53704.

Department of Natural Resources, Division of Environmental Protection, by Edward D. Main, Attorney, and Mark W. Johnson, Attorney, 55B Hill Farms State Office Building, P.O. Box 450, Madison, Wisconsin 53701.

James S. Devitt, Senator-Elect, 5151 Root River Parkway, Greenfield, Wisconsin 53228.

E. H. Fischer, PhD, Professor, and Coordinator of Pesticide Use Education, University of Wisconsin, 237 Russell Lab., Madison, Wisconsin 53706.

Illinois Water Pollution and Water Resources Commission, by Carl L. Klein, State Representative, Chairman, 6428 South Francisco Avenue, Chicago, Illinois 60629.

League of Wisconsin Municipalities, by Ed Johnson, Executive Director, 433 West Washington Avenue, Madison, Wisconsin 53703.

Robert B. McConnell, Assistant Attorney General Department of Justice, State Capitol, Madison, Wisconsin 53702 (Either as Public Intervenor, or as a Representative of the Department of Justice, whichever Circuit Court of Dane County may later determine to be proper).

Gaylord Nelson, United States Senator, Senate Office Building, Washington, D.C. 20510.

Steven M. Schur, Assistant Attorney General, 5 North, Capitol Building, Madison, Wisconsin 53702.

George F. Sieker, Assistant Attorney General, 48 North, Capitol Building, Madison, Wisconsin 53702.

Wachtel Tree Science and Service, Inc., by Brookdale Drive, Brookfield, Wisconsin 53228. Brookfield, Wisconsin 53228.

Wisconsin Department of Agriculture, by Arthur R. Kurtz, Administrator, Plant Industry Division, 202B Hill Farms State Office Building, Madison, Wisconsin 53702.

Wisconsin Red Cherry Growers, Inc., by Frank K. Ullsperger, Executive Secretary, P.O. Box 160, Sturgeon Bay, Wisconsin 54235.

Gayle L. Worf, Ph. D., Associate Professor of Pathology, Department of Plant Pathology, 276 Russell Lab., University of Wisconsin, Madison, Wisconsin 53706, and Charles Kovall, Ph. D., Assistant Professor, Department of Entomology, 237 Russell Lab., University of Wisconsin 53706.

U.S. Department of Agriculture, by George A. Robertson, Attorney, U.S. Department of Agriculture, Washington, D.C.

Working Group on Environmental Toxicology, Ecological Research Committee of the Swedish Natural Science Research Council, by S. Goran Lofroth, DSc, Royal University of Stockholm, Radiobiology, Department of the Biochemistry Institute, Box 6409, S–11382, Stockholm, Sweden.

EXAMINER'S SUMMARY OF EVIDENCE

I. Statutes, Rules, Issues

A. The petitioners seek a declaratory ruling under Section 227.06, Wisconsin Statutes, which provides that any interested person may petition for a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it. A ruling is sought declaring DDT to be a highly toxic persistent chemical, that its use be restricted in such way that it cannot enter the biosphere and that its existence in the biosphere constitutes pollution.

Section 144.01 (11), Wis. Stats., defines pollution:

"Pollution includes contaminating or rendering unclean or impure the waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life."

Section 144.30 (9), Wis. Stats., defines environmental pollution:

"Environmental pollution means the contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life."

B. Rules

Under the provisions of Section 144.025 (2)(b), the Department is authorized to adopt rules setting standards of water quality, to protect the public interest which includes the protection of the public health and welfare and the use of the waters for public and private water supplies, the propagation of fish and aquatic life and wildlife and other uses.

In compliance with the above, the Department adopted minimum standards of water quality in Wisconsin Administrative Code section RD 2.02(1)(d):

"Substances in concentrations or combinations which are toxic or harmful to humans shall not be present in amounts found to be of public health significance, nor shall substances be present in amounts, which by bioassay and other appropriate tests, indicate acute or chronic levels harmful to animal, plant or aquatic life."

C. Issues

1. DDT in what concentrations or combinations is toxic or harmful to humans and its presence in water in what amounts can be found to be of public health significance?

2. What amounts of DDT in water, which by bio-assay and other appropriate tests, indicates acute or chronic levels harmful to animals, plant or aquatic life?

3. Is DDT a pollutant within the statutory definitions of "pollution" as found in Sections 144.01(11) and 144.30(9), Wis. Stats.?

II. DDT—Chemical structure

A. Chemical Structure

DDT, a chlorinated hydrocarbon, is chemically described as 1, 1, 1-trichloro-2, 2-bis (para-chlorophenyl) ethane (T–223). It is common practice to refer to DDT and to include in the term its various isomers—DDE and DDD (T–264), and lesser isomers DDA and DDMU. Each of the isomers is further broken down into the ortho, para derivative and the para, para derivative (T–651). Isomers have the same number and kind of atoms but in either different configuration or different locations within the molecule (T–224). What is known as technical DDT is composed of 75% of para, para DDT, 20% ortho, para prime DDT, and 5% is the other isomers (T–2499). DDT is manufactured in the reaction of chloral and monochlorobenzene in the presence of sulfuric acid, the spent sulfuric acid carrying away any monochlorobenzene that remains (T–2498).

DDT has been known since 1870, developed in Switzerland as an insecticide and first used in United States armed forces in 1943. DDT in its pure state is not insecticidal (T–2491).

B. Properties, Uses, and Tests

1. Physical properties

DDT is unique in that it has broad biological activity as an insecticide, it has great chemical stability, high mobility, is relatively insoluble in water and soluble in fat or lipid tissue (T–226, 227). It has a strong tendency to form suspensions more than solutions (T–236). Ability to absorb particulate matter can cause a concentration in water particulates which is thousands of times greater than the concentration in water itself (T–2215). Although it has a finite vapor pressure, and is relatively non-volatile, it will evaporate and recrystallize in air and travel in airborne dust. It also has the power of codistillation (T–237, 238). Half-life is estimated at 10 years (T–234, 279–284), there being no standards of determination (T–282).

However stable DDT is, it does degrade in sunshine and oxygen, first to DDE and then to bis (chlorophenyl) ketone and parachlorobenzoic acid. Since the DDT molecule is a very efficient light absorber, it absorbs the shorter wave lengths of the solar spectrum. Being a diphenyl methane type compound, it readily dissociates to a free radical leading to the formation of DDE. The degrading mechanism of DDE is not clear, but it does degrade faster than DDT. Under sunlight irradiation in sealed Petrie dishes, DDT will degrade approximately 50% in 12 days and it can be expected to be faster in a vapor state in the atmosphere (T–2206–2208).

When applied to crops, it has a period of rapid decline believed to be evaporation, and then degrades at a rate that is logarithmic in time. Exact mechanism of "disappearance" is not known. Half lives of DDT and isomers are reported in crop materials from as little as two days to 40 days—the longer time being the more appropriate. DDT on crops or plants degrades to DDD and DDE and when harvested, the residues go with the plant. DDT very tightly sorbs to soil particles which may be moved deeper into soil or washed away. "Disappearance" of DDT from soil is logarithmic in time and on the average 20% of the amount present at any time "disappears" each year. DDT "degradation" in soil is due to microorganisms amounting to as much as two-thirds of the DDT in a period of two weeks to DDE, DDD, DDA, DBM, DBP and chlorobenzoic acid. Degradation is more rapid under anaerobic conditions (Exh. 157). DDT is extremely insoluble in water, sorbs to particulate matter which collects on bottoms of streams, etc. and tends to degrade under the anaerobic conditions existing. It will degrade in the gut of fish, insects, mammals and birds because of microorganisms found there (T–2209–2217; Exh. 204).

2. Uses

DDT is and has been primarily used as an agricultural pesticide, for the control of Dutch elm disease and for the control of mosquitoes. Slightly over 100,000 lbs. were shipped into Wisconsin in 1968 with approximately 58,000 lbs. used for Dutch elm disease (Exh. 2). Recommendation for mosquito control was withdrawn (in Wisconsin) (T–161–165), as was registration for use on dairy cattle and around dairy barns since a zero tolerance was established for milk in 1954 in the Miller amendment (T–137–138). It is also used as a rodenticide in the control of mice (T–2512–2514) and bats (T–2517).

3. Toxicity

DDT has a wide range toxic effect on agricultural pests (Exh. 2), on the entire phylum Arthropoda (T–265), and is toxic to a degree to fish, birds, mammals, amphibians and reptiles and crustaceans (T–227). It is a Class II pesticide under the Federal Eocnomic Poisons Law (T–157–159). Technical DDT is somewhat more toxic than metabolites DDE and DDD and toxicity varies between species (T–266–267). Pure undiluted DDT is not an insecticide (T–292). It was stipulated that DDT has an effect on the nervous system (T–2581). Effects occuring at very low concentrations are variable but in the case of cockroaches consist of repetitive firing in nerves, resulting in disorientation, running about, tremor overwork and death due to exhaustion (T–2581–2583).

The effect on crustacean nerve is the failure of the nerve axon to transmit impulses (T–2583–2584). The effect on robins is similar to that of the cockroach—quivering, tremor and death due to nerve effect (T–2528–2548). DDT, at acute toxic levels, affects the central nervous system of fish causing instability, difficulty in respiration and sluggishness (Exh. 70). In humans, the first

clinical signs of toxicity are a sensation of burning or itching of the tongue, lips and face (Exh. 70, T–1398), tingling of fingers and toes (T–1442, 1688). With larger doses tremor appears, a sensation of alarm, of fear, marked uneasiness and to convulsions with accidental doses (T–1688).

In rats clinical signs of poisoning are directly correlated with the concentration of DDT in the nervous system, as measured by the concentration in the brain. All parts of the nervous system are affected (Exch. 105). In both animals and man poisoned by DDT it is the nervous system that is affected primarily.

4. Translocation

DDT, because of its chemical/physical properties and once applied to crops, or placed in the atmosphere, moves throughout the environment in water, air, soil and food (Exh. 73, 74, 189, 198–204; T–209–214, 665–670, 723, 728, 831–837, 869, 2204–2205, 2209, 2212, 2215). A minor transport mechanism is in organisms such as birds and fish (T–239). It has been found in filtered air, untreated forest soil, and the fish in the untreated watershed had in some instances 2.4 ppm DDE (T–243–245). DDT and metabolites have been found in oceanic food chains from zoo-plankton to gulls, osprey, cormorant, petrels, pelicans and p. falcons with a corresponding biological concentration at each level of the chain (Exh. 65; T–251–256, 661–662, 715). It was not present in plankton gathered in the 1920's and studied, nor in the body of a penguin of 1911 (T–912). It was not present in 10 samples of human fat collected before the advent of DDT (Exh. 102). DDT is found in bodies of fresh water (Lakes Michigan/Superior) from the muds up through all aquatic organisms (Exh. 71; T–619–620, 1207–1208).

5. Storage/accumulation in organisms

While relatively insoluble in water, DDT is soluble in lipid or fatty tissue (Exh. 102, 109; T–226, 246, 788), and accumulates in such tissue (T–247, 654; Exh. 109).

Unlike birds, DDE levels in mammals appear to reach a plateau with same amount of intake (Exh. 102) and remain at approximately 10–12 ppm in body fat of general population (T–855–856, 1099). A study of 35 men with 11 to 19 years of exposure in a DDT manufacturing plant shows the overall range of storage of isomers and metabolites in body fat ranged from 38 to 647 ppm, with an average of eight ppm for the general population (Exh. 72). There is no evidence of progression of storage of DDT in the general population since 1950–1951 (Exh. 84, 102, 109).

Abstainers from meat stored on the average about half as much DDT and half as much DDE as persons in the general population who stored an average of 4.9 ppm and 6.1 ppm of the two compounds respectively. Agricultural occupational exposure caused marked increase in storage at an average concentration of 17.1 ppm. In a 1958 study applicators stored less than formulators but stored about three times as much DDT/DDE as neighbors with only environmental exposure (Exh. 102). A 1961–1962 study showed no difference in levels of DDT/DDE between general population and persons living in or near areas of extensive agricultural use. Differences in the two studies may be due to decreased use by more than 50% in the test area (Exh. 106). One of the general population samples came from a six-month-old bottle-fed boy whose extractible lipid levels for DDT (6.2 ppm) and DDE (16.5 ppm) were well within range of the general population. In six months he had stored at least the average concentration for the general population (Exh. 106).

Human storage of DDT in England, West Germany, France, and Canada is lower than in the United States. Only in Hungary did the level of DDT storage equal or exceed that of the U.S. (Exh. 106). Sixty-five (65) percent of material is DDE (Exh. 106). Loss of DDT from storage, although always slow—less than 0.3% per day in man—is always more rapid when the storage is high than when it is low. Rate of excretion of DDT changes with concentration (Exh. 109). In general, doubling the dosage will double the storage (Exh. 109). A total of 282 autopsy samples of human abdominal fat tissle obtained at random from patients who had died of a variety of causes, regularly showed concentrations of 0.1 ppm or higher. The sum of DDE plus DDT averaged 10.3 ppm with standard deviation of 7.2 ppm. Nearly 96% of the values ranged from 0.1 to 22.3 ppm. About 72% of the DDT was present as DDE, the rest as DDT itself (Exh. 112). Other studies of volunteers receiving 35 mg per man per day of technical DDT resulted in average storage in fat of 234 ppm and 281 ppm respectively (T–1397). Other studies of 1961 to date give ranges of storage at between 2.3 and 4.0 ppm body fat (T–1397), but the witness was uncertain (T–2653). Concentration of storage depends on dosage and nature of the tissue in which stored and rate of metabolism depends on the concentration. A point or plateau is reached where concentration/storage and rate of metabolism matches ingestion or dosage (T–1406–1407).

All organisms store DDT in varying amounts in fat, muscle, and internal organs (Exh. 82, 70, 103, 105, 106, 119; T–364, 409. 619–650, 975, 1208, 1319).

6. Detection and measurement

The laboratory equipment now most commonly used for the detection and measurement of chlorinated hydrocarbons is what is known as the gas chromatograph. Long U-shaped tubes filled with a powder-like material coated with resin are in a heat cabinet with temperatures around 200° C. A specific amount of a mixture of various chlorinated hydrocarbons in a solvent such as hexane is injected through the system at one end of the column. Some of the compounds come out earlier than others because of their physical-chemical properties and pass through a mechanism known as a detector, the most commonly used being known as an electron capture detector. The detector operates a recorder pen which marks a moving sheet of paper showing the times and amounts of gas which spin off the basic hydrocarbon ring. Peaks are made on the moving paper corresponding to the compound coming off. Because of chemical properties it occasionally happens that two of the compounds may come out at or about the same time, creating one peak or confusing the type of peak. This may happen with a non-polar column known as a DC–200 or an SE30 where compounds known as polychlorinated-biphenyls may come off at the same time as p, p' DDT. The interference is avoided by also using a QF–1 polar column where the retention times of the compounds will be differentiated. Laboratory procedures such as saponification can also be utilized (T–916). There chlorinated hydrocarbons are extracted from the sample provided no matter what it may be through certain laboratory procedures (T–275, 302, 652, 654–656, 675, 705, 723, 728, 819–820, 2220–2223, 2235).

Almost all analytical techniques are based on pesticide manuals of Food and Drug Administration listing techniques and now to verify conclusions (T–711, 922, 2077). There are several techniques and procedures used for confirmation or verification (T–275, 302–303, 2048–2049, 306–307, 313–316, 656–657, 711, 869, 916, 922, 2048–2050, 2069, 2221, 728).

Chlorinated hydrocarbon residues in organisms or samples of other material can be detected and measured in parts per million (ppm) up to .10 ppm in the Schecter-Haller colorimetric method (T–1454, 2047) and with the more sensitive gas chromatograph up to parts per billion (ppb) (T–239, 243, 244, 621–624).

7. Chlorinated hydrocarbons are tested for effects, storage residues by feeding tests (T–918, 971–980, 1044, 1217, 1802), bio-assay (T–889, 918, 2045), in "vitro" (Exh. 138; T–1670) and in "vivo" (Exh. 85, 86; T–322, 327, 1045, 1046, 1670).

III. Enzyme induction

A. Enzymes—Function and Body System Effects

Enzymes are catalysts (T–684, 847), protein in nature, manifested morphologically by an increase in the smooth endoplasmic reticulum of the liver. The production of non-specific hydroxylating enzymes by the microsomal fragment liver cells is a normal function of the liver (T–229, 347, 1044, 1126–1127, 1672–1676). The existence of non-specific enzymes and their production in the liver became evident in 1958 (T–1093). Two major functions of the liver are digestion and detoxification (T–346, 1461, 1673–1676). Enzymes are produced in the liver to hydrolyze or oxidize non-polar substances such as fat and resins to a polar condition and capable of excretion by the kidney (T–681, 1063, 1461, 1673–1676). They have not been isolated in purified form (T–850). They will also hydroxylate both endogenous and exogenous steroids which is a natural physiological process and will themselves disappear when no longer needed (T–683–684, 1044–1046, 1059, 1072, 1074). The enzyme substrate affinity for steroids is much greater than it is for drugs (T–1059) and it has been shown that o, p' DDD stimulates the metabolism of hydrocortisone to 6-Beta hydroxy-cortisone in humans (T–1063, 1104, 1673–1676; Exh. 86). Enhanced steroid metabolism causes compensatory synthesis of more steroid by organisms and raises problems of drug interaction (T–1129, 1674–1678; Exh. 87).

Many drugs, compounds and poisons induce detoxifying enzymes. For an example, while phenobarbitol induces enzymes and is metabolized, a high level of enzymes induced by chlorinated hydrocarbons will decrease its physiological effect (T–687, 1060, 1101, 1128, 1673–1676; Exh. 86). Levels of enzymes induced are directly proportional to the dose and rate (T–2633).

An overall body concentration of one (1) ppm and ten (10) ppm of DDT in the fat—levels slightly below levels found in the human body—causes a significant increase in liver enzymes (T–740, 1044, 1058, 1094, 1099). Five (5) ppm of DDT given to rats for three months caused an increase in enzyme activity in the rat liver and as little as 40 micrograms of DDT given to rats for four (4) weeks caused an increase in the metabolism of several clinically useful drugs, an effect which extended for twelve (12) weeks after the DDT feeding was stopped (T–1058, 1060–1062, 2651; Exh. 87). Liver detoxification mechanisms are less highly developed in human infants than in adults and this is also true of rat infrants (T–2649).

2. Clinical effects

There are no overt pathological changes in body organs at tissue levels of ten (10) ppm (Exh. 72). There are no overt pathological histological changes in rats fed DDT in very low amounts (T–1117). This does not mean, however, that there are no bio-chemical or pharmacologic effects (T–1120–1124). Histologically, no effect is evident except a proliferation of the smooth endoplasmic recticulum of the liver cell following the administration of enzyme-inducing agents. Up to this time this effect has not been considered a pathological one and therefore has no pathological significance. The biochemical significance is a higher enzyme level and the metabolism at a faster rate of steroids and drugs (Exh. 87; T–1127–1128).

Repeated oral doses of DDT to volunteers of approximately 200 times what the general population gets in their diet caused no clinical signs of illness. Dosages of 3.5 and

35 mg., depending on the exact weight of each man, averaged .05 and .5 mg/kg per day and did not produce any clinical illness. It did result, however, in increased storage (T–1394–1395; Exh. 101). Storage in fat of 35 mg per man per day dosages of technical DDT was an average of 234 ppm in one study and 281 in another study (T–1397). Average person diet intake of DDT is .028 mg per man per day on values established for 1964 through 1967 (T-1396). Ten (10) mg/kg produces illness in many people and sixteen (16) mg/kg has frequently produced convulsions (T–1404). Routine clinical examinations and simple laboratory tests of workers with great exposure to DDT failed to show any illness (T–1439, 1446, 1475–1476; Exh. 72) and disorders were looked for which had been produced by moderately larger dosages of DDT in man and in animals (T–1452, 1474–1475). There were no clinical or sub-clinical effects found. Clinical effects were primarily sought. No procedures were utilized to determine subclinical effects of enzyme induction (T-1657–1658). Not only the dosage that ordinary people get but the higher dosages workers get produce no detectable clinical effects (T-2656, 2645). People who have not ingested enormous amounts of DDT have evidenced no manifest clinical symptoms (T-1692).

3. Sub-clinical effects

The principal sub-clinical metabolic effect of DDT is the accelerated degradation of drugs, hormones and endocrines as listed in preceding paragraphs. Hormones such as testosterone, estrogen and progesterone in the human body function in a ratio of parts per billion (ppb) (T-233) and are broken down by liver enzymes (T-347). Other chlorinated hydrocarbons such as polychlorinated biphenyls (PCB) also induce hepatic enzymes with the capacity to hydroxylate steroids. The PCB-induced enzyme produces a different polar metabolite (T-847, 851–852; Exh. 153, 173). PCB is found in almost all organisms throughout the world (Exh. 153, 173, 174).

The degradation of hormones without observable effect on the organism itself by DDT-induced hepatic enzymes is evidenced by what is known as "the thin eggshell phenomenon" in birds. High levels of hepatic enzymes cause a rapid metabolism of the avian estrogen necessary for the laydown of calcium in the medullary bone of birds (T–335, 409, 435, 678–679, 685–686; Exh. 67). An upset in the calcium metabolism of the bird itself results in abnormal brooding behavior and the eating of its own eggs (T–335). Lack of available calcium carbonate results in thin eggshells (T–685–686, 849, 1180, 1193–1205; Exh. 93).

In a controlled feeding study at the Patuxent Wildlife Research Center, Department of the Interior, mallards were fed DDT or metabolites DDD or DDE each separately at 10 ppm or 40 ppm on a dry weight basis. Mallards fed DDE cracked or broke 24% of their eggs, controls 4%, and good eggs produced had shells 13½% thinner than controls. Incubated eggs laid by ducks fed DDE produced less than one-half (½) as many healthy ducklings as did the controls. Both amounts of DDE produced effects of similar magnitude. A "no effect level" was not found and must be lower than the dosages given. Ducks fed p, p' DDT minus the o, p fraction at 25 ppm showed results similar to those produced by DDE at 10 or 40 ppm. DDD fed to ducks at 10 or 40 ppm produced normal eggs and healthy ducklings.

In another experiment, kestrels (sparrowhawks) were fed 2 ppm of DDT plus ⅓ ppm of dieldrin and also 5 ppm DDT plus 1 ppm of dieldrin. Shells of dosed birds were 15% thinner than the controls as were second generations fed diet of the parents (T–1214–1222).

Another experiment with the Japanese quail, was designed to determine what effect toxic levels of DDT fed in the growing period might have on reproduction efficiency later on, and whether resistance to DDT could be developed. The quail were fed 200 ppm until a 50% mortality was reached which was approximately 30 days. Survivors were bred for four (4) generations. There was no effect on reproduction or shell thickness. No residue levels were determined. The Japanese quail is related physiologically to chickens, pheasants and turkeys (T–1802–1806, 1832–1833).

What role, if any, DDT plays in fish physiological processes is unknown. It is unknown whether the principle of hepatic enzyme induction is involved in fish reproduction (T–690–693).

B. Environmental Effects

1. Birds

a. Sea or Waterfowl

The effects shown in the Patuxent studies are similar to those experienced in the environment, resulting in declining raptor and water bird populations. The pelagic Bermuda petrel (T–256), the brown pelican (T–662, 714–715), the peregrine falcon (T–696–700, 1149–1152, 1188–1197; Exh. 93, 98), the forked-tail petrel (T–714), the bald eagle (T–1153, 1197, 1269; Exh. 93), the osprey (T–1158–1159, 1197, 1277; Exh. 90, 93), the coopers hawk (T–1187), the double-crested cormorant (T–1206–1207) and mallards (T–2281) are affected.

b. Upland Birds

The population trend on a nationwide basis so far as small game and upland game birds are concerned, taking into account anticipated population fluctuations, shows a generally healthy upward trend. This is true of cottontails, snowshoe hare and squirrels and birds such as pheasant, quail, grouse and woodcock (T–2271–2273).

c. Omnivores

Golden eagles, red-tailed hawks and the great horned owl are omnivores, feeding on both birds and mammals, and are representative of reasonably stationary populations showing no statistically significant fluctuations in eggshell weight (T–1197; Exh. 93). The golden eagle in the British Isles is also declining and it is shown that in feeding on sheep carrion and fleece is ingesting DDT in combination with dieldrin, both being used as sheep-dips (Exh. 91).

2. Fish

The University of New Hampshire studies on effects of DDT on reproduction of brook trout and their resistance to stress shows that mortality where one gamete came from fish exposed to DDT was in every case higher than instances where neither of the gametes came from a fish exposed to DDT, and in five out of six cases the differences were statistically significant. The stress imposed was starvation and lowered water temperatures and the approach of spawning activity (T–971–976; Exh. 80, 81).

The findings in the New Hampshire study are consistent with the study and field investigation of the New York State Conservation Department, which showed a relatively close relationship between the amount of DDT in lake trout eggs and observed mortality (Exh. 82). Canadian studies establish that when DDT and its metabolites occur in concentrations slightly above 400 ppb in eggs, mortality in the resulting fry ranged from 30% to 90% in the 60-day period following the swim-up stage (Exh. 83). The Wisconsin studies, however, are inconclusive. Data indicated no relationship between pesticide residue levels in eggs and median life span of fry nor pesticide levels in fry and median life span of the fry. Difficulties in the experiment occurred and the experiment design differed also from the New York and New Hampshire studies (Exh. 70, 175).

IV. Effect on nerves

A. Anatomy and Physiology

Exhibit 184 is a simplified diagram of a motornerve cell showing receptor dendrites, the nerve soma or body, the axon and endplate. The axon or transmission part of the nerve cell is composed of a central core surrounded by a plasma membrane called the neurolemma. Next to the neurolemma is a Schwann cell which comprises the myelin sheath. The myelin sheath has openings or channels called the node of Ranvier.

The nurolemma is believed to be a laminated membrane with a lipid molecule interior sandwiched between layers of protein molecules with channels through the membrane. The term "channel" does not refer to an anatomical structure, but only refers to a conceptual pathway (Exh. 182). Between the neurolemma and the cytoplasm is a concentration of potassium ions and on the outside of the membrane is a concentration of sodium ions. The membrane offers resistance to the passage of electrical currents and shows selective permeability to the exchange of the sodium and potassium ions. In the resting cell the inside of the membrane is negative to the outside.

In excitation of the cell, the nerve impulse received by the dendrites and at a certain potential is passed on through the axon. With the decay of the potential due to resistance, sodium ions pass through the membrane to the inside and simultaneously the potassium ions flow outward. Both flows last but a thousandth of a second and at the moment the two effects balance one another the inside of the memberane is slightly positive and the membrane restores ionic balance typical of the resting state. The excitation or nerve impulse passes down the lattice-type membrane by leaking currents through one node of Ranvier to the next node where sodium and potassium ions are exchanged through the neurolemma. The conductance is then not a smooth flow but a whole series of changes in potentials. (Examiner's Note: This is a gross oversimplification of an enormously complex, complicated neurophysiological reaction) (T–2552, 2616; Exh. 179–184).

DDT will increase membrane conductance to potassium or the inactivation of the nerve membrane conductance to sodium or both are inhibited, thereby increasing the negative after potential and its prolongation (Exh. 182). DDT does not simply reduce maximum sodium current, but instead gums open the channels or some of the channels for sodium, resulting in the prolonged action potential and the prolonged action current with an effect similar to veratrine, the alkaloid active ingredient of belladonna (T-2593).

". . . A prolongation of the active state of the nerve means—and coupled with no change in the inactivation process for sodium—means that after one nerve impulse, when the channels become ready to conduct or to open again to conduct a second impulse, and examine or test the potential across the membrane, they will find that according to the potential they should already go again, that is, no further impulse would be necessary to make it fire another signal. This could produce repetitive firing. On the other hand, in other nerves where sodium inactivation takes a longer time, one could simply find that the nerve on reactivating its sodium mechanism finds that the potential, already too high to fire an action potential, and instead would simply remain quiescent. This would product a complete failure of the transmission line or at least intermittent failure. Either of these mechanisms quite clearly and very conclusively could cause tremors and could cause grave disturbances

in terms of the ability of the animal to move or to make motions." (T-2594-2595).

The effects of DDT on nerves involved in the experiments conducted did not wear off during the time course of the experiment. The effects are irreversible (T-2593-2594). There did not seem to be any concentration lower limit of DDT to create the effects shown (T-2591, 2589). In cockroaches, insects and crustaceans, effects occur at very low concentrations and are variable. Effect on the cockroach consisted of repetitive firing on nerves where one impulse applied to the nerve no longer evoked a single message but rather a large volley of messages. The behavior showed disorientation, running about, tremoring, kicking of legs in the air, and death (T-2583). There is a similar effect on robins (T-2595). How DDT reaches the nerves in the body is unknown (T-2607).

It was stipulated that DDT has an effect on the nervous system (T-2581). It is the nervous system that is primarily affected (T-1438), and it does in fact stimulate all parts of the nervous system (T-1679-1680). The earliest subjective clinical sign of DDT poisoning is tingling of fingers and toes, and peculiar tingling about the mouth (T-1442).

B. Environmental Effects

1. Fish

At acutely toxic levels, the chlorinated hydrocarbons damage the central nervous system, causing instability, difficulty in respiration and sluggishness in fish (Exh. 70).

2. Birds

In Hanover, New Hampshire, a study was made of effects of DDT on local birds after the town was sprayed for Dutch elm disease. Ninety-six (96) dead birds had a concentration of about 30 ppm DDT. All birds with tremor had above 30 ppm in the whole bird (T-363-365).

The study conducted at the East Lansing Campus at Michigan State University shows that birds, primarily robins, suffered from extensive tremor and death after the campus had been sprayed with DDT. More than 200 robins and 216 specimens of non-robins, representing about 50 different species were analyzed. It was determined that the amount of DDT in the liver had no correlation with mortality. The brain was considered the best criterion. DDT was found in 99.5% of birds from DDT-sprayed area. No robins with tremor were found that did not have 50 ppm or more DDT. All birds in tremor and dying birds had large concentrations of DDT in the brain (T-2524-2549).

3. Mammals

The giant squid axon fiber is like nerves of higher vertebrates, but unlike them has a very large diameter and is useful in nerve conductance experiments (T-2562). Work done on the squid axon is applicable to nerves of both vertebrates and invertebrates (T-2572, 2583, 2596; Exh. 183). The effect of DDT on nerve conductance would not always be manifest in gross neuromuscular clinical signs and if manifested would not necessarily be the sole cause of the observed clinical signs (T-2615).

The action of DDT in animals is manifested almost entirely through the nervous system with prominent signs of poisoning being muscle tremor, incoordination and convulsions. Concentration of DDT in the brain of rats fed p, p DDT at 200 ppm for 90 days increased during a subsequent 10-day period of partial starvation. Increased concentration of DDT in the brain during starvation was correlated with clinical signs of poisoning. While all parts of the nervous system are affected by DDT the brain is of major importance (Exh. 105).

V. Other effects

A. Hormone Mimicry in Quail and Rats

An experiment designed to determine estrogenic effects resulted in a tripling of the wet weight of the conturnix quail oviduct when injected with 190 mg/kg of o, p DDT. No attempt was made to determine the amount that would cause the effect (T-323, 326). The coturnix is a gallinaceous bird, related physiologically to chickens, pheasants and turkeys (T-1833). Experiments at the University of Wisconsin designed to determine the effect toxic levels of DDT fed in the growing period would have on reproductive efficiency later on, and also whether DDT-resistant birds could be developed, showed no effect at all on coturnix eggshell thickness (T-1802-1806). The nationwide trend so far as small game and upland game birds are concerned shows "a generally healthy upward trend." (T-2272, 2273; Exh. 158, 159).

DDT also increases the uterine wet weight in immature female rats and in ovariectomized adult rats. The physiological significance of this effect is unknown.

B. DDT and Human Pathology

DDT concentrations were determined at autospy in the fat and liver of 271 patients previously exhibiting pathological states of the liver, brain and other tissues and compared with other random autopsy cases. There was a striking lack of correlation between concentrations in the liver and fat in all cases, but a significant correlation between levels in the brain and fat. There was no elevation of concentrations in the presence of brain tumors but a significant increase of the mean p, p' DDE in encephalomalacia and cerebral hemmorrhage. Significant concentrations of p, p' DDE were found in portal "cirrhosis" and highly significant concentrations in carcinoma. Fat concentrations of the various DDT analogs were consistently and significantly elevated in hypertension.

Individuals using pesticides extensively in the home had levels of p, p' DDT and p, p' DDE three to four times higher than those who had used minimal quantities. No conclusions can be drawn on the role of pesticide exposure in the production of the diseases without confirmatory studies to determine whether the diseases caused high DDT levels or vice versa (T-1725-1735; Exh. 119).

OPINION

Clinically observable toxic effects of DDT in humans are obtained only with extremely large dosages by sudden extreme exposure, or of accidental origin. Clinically observable effects are evident injury, illness, loss of body function which directly inconveniences a person at work or play. Toxicity, as the word is ordinarily expressed, is related to dosage which in turn is related to storage.

DDT is ubiquitous. It is found in the atmosphere, soil, water and in food in what might be considered minute amounts. The chemical property of being soluble in lipid or fat tissue results in storage primarily in the body fat and nervous systems of all organisms in all levels of food chains. It is therefore impossible to establish levels, tolerances or concentrations at which DDT is toxic or harmful to human, animal, or aquatic life.

The principle that DDT, being a chlorinated hydrocarbon, induces the production of nonspecific detoxifying hydroxylating hepatic enzymes is well established. The induction of the enzymes is a normal adaptive hepatic process for the detoxification of substances and no definitive pathological effects are observed at present dosages. A high level of induced hepatic hydroxylating enzymes, however, causes a pharmacological biochemical effect in accelerating the metabolism of body steroids and drugs such as barbiturates and nonbarbiturate depressants.

While the exact physiological mechanisms are not known in enzyme induction, it is established by feeding studies that DDT and one or more of its metabolities will by themselves cause a thinning of egg-shells in raptor, pelagic or water-fowl birds. The effect explains the existence of the phenomena in the environment but does not exclude other causative factors, namely diet, illness and other chlorinated hydrocarbons among them being polychlorinated biphenyls. The appearance of the phenomena, however, on two continents simultaneously, would seem to eliminate illness, diet or predator interference as causative factors. Waterfowl and raptors on the top of water and other food chains are suffering decline and insect/worm-eaters are affected whereas gallinaceous birds are not. The differences in dosage reactions can also be explained by well-known order differences in birds.

The effect of DDT in minute amounts on the extremely complex, complicated mammalian nerve system is unknown. Huge dosages of DDT bordering on the accidental will cause gross clinically observable neurological symptoms in humans. It is uncontroverted that DDT has an almost immediate nerve effect on the primitive nerve systems of insects and on the less well-developed nervous systems of other forms of life. It is also uncontroverted that nerve tissue of vertebrates and invertebrates is the same, that DDT has a harmful effect on nerve conductance as shown by experiments on the axons of crustaceans and amphibians, that the effects are irreversible during the duration of the experiments. Clinically observable signs of nerve effects in humans such as tremor disappear upon reduction of dosage. That there are sub-clinical residual effects can only be postulated on mathematical equations and principles worked out in conjunction with nerve conductance experiments on nerve axons of crustaceans and amphibians and shown to be valid in all cases. Taking into consideration the above experiments together with the fact that DDT is used as a rodenticide for mice and bats, the only valid permissible inference is that DDT in small dosages has a harmful residual effect on the mammalian nervous system.

While physiological mechanism causing a reduced reproductive success in fish and a reduced resistance to stress when dosed with fairly high levels of DDT is unknown, the known effects themselves can only be considered harmful ones.

The record is replete with evidence of the economic benefits derived from use of DDT in the control of pests in agriculture and in the control of mosquitoes for both comfort and prevention of disease. Without doubt DDT has provided enormous economic benefits, but economic benefits are not an issue or part of any issue in this case.

RULING

DDT, including one or more of its metabolites in any concentration or in combination with other chemicals at any level, within any tolerances, or in any amounts, is harmful to humans and found to be of public health significance. No concentrations, levels, tolerances or amounts can be established. Chemical properties and characteristics of DDT enable it to be stored or accumulated in the human body and in each trophic level of various food chains, particularly the aquatic, which provides food for human consumption. Its ingestion and dosage therefore cannot be controlled and consequently its storage is uncontrolled. Minute amounts of the chemical, while not producing observable clinical effects, do have biochemical, pharmacological, and neurophysiological effects of public health significance.

No acute or chronic levels of DDT which are harmful to animal or aquatic life can be established. For the reasons above set forth a chronic level may become an acute level. Feeding tests, laboratory experiments and environmental studies establish that DDT or one or more of its analogs is harmful to raptors and waterfowl by interfering with their

reproductive process and in other birds by having a direct neurophysiological effect.

Feeding tests or experiments and environmental studies establish that DDT at chronic low levels is harmful to fish by reducing their resistance to stress.

DDT and its analogs are therefore environmental pollutants within the definitions of Sections 144.01 (11) and 144.30 (9), Wisconsin Statutes, by contaminating and rendering unclean and impure the air, land and waters of the state and making the same injurious to public health and deleterious to fish, bird and animal life.

Dated at Madison, Wisconsin, this 21st day of May, 1970.

CONGRESS CUTS LAST BUDGET OF PRESIDENT JOHNSON

Mr. ALLOTT. Mr. President, yesterday the distinguished majority leader inserted a chart into the CONGRESSIONAL RECORD of July 20, 1970, on page 25036. This chart detailed the reductions effected by Congress on the spending requests contained, in the words of the distinguished majority leader, "in the budget submitted by the administration."

The distinguished majority leader pointed out that, and again, I use his words:

Acting on administration budget requests for the fiscal year just concluded, Congress cut a total of $6.37 billion.

The table inserted by my distinguished colleague described, in his words, "items that were felt to have been unnecessarily bloated by the administration."

Unfortunately, my esteemed colleague neglected to mention that the budget to which he had reference, which he had just inserted in the RECORD, was the budget for fiscal year 1970. This budget was submitted to the Congress at 12 noon on Wednesday, January 15, 1969, and signed by Lyndon B. Johnson, President of the United States. Certainly we should all feel quite proud of our actions with regard to this last budget of the previous Democratic administration.

Of course, in his budget message of January 15, 1969, former President Johnson stated that he had developed a budget which would yield a surplus of $3.414 billion in fiscal 1970. This was based on anticipated revenues of $198.7 billion and anticipated expenditures of $195.3 billion.

President Nixon inherited that budget when he took office, 5 days later, studied it for approximately 2 months, and came up with a revised budget which was announced on April 15, 1969. In essence, his budget cut aggregate expenditures to $192.9 billion with the same figure for aggregate revenues, $198.7 billion. Initially, therefore, the Nixon budget yielded an anticipated surplus of revenues over expenditures of $5.8 billion.

A good deal of discussion has already taken place with regard to the way in which the first session of the 91st Congress addressed itself to discharging its appropriation responsibility in light of the revised Nixon budget.

Taking the narrow issue of appropriations alone, it has been argued that the Congress itself cut the Nixon budget by $7.6 billion in certain areas of governmental appropriations, added roughly $2 billion to other areas of appropriation, for a total aggregated reduction of $5.6 billion.

Not so, says Representative GEORGE H. MAHON'S Joint Committee on Reduction of Federal Expenditures, in its report on the impact of congressional actions and inactions of the 1970 fiscal year Federal budget. As shown in the following table, this Congress cut a $5.9 billion surplus by $46 million.

Mr. President, at this point in my remarks I ask unanimous consent that this table be printed in the RECORD.

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

BUDGET SUMMARY—A SUMMARY OF FISCAL YEAR 1970 AND FISCAL YEAR 1969 FEDERAL BUDGETS—REFLECTING CONGRESSIONAL ACTIONS AND INACTIONS AFFECTING THOSE BUDGETS DURING THE 1ST SESSION OF THE 91ST CONGRESS

[In millions of dollars]

Summary totals	Budget authority (obligational and lending authority) (1)	Budget outlays (expenditures and net lending) (2)	Budget receipts (3)	Budget surplus or deficit (4)
Fiscal year 1970:				
Net total budget estimates as submitted Jan. 15, 1969	210,116	195,272	198,686	+3,414
Net total budget estimates as corrected by the new administration	211,412	196,921	198,686	+1,765
Net total budget estimates as corrected and revised to Apr. 15, 1969	205,901	192,899	198,686	+5,787
Net total budget estimates as revised and amended to date	[1] 204,201	[2] 192,885	[2] 198,800	+5,915
Adjustments for interfund and intragovernmental transactions and applicable receipts	+13,714	+13,714	+13,714	
Total gross budget estimates	217,915	206,599	212,514	+5,915
Budget estimates not requiring further action by Congress (previously enacted or permanent)	80,712	114,896	202,712	
Prior year's budget authority		(85,165)		
Current (1970) budget authority	(80,712)	(29,731)		
Budget estimates requiring action by Congress	137,203	91,703	9,802	
Effect of congressional action on budget estimates (net changes) to Dec. 23, 1969:				
House	−3,687	+362	+158	−204
Senate	+2,512	+767	−2,173	−2,940
Enacted	[3] −837	[3] −1,569	−118	+1,451
Effect of congressional inaction on budget estimates (see supporting table No. 3 and part I of supporting table No. 4)	+1,313	+1,232	−265	−1,497
Total net effect of congressional action and inaction, 1st session, 91st Congress	+476	−337	−383	−46
Fiscal year 1969:				
Net total budget estimates as submitted in January	194,620	183,701	186,092	+2,391
Net total budget estimates, as revised	196,030	185,588	186,492	+904
Net total budget estimates, as changed by congressional action	195,568	185,263	186,492	+1,229
Actual net total as enacted by Congress and reported by the Treasury	195,568	184,769	187,843	+3,074

[1] Budget authority estimates have not been revised since the May 20 withdrawal of $1,700,000,000 for the previously proposed social security program.

[2] The summer review of the 1970 budget reflected revised budget outlay estimates at $192,860,000,000 and revised budget receipt estimates at $198,800,000,000. The revised outlay estimates reflect many increases and many offsetting decreases on which full details are not available. Since revised detailed estimates were not transmitted to the Congress, it must be assumed for scorekeeping purposes that the Congress was working with the Apr. 15 budget appropriation and outlay estimates.

[3] Includes the effect of the Labor and Health, Education, and Welfare, and the Foreign Assistance Appropriation bills, on which Congress has not taken final action, in the amounts approved by the committees of conference.

Mr. ALLOTT. Specifically, Congress acted to reduce budget authority by $837 million, reduce budget outlays by $1.569 billion, and reduce budget receipts by $118 million, thus apparently producing a budget surplus of $1.451 billion.

But through congressional inaction on other budget estimates, as the committee pointed out, Congress at the same time added $1.313 billion to authority, $1.232 billion to outlays, and reduced receipts by $265 million, therefore, the total net effect of congressional action and inaction of the first session of the 91st Congress, according to Chairman MAHON'S committee, was to reduce a $5.9 billion surplus by $46 million.

It may be history that the first session of this Congress set new records on the lateness of making appropriations—a history that may find its way into the trivia of the Guinness Book of World Records—but the fact of the matter is that retardation of appropriations has caused budgetary experts to estimate a loss of about $3 billion. The cause was inefficient governmental expenditures because none of the 15 appropriation bills had yet been enacted when the fiscal year began.

Perhaps a comparison with the pace of appropriations bills during the first year of President Eisenhower's first term is in

order. It should be recalled there was a slim Republican majority in both House and Senate in that year, 1953, and Congress adjourned August 4, having passed all appropriations bills.

This year, hopefully, we can match that record. In 1969, however, after the first 6 months, the Democratic-controlled Congress had failed to enact any of the fiscal year 1970 appropriations bills; by September 30, Congress had enacted one bill; by October 31, the total was two; by November 30, it had risen to four. By adjournment time, December 22, 1969, most of the bills had been rushed through by a weary Congress—half a year late.

Just a few weeks ago, the distinguished Representative from Texas, Chairman GEORGE H. MAHON, released his 1971 budget scorekeeping report—Staff Report No. 6. I would like to quote from page 1 of this report which deals with congressional changes up to June 25, 1970, with regard to the budget for fiscal year 1971, the first budget truly reflective of the intents of the new Republican administration.

According to Chairman MAHON:

A. Budget authority for fiscal 1971:

1. House actions to June 25, 1970 on all spending bills—appropriations and legislative—have *increased* the President's requests for fiscal 1971 budget authority by $1,197,277,000.

2. Senate actions to June 25, 1970 on all spending bills—appropriations and legislative—have *increased* the President's budget authority requests for fiscal 1971 by $1,992,529,000.

3. Enactments of spending bills—appropriations and legislative—to June 25, 1970 have *added* $457,584,000 to the President's budget authority requests for fiscal 1971.

B. Budget outlays for fiscal 1971:

1. House actions to June 25, 1970 on all spending bills—appropriations and legislative—have *added* a net of $1,833,363,000 to the President's total estimated outlays for fiscal 1971.

2. Senate actions to June 25, 1970 on all spending bills—appropriations and legislative—have *added* a net of $1,028,852,000 to the President's total estimated outlays for fiscal 1971.

3. Enactments of spending bills—appropriations and legislative—to June 25, 1970 have *added* $465,084,000 to the President's total estimated outlays for fiscal 1971.

Perhaps the action of Defense Secretary Melvin Laird in cutting the Johnson defense budget even before Congress began serious consideration of it, threw my colleagues on the other side of the aisle into such confusion that they have never really understood the fiscal 1970 budget.

Fortunately, we have the reports of the distinguished chairman of the House Appropriations Committee, Mr. MAHON, to place the matter in its proper perspective.

As Mr. MAHON has so straightforwardly pointed out, since January 1970 the Congress has been considering the budget for fiscal year 1971. Fiscal year 1971 begins on July 1, 1970. The Congress has added $465 million to the President's budget so far this year.

Finally, Mr. President, I should like to call attention to an editorial that appeared in this morning's Baltimore Sun entitled "Let's Not Blow It," and request unanimous consent that it be printed in the RECORD.

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

LET'S NOT BLOW IT

George P. Schultz, head of the President's new Office of Management and Budget, said that Mr. Nixon's statement on excessive spending by Congress could be boiled down to this: "We've worked so hard to get here, now let's not blow it by doing the ill-considered thing."

The President's statement put the matter this way:

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 nineteen-sixties. 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.

Americans surely have learned the futility, indeed, the lunacy, of inflation. The record of the past several years is there for all to see, and the recession of the past few months is painful evidence of the fact that the high price of inflation must be met at some stage. It would be nothing less than folly for Congress now to ignore all of these developments and set off another inflationary spree.

As has been noted in these columns many times, Congress cannot keep raising the government's spending totals above its income level without causing more inflation. It is slow to raise taxes and quick to raise spending. If the decision of Congress is to increase appropriations in such fields as public health and education above the President's recommendations—and this is its prerogative—other approriations must be reduced accordingly.

Some progress has been made in checking inflation and some signs have appeared that the national economy may be moving out of the recessionary period of recent months. As Mr. Schultz said, let's not blow it.

Mr. ALLOTT. Mr. President, I quote the last two paragraphs of the editorial:

As has been noted in these columns many times, Congress cannot keep raising the government's spending totals above its income level without causing more inflation. It is slow to raise taxes and quick to raise spending. If the decision of Congress is to increase appropriations in such fields as public health and education above the President's recommendations—and this is its prerogative—other appropriations must be reduced accordingly.

Some progress has been made in checking inflation and some signs have appeared that the national economy may be moving out of the recessionary period of recent months. As Mr. Schultz said, let's not blow it.

Mr. President, I think this is an obligation of Congress today if we are going to hold the line against inflation. Let us not "blow" it in Congress.

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 bill (S. 3978) to extend the time for conducting the referendum with respect to the national marketing quota for wheat for the marketing year beginning July 1, 1971.

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. ERVIN. Mr. President, the American Bar Association has come out through its committees as being emphatically opposed to provisions embodied in the District of Columbia crime conference report.

I read the report and recommendations of the section of individual rights and responsibilities of the American Bar Association:

REPORT AND RECOMMENDATION OF THE SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES

RECOMMENDATION

The Section of Individual Rights and Responsibilities recommends adoption of the following Resolution.

Whereas, the House version of S. 2601 contains many provisions of a controversial nature, particularly on the subjects of permissive authority for no-knock searches, preventive detention of those accused of crime and rights of juveniles; and

Whereas, the Chairman of the Senate Judiciary Subcommittee on Constitutional Rights has expressed grave concern that some of the provisions of the House version of S. 2601 would violate provisions of the Constitution of the United States and constitute serious deprivations of individual rights, and the Section of Individual Rights and Responsibilities of the American Bar Association strongly shares such concern; and

Whereas, some of the provisions in the House version of S. 2601 are inconsistent with the Minimum Standards for the Administration of Justice adopted by the House of Delegates of the American Bar Association; and

Whereas, the Senate version of S. 2601, although an improvement over the House version, also has many provisions which raise serious constitutional questions, constitute deprivation of individual rights and involve departures from the Minimum Standards; and

Whereas, the Congressional hearings on the House version of S. 2601 have been wholly inadequate and failed to explore the pertinent constitutional and legal objections and no testimony was presented by representatives of the American Bar Association or other elements of the organized bar on many of the controversial provisions in such legislation;

Resolved, that the American Bar Association—

(a) disapproves the enactment of S. 2601 in its present forms;

(b) recommends that the provisions of S. 2601 regarding court reorganization (Title I, Part A), The Public Defender (Title III) and Transfer to Bureau of Prisons of Certain Facilities (Title V) be treated separately from the criminal law portions of the remaining Titles and that the criminal law portions on such legislation be returned for further hearing and consideration.

REPORT

There is presently pending before a Conference Committee of the United States Senate and the House of Representatives a bill known as S. 2601. There is a House version of this bill and a Senate version of this bill.

The procedural history of the bill is com-

plicated. As originally introduced in July 1969 by the Department of Justice, S. 2601 was announced "D.C. Court Reorganization Bill." It proposed to redistribute the mixed jurisdiction of the Washington courts to conform to the federal state model. It was characterized as containing no substantive changes in criminal law or procedure. It was soon discovered, however, to contain wire tapping, juvenile and other proposals of a highly controversial nature. These provisions were sorted out and introduced in a new bill, S. 2869. Over the period from July through October, these two bills and three others, S. 545 (D.C. Bail Agency); S. 2981 (Juvenile Court Procedure); and S. 2602 (D.C. Public Offender), were passed by the Senate. As is unfortunately sometimes the practice with D.C. legislation, these bills attracted little attention in the Senate. Even as modified from the original Department proposals, the Senate bills were not entirely satisfactory.

The House Committee took no action until January. Then in a short time and with bare lip service to the formalities of hearings, the House passed what suddenly became known as the D.C. Omnibus Crime Bill.

I digress to say it would have been a good name for the bill if they had called it the ominous crime bill instead of the omnibus crime bill.

I continue to read:

For debate, the House version was designated as H.R. 16196. A copy of the bill, excluding the portions dealing with court reorganization, is attached as *Appendix A*. As a formal matter, however, both the House bill and the original Senate bill are designated as S. 2601.

The bill went to a joint conference in the end of March. Indications are that the conference may complete action as early as June 1, which points up the urgency of the Resolution submitted herewith.

The contents of the House bill are as difficult to summarize as is legislative history. It is 439 pages, and has a confusing table of contents. For example, the provisions dealing with "Preventive Detention" are contained under the heading "Codification of Title 23," not a very revealing title. The table of contents does not even refer to the page numbers, which makes it especially difficult to analyze. Among the major objectionable features are:

1. Repressive juvenile court procedures (page 115, et seq.).
2. Extraordinary mandatory sentence provisions (page 301, et seq.).
3. No-knock search authority (page 337, et seq.).
4. Wire tapping (page 344, et seq.).
5. Preventive detention (page 398, et seq.).

Senator Ervin, Chairman of the Senate Subcommittee on Constitutional Rights, has termed the bill "a garbage pail of some of the most repressive, nearsighted, intolerable, unfair and vindicative legislation that the Senate has ever been presented."

Attached as *Appendix B* is a statement by Senator Ervin made in Congress on Tuesday, March 24, 1970, which sets forth some of the defects in the bill and raises concerns which the Section of Individual Rights and Responsibilities shares.

In addition to the major defects pointed up by Senator Ervin, the House bill contains many other controversial and poorly conceived provisions. For example:

In suits for wrongful arrest, the complainant must pay the policeman's attorney's fees, no matter who wins (page 435, et seq.).

Medical tests "or experiments" on anyone found on premises may be conducted by police incident to the search warrant (page 337, et seq.).

In a criminal trial, the defendant may not be acquitted on the ground of insanity unless the insanity is proven by a preponderance of the evidence (page 311, et seq.).

Government interlocutory appeals may be taken during trial upon certification of need by the prosecutor (page 319, et seq.).

"Moot appeals" on issues of law may be taken by the government after trial even if the defendant is acquitted (page 320, et seq.).

Upon a verdict of not guilty by reason of insanity, the defendant is automatically committed to a medical hospital without the need for a showing of present insanity (page 311, et seq.).

Moreover, the proposed legislation conflicts with various of the Standards for the Administration of Criminal Justice adopted by the American Bar Association. For example:

H.R. 16196, provides mandatory minimum sentences, in certain cases as much as twenty years (pages 301–314). Such provisions are inconsistent with the approach and structure set forth in the Standards Relating to Sentencing, Alternatives and Procedures Adopted by the American Bar Association in August, 1968.

The provisions of H.R. 16196 dealing with electronic surveillance (pages 344–358, et seq.) are inconsistent in various respects with the Tentative Draft Relating to the Standards of Electronic Surveillance and even more inconsistent with the Recommendations by the Section of Criminal Law for Amendments of the Tentative Draft Relating to the Standards of Electronic Surveillance.

The provisions dealing with preventive detention (pages 398–418, et seq.) are inconsistent with the Minimum Standards Relating to Pretrial Release. Our Section, pursuant to authority granted by the Board of Governors in October, 1969, has already testified before another Committee of the House setting forth the reasons why preventive detention proposals similar to those contained in H.R. 16196 are inconsistent with the Minimum Standards and are undesirable, and such testimony is available if desired.

The provisions dealing with juvenile procedures (page 115, et seq.) are inconsistent in many respects with the Uniform Juvenile Court Act drafted by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association in August, 1968. For example, H.R. 16196 provides that the determination of delinquency shall be made on the basis of the preponderance of the evidence, whereas the Uniform Act provides for such a determination on the basis of proof beyond a reasonable doubt. H.R. 16196 removes juvenile court jurisdiction for any juvenile over sixteen years old charged with certain serious crimes, whereas the Uniform Act retains jurisdiction for juveniles under eighteen.

Mr. President, I digress from reading the report of the American Bar Association Section on Individual Rights and Responsibilities to make this remark. Three days after the House version of this bill was passed by the House of Representatives the Supreme Court held in the case of In re Winship, coming from a State court, that the provision of the bill which authorized the conviction of juveniles on the basis of greater weight of the evidence rather than by evidence satisfying the jury or the court beyond a reasonable doubt was unconstitutional under the due process clause of the Constitution. Notwithstanding that adjudication of the Supreme Court, holding that in criminal cases it is necessary for the prosecution to prove the guilt of a defendant beyond a reasonable doubt from the testimony, the present bill contains a provision declaring a lesser burden of proof in order to imprison people for as much as life under the habitual criminal provision of the act; and it also provides that the burden of proving the guilt of the defendant does not rest upon the prosecution but that the burden of proving the innocence of the defendant rests upon the defendant so that the defendant must be adjudged guilty of being a habitual offender unless he proves by the greater weight of the evidence that he is not a habitual offender.

I have made this statement on the floor of the Senate and nobody who supports the conference report has dared to reply to it nor dared to deny what I say about its contents.

Now, I resume reading the report:

This Report does not by any means try to exhaust the numerous deficiencies in H.R. 16196. There are many more. While the Senate version (S. 2601) is an improvement, many of the deficiencies referred to also exist in the Senate version as well. Unfortunately, the defective provisions of this proposed legislation have been lumped with provisions which are not objected to such as court reorganization. It is regrettable that there was such lumping of the desirable with the defective. At this stage, we are advised that the legislation must be returned in order to eliminate the defective provisions.

I digress to observe that the Section of the American Bar Association on Individual Rights and Responsibilities came to the same conclusion I did about this bill. I phrased it a little differently. I said the Department of Justice was like the apple grower who wanted to sell his rotten applies along with his good apples, so he put his rotten apples in the bottom of the barrel and covered them up with the good apples. That is exactly what this conference report does and that is the reason I have joined 21 other Senators in separating the good apples from the rotten apples.

We propose to ask the Senate—if it does what it should do and rejects this conference report—to pass a bill containing sound provisions and to reject these travesties on justice which we oppose.

Mr. President, instead of reading the remainder of the report I ask unanimous consent that the remainder of the report may be printed in the RECORD.

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

The matter is of sufficient importance to warrant the attention of the organized bar. Informed observers believe that this legislation if adopted will serve as a prototype for legislation on a national scale. This latter point has been succinctly made by Senator Ervin in a letter to the Chairman of our Section's Committee on Civil Rights and Responsibilities. A copy of that letter is incorporated in this Report as *Appendix C*.

We do not believe that the organized bar can remain silent and not express its views on provisions as significant and sweeping as those under consideration.

Like all thoughtful citizens, we are deeply concerned with problems created by the nation's high crime rate. Society cannot prosper and flourish when its urban centers are beset by crime and are unable to provide essential security and freedom from the devastations of lawlessness. We recognize that every effort must be made to combat crime with all of the resources at our disposal, and we must do more than has been

done until now. At the same time, the individual and constitutional rights of our citizens have been painfully developed in the course of American jurisprudence over the course of years. Lawyers have been foremost in the fight for individual liberties. The remedies we fashion today must not be false to our tradition. They must be consistent with the spirit of liberty and due process which is part of our heritage and which is the basis for our claim to moral leadership in the free world. The proposed legislation in its present form is not consistent with that spirit.

We therefore respectfully urge the adoption of the foregoing Resolution.

Respectfully submitted.

JEROME J. SHESTACK,
Chairman, Section of Individual Rights and Responsibilities.

SUPPLEMENTAL NOTE

The foregoing recommendation was adopted by the Council of the Section on May 4, 1970, with one abstention and no negative votes. The recommendation was presented to the Board of Governors during its May meeting. The Board deferred action, apparently because the Council of the Section of Criminal Law had not yet expressed its views on the subject.

Subsequently, on June 6–7, 1970, the Council of the Section of Criminal Law met and took action which in substance agrees with this Section regarding the objectionable portions of the legislation discussed herein.

Since our Council acted in the matter, proponents of the legislation have argued that the American Bar Association endorse this legislation because of the need to combat the increasing crime problem. Regrettably, that need is not served by lumping desirable legislative provisions with defective and objectionable ones. Frequently in our history, repressive and undesirable riders have been inserted in otherwise beneficial legislation with the objective that the whole package, including the bad, would be enacted for fear of losing or delaying the good. Such an in terrorem approach to enactments is destructive of the legislative process and has been often condemned by thoughtful students of our democratic system.

Mindful of the pressures that have been brought to bear on this issue, it is reassuring to find that the expert and experienced Council of the Section of Criminal Law has disapproved the same provisions which this Section found objectionable. Indeed, that Section has pinpointed even more objectionable provisions than did our Section. We find it significant that after a two day meeting, in which the Council of the Section of Criminal Law heard presentations by proponents of the legislation, the Council of that Section took the following action, inter alia, with respect to H.R. 16196:

Disapproved Section 201–208 (pp. 301–314) dealing with sentencing provisions for certain felonies because of inconsistency with the ABA Standards Relating to Sentencing Alternatives.

Disapproved Section 23–103 (p. 318) relating to availability of the pre-sentence report to the defendant prior to sentence because it is inconsistent with Standards 4.3, 4.4 and 4.5 of the ABA Standards Relating to Sentencing Alternatives.

Disapproved Section 207(5)(d) H.R. 16196 (p. 311) relating to automatic commitment of a defendant acquitted on ground of insanity because it is inconsistent with the decision of the Court of Appeals of the District of Columbia Circuit in *Bolton* v. *U.S.* which requires a due process hearing on the present mental condition of the defendant.

Disapproved Section 207(6)j) H.R. 16196 (p. 311) relating to placing a burden of proof on the defendant to prove insanity because it does not conform to existing law which requires the prosecution to prove the defendant sane beyond a reasonable doubt when the defendant places his sanity in question and produces some evidence to support his defense.

Disapproved Section 23–104(f) relating to detention of a defendant pending an appeal by the prosecution because it is inconsistent with the tentative draft of the Standards Relating to Criminal Appeals.

Disapproved Section 23–112 relating to consecutive sentences because it is inconsistent with Standard 3.4 of the ABA Standards Relating to Sentencing Alternatives.

Disapproved Section 23–521(f)(6) (p. 339) relating to content of search warrants and Section 23–591(c) (p. 366) relating to execution of search warrants without prior notification because of inconsistency with present law. (These are the provisions popularly referred to as "No-knock" provisions.)

Disapproved Section 23–1322 relating to Preventive Detention (p. 398, et seq.) as being inconsistent with the ABA Standards Relating to Pre-Trial Release approved by the House of Delegates of the ABA.

Disapproved Title IV—H.R. 16196 (p. 435) relating to attorney fees in wrongful arrest actions against police because it is against public policy.

The organized bar has a responsibility to make its views known on this subject affecting as it does constitutional law, individual rights, public policy and the desirable Standards for the Administration of Justice. It is to be regretted that so long a time has passed without those views being made known. Yet, on a significant public and legal issue such as this one, it is better that the bar be heard late than not at all.

APPENDIX D. DISSENTING STATEMENT OF BEN R. MILLER*

The Matter of Jurisdictional Conflicts:

This Section, though now almost four years old, has a membership of less than 1700—far less than many of the sections, and particularly less than the Section of Criminal Law. Yet this relatively small section from its very beginning, and increasingy so, has transgressed (in my opinion) on the exclusive or at least primary jurisdiction of many other sections and committees of the Association—as is exemplified by the three currently proposed resolutions. As examples of matters which have been placed on the agenda of this Council from time to time or which have been the subject of committee work and reports, which would at least appear to be more properly, if not exclusively, within the primary jurisdiction of other sections and committees, are these:

1. Infringement on the primary jurisdiction of the Section of Criminal Law:

(1) S. 30 which has passed the Senate. The Omnibus Crime Bill.

(2) Various bills pending in the present House and Senate dealing with pretrial detention—which involves also the interpretation of "The Standards on Pretrial Release" which as you know was drafted by (and presumably matters of interpretation should be first requested of) the Lumbard Committee, or, alternatively, of the Criminal Law Section which has primary jurisdiction to implement the Standards.

(3) The "Chicago Seven" Trial.

(4) Criticism and opposition to the tentative standards on "Electronic Surveillance."

(5) The Bail Reform Bill.

(6) Jury Selection.

(7) Alcoholism and Drug Abuse.

(8) Abortion (as to which the Family Law Section would appear to have collateral jurisdiction).

(9) Rights of Prisoners.

(10) Opposition to Title 2 of S. 917 (now law)—the Safe Streets Bill.

2. Infringement on the primary jurisdiction of the Section of International Law:

(1) The Genocide Treaty.

(2) The Racial Discrimination Treaty.

3. The Judicial Administration Section:

(1) The conduct of Judge Hoffman in the "Chicago Seven" Trial.

(2) The general conduct of the "Chicago Seven" Trial.

(3) Allegations of improper or unethical conduct of judges.

(4) Many of the other matters dealing with Criminal Law would be more properly within the jurisdiction of the Section of Judicial Administration rather than "Individual Rights and Responsibilities."

4. Local Government Law Section:

(1) Housing and Urban Development.

(2) Reapportionment—particularly as pertains to local government.

5. Administrative Law:

(1) Selective Service Law.

(2) Indian Affairs.

6. Labor Law:

(1) Labor unions—discrimination in.

7. Family Law:

(1) Abortion.

(2) S. 2108 and Food Stamp and Family Assistance—the subjects of two of the resolutions proposed for submission at the August annual meeting of the House.

8. Legal Education and Admission to the Bar Section:

(1) The supply of lawyers from minority groups.

(2) Investigation of the Mississippi Law School.

9. Section of Bar Activities:

(1) Bar Association membership requirements.

10. Federal Judiciary Committee: As to which the Judicial Administration Section would appear to have jurisdiction.

I do not mean to imply that the Section of Individual Rights has sought to assert primary jurisdiction in all of these matters which are listed above. It has, however, at one time or another had all of these matters on the agenda, or had committees working on such topics.

I am convinced, there is a serious and immediate need for a full re-evaluation of this Section's jurisdiction; and for the promulgation of specific and detailed ground rules as to the Section's permitted activities and the procedure it should follow both before and after Section activity.

My Dissent on the Substantive Issues Presented By the Three Proposed Resolutions:

A. With Respect to S. 2108, on Extending Family Planning Service in Population Research Activities: And With Respect to the Resolution Endorsing Food Stamp and Family Assistance Legislation.

A distinguished member of this Association and of this Section advised the Chairman of this Section by letter dated May 7, 1970, in part as follows:

"The section now appears to me as an unfortunate example of what I consider almost a fad among American lawyers, particularly in the eastern part of the nation, to convert bar associations into agencies of social reform or public charity on the mistaken theory that such is a peculiar responsibility of the legal profession.

"Frankly, I see little more reason for bar associations to barge into this sort of activity than medical or engineering associations, scientific associations, school teacher unions, etc. The matter of relieving hunger and so on is, in my opinion, one for charitable associations, governments, churches, etc., but

*Chairman's Note: On June 2, 1970, Mr. Miller sent the Chairman a letter opposing the foregoing three resolutions. Actually, in the case of two of the resolutions, Mr. Miller is recorded as voting in favor of them at the Council meeting and as abstaining as to the other. However, since we favor airing dissenting views, we include Mr. Miller's statement, although he did not follow the standard ABA procedures for presenting minority reports.

not for bar associations; and the connection between the law profession and all this is too thin to justify burdening an already busy group with additional responsibilities."

I, too, received a copy of this letter of May 7th which was subsequent to the discussion of these two proposed resolutions by members of the Council of this Section at the meeting it held on May 4, 1970. At the moment I do not recall whether at that Council meeting I abstained on these two particular resolutions or dissented at the time, but in any event, my serious doubts as to this Section taking any action with respect to the subject matter of these first two resolutions were increased by such expressions, and particularly by the statement in that letter of May 7th, that "I do not intend to renew my membership in the Section." Accordingly, I oppose these two particular resolutions by this Section, and dissent to their approval by either the Council or the Section.

B. With Respect to S. 2601 or S. 2869 and the House Version [H.R. 16196] (The District of Columbia Crime Bill):

Both S. 2601 and S. 2869 relate to criminal law and procedure in the District of Columbia. But S. 2869 is the Senate version of the criminal law provisions which appear in H.R. 16196, the House version of the D.C. Crime Bill. Both the House and Senate District Committees diligently studied the crime problem in the nation's capital, holding 44 days of hearings on these proposals.

Every one or certainly virtually every one, of the alleged controversial criminal law provisions, such as pretrial detention, no-knock and local wiretapping were individually and thoroughly debated on the Floor of the House and overwhelmingly approved by the House, March 19, 1970.

The Bar Association of the District of Columbia, further, spent considerable time and energy reviewing and reporting on the criminal law sections of this District of Columbia Crime Bill. A referendum was held by the District of Columbia Bar Association in February 1970 on the more important criminal law provisions in the Bill. This referendum not only stated succinctly the specific significant provisions but stated fully and clearly the arguments for and the arguments against each particular provision on which the referendum was taken. Over 1400 members of the District of Columbia Bar Association voted. The referendum fully supported most of the criminal law provisions in the Bill including the no-knock provision and the local wiretapping section.

After the House and Senate passed different versions of this particular District of Columbia Crime Bill, a Criminal Law and Procedures Committee of the Bar Association of the District of Columbia spent considerable time comparing the differences in the Bills and making recommendations. As a result of that study and with the approval of the Executive Council of that Association, a letter was sent to all House and Senate conferees stating that Association's position on the differences in the Bill.

Great weight should be attached to the fact that that Bar Association [of the District of Columbia], the organization of lawyers most familiar with the particular problems of the District of Columbia, after carefully studying the Bills, supported almost all of the criminal law provisions therein.

These are among the specific positions taken by or on behalf of the Bar Association of the District of Columbia:

1. Approved the no-knock provisions which, despite misconstruction of it by certain segments of the press and by certain critics of the bill, merely codifies the case law on the subject so as to enable the police to know what the law on that point is without having to guess. (The only new "law" embodied in the no-knock provision is in fact the imposition of a limitation on the police which does not exist under the case law today; for it would restrict their present discretion to enter without knocking by requiring that when the exigent circumstances are known in advance, they secure prior judicial approval for such an entry).

2. Approved the wiretapping and electronic surveillance provisions except that Association recommended abortion be deleted from the list of crimes for which a wiretap could be obtained.

3. Approved provisions permitting impeachment of a defendant or witness by a prior but not remote conviction if it reflected on his honesty or veracity. (Here, again, this is but clarification of the existing case law in the District, by virtue of the Gordon and Luck line of cases).

4. Approved discretionary triple penalties for persons convicted for the third time for the same offense.

5. Approved discretionary life sentences of those convicted of a third felony, if the history of the person and nature of his criminal conduct indicates that a life sentence will best serve the public's interest.

6. Approved the provision that it is neither justifiable nor excusable to use force to resist any arrest, even one *subsequently* ruled unlawful.

7. Approved giving appeal by the government of certain in-trial orders, comparable to the right of the defendants to appeal such in-trial orders; and that rather than a mistrial being required during such an in-trial appeal by the government, the trial would be suspended.

8. Approved granting the government the same right as the defense to take depositions of potentially unavailable witnesses.

9. Approved the provision that all sentences would run consecutively *unless* the sentencing judge provides to the contrary.

10. Approved granting the police officer executing a search warrant the authority to seize evidence not listed in the warrant but which he discovered in the course of the search.

11. Approved permitting a police officer to arrest a person without a warrant whom he has probable cause to believe has committed or is committing an offense in his presence.

12. Approved authorizing a private citizen to arrest, or assist in arresting, a person committing a crime in his presence.

With respect to the furor which has been created concerning the "pre-trial" or "preventive detention" provisions in this District of Columbia Crime Bill, and those in S. 30 (the Organized Crime Bill), these provisions would create even less rather than greater, infringement on the "rights" of the recidivist accused of crime than exists in the states and other great cities of our nation today. For in most if not all of the courts of the states the dangerous criminal and the recidivist who commits further crime if released pending trial (to secure funds for his defense, and to secure the drugs he craves if he is an addict, for examples) are "preventively detained" through the medium of prohibitive bail and without all the safeguards and protection contained in the District of Columbia Crime Bill or in S. 30—the Organized Crime Bill. For not only must there be an adversary hearing, but the one so detained must be actually brought to trial within 60 days (unless further delay is occasioned by his own counsel) or else freed.

Although critics have challenged the constitutionality of pretrial detention, the Attorney General of the United States among many others, has in my opinion, answered all such arguments.[1] In any event it is highly presumptious of this Section, with its lack of expertise in criminal law, to substitute its judgment of constitutionality for that of the Attorney General, the majority of the Senate Judiciary Committee, as well as the Senate and the House which each passed overwhelmingly a District of Columbia Crime Bill.

England, the source of our common law, has always had and still has "pre-trial detention".

Moreover, most if not all of our states' coroners always have had the power and authority for "preventively detaining" those they consider dangerous to society pending a hearing to determine that fact and upon such determination there may be commitment to an institution often far more forbidding than our penitentiaries; yet no one has seriously questioned the constitutionality or propriety of coroners "preventively detaining" on suspicion of dangerous insanity pending the trial for commitment to an institution. And in our rural sections even today coroners may be laymen rather than medical experts, yet every day those who in their opinion are "dangerous" to the community because of mental aberrations are "preventively detained." The District of Columbia Crime Bill would allow a legal expert—a judge (before whom the particular defendants may even have appeared on repeated charges of crimes of violence) to make a finding of "dangerous to the community" but *only* after an adversary hearing, only for a relatively short period of time pending a prompt trial, and with his finding of dangerous itself subject to review; and with the defendant fully enabled to assist his attorney in preparing for trial.

Finally, critics of the District of Columbia Crime Bill say it should not be enacted because it will become a model for similar legislation on a nationwide scale. If this experiment in new techniques to combat what is either the first or the second most serious crisis in our country (the crime explosion) demonstrates its effectiveness; and its provisions (as initially enacted or as modified as a result of experience under it) are shown to have corrected at least to some extent the imbalance presently favoring the rights of those accused of crime over the rights of the public to be protected from crime, I would hope it *would* be followed on a nationwide scale.

Everyone talks of crime; and contradictory measures to solve the problem and contradictory statistics concerning the problem are offered. The District of Columbia Crime Bill, applicable to one of our great cities, supported by *its* bar association and *its* governing authority, offers a unique opportunity to obtain valuable empirical facts.

For all the reasons I have stated in this dissent, I strongly do dissent to the approval of any of the three resolutions to be submitted to the House of Delegates by the Section of Individual Rights and Responsibilities; and if in the interim before the meeting of the House this Section should also propose a resolution urging opposition to S. 30 (the Organized Crime Bill), I likewise dissent and for the reasons herein stated.

Response to Mr. Miller

At the Council meeting where the foregoing Resolutions were discussed, Mr. Miller did not raise jurisdictional question or substantive objection. He is recorded as voting in favor of two of the Resolutions and abstaining on the third.

It is regrettable that Mr. Miller should use this occasion for an attack on the Section. Fortunately, his views do not reflect those of any member of the Council and do not, we believe, reflect the views of our membership which is well satisfied with the direction of our activities.

The so-called jurisdictional points now raised by Mr. Miller are not well taken. The Criminal Law Section has not objected to our dealing with S. 2601 or S. 30; they have welcomed our interest and we theirs, and, in fact, we share the same views, as our Reports make clear.

As the House knows, many subjects often

[1] "Bail Reform and the Constitutionality of Pre-Trial Detention," John N. Mitchell, 55 Va. L.R., No. 7, Nov., 1969, pps. 1223–42.

fall within the jurisdiction of more than one Section. For example, at the 1968 mid-year meeting of the House, the Section on Administrative Law introduced a Resolution dealing with immigration matters which could just as well have been initiated by the Section of Judicial Administration. At the same session, the Section on Real Property, Probate and Trust Law proposed a Resolution on new administrative procedures which might just as well have been introduced by the Section of Administrative Law. Numerous other examples can be cited. This Section, like other Sections, addresses itself to matters it considers within the scope of its interest, establishes liaison with other Sections where warranted and acts in good faith to carry out its objectives.

With respect to the merits of the Resolutions, Mr. Miller does not take up the merits of two of the Resolutions and discusses only H.R. 16196 (S. 2601). He raises two points. Mr. Miller's first point here is that most of the provisions of the bill were supported in a referendum conducted by the District of Columbia Bar Association. Mr. Miller neglects to note that: (1) the vote was taken not in any meeting but in a mail ballot; (2) it has been pointed out that most of those who replied were not residents of the District of Columbia and were not experienced in the criminal justice field; (3) even so, the vote was very close and some provisions were disapproved; and (4) the members voting were not given a copy of the proposed bill to examine. We believe that the judgment of our Council and the Council of the Section on Criminal Law, which gave this matter considerable study before reaching their conclusions, is sound.

Mr. Miller's second point deals with preventive detention. The Board of Governors, at its meeting of October, 1969, authorized this Section to testify against pending preventive detention proposals to the extent they were inconsisent with the ABA Minimum Standards. That position has already been presented to Congressional Committees by the Section on behalf of the Section. To better understand the failings in current preventive detention proposals, we are attaching as *Appendix E* a copy of such testimony presented by this Section on behalf of the Association. It fully answers the few points raised by Mr. Miller.

JEROME J. SHESTACK,
Chairman.

Mr. ERVIN. Mr. President, I also call to the attention of the Senate, so they may know before they vote on this matter, that another section of the American Bar Association, the section on criminal law of the American Bar Association, condemns the provisions which are incorporated in this bill. I ask unanimous consent that the recommendations and report of the section of criminal law of the American Bar Association be printed in the RECORD.

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

AMERICAN BAR ASSOCIATION: SECTION OF CRIMINAL LAW

Recommendations on H.R. 16196 (91st Congress, 2d session), entitled: "A Bill to reorganize the courts of the District of Columbia, to revise the procedures for handling juveniles in the District of Columbia, to codify title 23 of the District of Columbia Code, and for other purposes."

Whereas, there is pending in Conference Committee in the Congress H.R. 16196, and

Whereas, a majority of the Council of the Section of Criminal Law of the ABA believe that this proposed legislation contains certain provisions relating to criminal law and procedure which involve policy of a national dimension and are not simply related to the problems of criminal justice in the District of Columbia, and

Whereas, a number of these provisions are unacceptable to a majority of the Council in their present form for reasons of policy and law or because they are inconsistent with certain Standards of Criminal Justice previously adopted by the Council and the ABA, and

Whereas, the Council desires to assist the Congress to improve the administration of criminal justice in the District of Columbia as a model for the nation consistent with Constitutional requirements and the policies embodied in the Standards of Criminal Justice previously adopted by the ABA,

Now therefore be it resolved: that the Board of Governors and/or the House of Delegates of the ABA recommend to the Congress the following:

1. That No. 14–305 (b) of Title I (p. 184, H.R. 16196) be stricken and that there be substituted in its place the language of Sec. 203 (4), Title II, of S. 2601 P.S. 4524 as amended to incorporate the holding of the Court of Appeals of the District of Columbia Circuit in *Luck v. U.S.* 348 Fed. 2d 763 (1965).

2. That Sec. 201 of Title II (beg. p. 301, H.R. 16196) be stricken and that there be substituted in its place a provision incorporating Standards 2.5(b) and 3.1 (c) of the ABA Standards Relating to Sentencing Alternatives which have been approved by the ABA.

3. That sections 204 and 205 of Title II (beg. p. 304, H.R. 16196) be stricken and that there be substituted in their place provisions incorporating the ABA Standards Relating to Sentencing Alternatives which have been approved by the ABA.

4. That Sec. 207 (5) (d) of Title II (H.R. 16196) be stricken and that there be substituted in its place a provision consistent with the relevant holding of the Court of Appeals for the District of Columbia Circuit in *Bolton v. Harris*, 395 Fed. 2d 642.

5. That Sec. 207 (6) (j) of Title II (p. 309, H.R. 16196) be stricken.

6. That Sec. 23–103 of Title II (p. 318, H.R. 16196) be amended by striking the words beginning "may disclose . . ." on line 11, p. 318 and ending "in the case," on line 14, p. 318, inclusive, and substituting in their place language incorporating Standards 4.3, 4.4 and 4.5 of the ABA Standards Relating to Sentencing Alternatives which have been approved by the ABA.

7. That No. 23–112 of Title II (p. 330, H.R. 16196) be stricken and that there be substituted in its place a provision incorporating Standard 3–4 of the ABA Standards Relating to Sentencing Alternatives which have been approved by the ABA.

8. That Sec. 23–521(f)(6) of Title II (p. 339, H.R. 16196) be stricken and that there be substituted in its place the language of Sec. 23–522(c)(2) of S. 2601, as amended.

9. That Sec. 23–591(c) of Title II (p. 366, H.R. 16196) be stricken and that there be substituted in its place the language of Sec. 23–524(a) of S. 2601, as amended.

10. That the provisions of Sec. 23–522(c)(2) and Sec. 23–524(a) of S. 2601, as amended, be included in H.R. 16196 with regard to arrests as well as searches.

11. That sections 23–541 to 23–544 of Title II (beg. p. 344, H.R. 16196) be stricken and that there be substituted in their place provisions incorporating the amendments to the tentative draft of the ABA Standards Relating to Electronic Surveillance recommended by the Council of the Section of Criminal Law and submitted to the House of Delegates of the ABA. (Submitted as report with recommendation June 17, 1970)

12. That Sec. 23–1322 of Title II (p. 402, H.R. 16196) be stricken and that there be substituted in its place a provision incorporating the ABA Standards on Pretrial Release which have been approved by the ABA.

13. That Title IV of H.R. 16196 be stricken.

And be it further resolved: that the Section of Criminal Law be authorized by the Board of Governors and/or the House of Delegates of the ABA to communicate these recommendations to the appropriate Committees of Congress on behalf of the ABA.

REPORT

Provisions on which the Council took no action on the ground that they dealt with Court reorganization in the District of Columbia or with institutions or legal provisions peculiarly relating to the District of Columbia.

1. Title I of H.R. 16196 (pages 1–300) dealing with Court reorganization and other substantive and procedural provisions particularly relating to the District of Columbia.

2. Title III (pages 428–436, H.R. 16196) relating to the Public Defender of the District of Columbia.

3. Title V (pages 436–438, H.R. 16196) relating to transfer of certain prison facilities of the District of Columbia.

4. Title VI (p. 438, H.R. 16196) relating to abolition of Commission to revise the Penal Code of the District of Columbia:

(b) Provisions on which the Council took action.

1. Title I—No. 14–305(b) H.R. 16196 (p. 184) relating to use of prior conviction to impeach witness. The Council disapproved this provision and instead approved S. 2601, as amended, Title II, Sec. 203(4) with the recommendation that S. 2601 be amended to include the right of the Court to have discretion to pass upon the use of a prior record of conviction as contained in the decision of the Court of Appeals for the District of Columbia Circuit in *Luck v. U.S.*

2. Title II—Criminal Law and Procedure (H.R. 16196):

(a) Sections 201, 204 and 256, relating to sentencing of multiple offenders and sentencing provisions for certain felonies.

(1) The Council disapproved these provisions on the ground they were inconsistent with the ABA Standards relating to sentencing alternatives and recommended amendments incorporating the ABA Standards. They lack clarity and specific criteria helpful to a sentencing judge and also provide for mandatory imprisonment which is inconsistent with correctional policies recommended by most experts in the field of corrections.

(b) No. 23–103 (p. 318) relating to availability of pre-sentence report to defendant prior to sentence. The Council disapproved this section on the ground it was inconsistent with Standards 4.3, 4.4 and 4.5 of the ABA Standards Relating to Sentencing Alternatives and Procedures which have been approved by the House of Delegates of the ABA and recommended amendments incorporating the ABA Standards.

(c) #207 (5(d) H.R. 16196 (p. 311) relating to automatic commitment of a defendant acquitted on ground of insanity. The Council disapproved this provision and recommended it be amended to be consistent with the decision of the Court of Appeals of the District of Columbia Circuit in *Bolton* v. *U.S.* 395 Fed. 2d 642 which requires a due process hearing on the present mental condition of the defendant.

(d) #207(6)(j) H.R. 16196 (p. 311) relating to placing a burden of proof on the defendant to prove insanity. The Council disapproved this provision and recommended that it be amended to conform to existing law which requires the prosecution to prove the defendant sane beyond a reasonable doubt when the defendant places his sanity in question and produces some evidence to support his defense.

(e) #23–112 relating to consecutive sentences. The Council disapproved this section on the ground it is inconsistent with Standard 3.4 of the ABA Standards Relating to Sentencing Alternatives which have been approved by the House of Delegates of the ABA

and recommended an amendment incorporating the ABA Standards.

(f) #23–521(f)(6) (p. 339) relating to content of search warrants and #23–591(c) (p. 366) relating to execution of search warrants without prior notification. These are the provisions popularly referred to as "No-knock" provisions. The Council disapproved these provisions in H.R. 16196 and approved instead Sec. 23–522(c)(2) and Sec. 23–524(a) of S. 2601, as amended, on the ground that these provisions of the Senate Bill are more consistent with present law. The action of the Council would apply to arrests in the same manner.

(g) #23–541 to #23–544 incl. relating to wire interceptions and interceptions of oral communications. The Council disapproved these sections on the ground that they were inconsistent with the Supreme Court decisions in the *Berger, Katz, and Alderman* cases (*Berger* v. *New York*, 388 U.S. 41 (1967); *Katz* v. *U.S.* 389 U.S. 347 (1967) and *Alderman* v. *U.S.* 394 U.S. 165 (1969)) and recommended that they be amended to incorporate the draft provisions which the Council has previously unanimously approved and which will be submitted to the House of Delegates as an alternative to the ABA tentative draft relating to Electronic Surveillance.

(h) #23–1322 relating to Preventive Detention. The Council disapproved this section as being inconsistent with the ABA Standards Relating to Pre-Trial Release approved by the House of Delegates of the ABA and recommended amendments incorporating the ABA Standards.

3. Title IV—H.R. 16196 (p. 435) relating to attorney fees in wrongful arrest actions against police.

(a) The Council disapproved this Title on the ground it was against public policy.

Respectfully submitted,

H. EUGENE BREITENBACH, *Chairman.*

JUNE 16, 1970.

Mr. ERVIN. Mr. President, for many years we have had some of the finest lawyers in the United States serving in various sections of the American Bar Association on such subjects as criminal law and the rights of individuals. As a result of their studies they have developed minimum standards which should be followed in the administration of criminal justice and in recognizing the basic rights of the individual American citizens.

These reports point out that this conference report offends virtually every one of these minimum standards which have been adopted by some of the ablest lawyers in the United States who study law for the purpose of having sound law and not for any personal purposes whatsoever.

Not only have these two sections of the American Bar Association condemned the bill, but I have scores and scores of telegrams from great teachers of law throughout this Nation and scores and scores of telegrams from great lawyers throughout this Nation condemning the conference report.

At this point I should like to read a telegram which I received from Maynard J. Toll, president of the National Legal Aid and Defender Association. The telegram is addressed to me and reads:

DISTRICT OF COLUMBIA CRIME BILL

The National Legal Aid and Defender Association strongly opposes the provision of S. 2601 (companion to H.R. 16196) granting permissive authority for no-knock searches and preventive detention of those accused of crime. NLADA resolution adopted October 29, 1969, reads: Whereas, Senate bill 2600 amends the Bail Reform Act of 1966 by granting authority to Federal courts to detain certain defendants found to be dangerous and whereas, the concept of preventive detention.

As embodied in such legislation was also specifically rejected by the American Bar Association project on minimum standards in its minimum standards relating to pretrial release approved by the American Bar Association House of Delegates in 1968 based on the many constitutional and practical objections to such concepts; that the Association opposes the preventive detention amendment of the act that would permit the practice of 'preventive detention,' and at this time NLADA urges the Congress not to enact such provision into law.

This legislation would establish a most dangerous precedent—which might prompt similar legislation in the various States. The bill is entirely inconsistent with the spirit of liberty and due process as exemplified by our Constitution.

We respectfully urge you to vote against it.

MAYNARD J. TOLL,
President, National Legal Aid and Defender Association.

I have received the following telegram from Dean Howard R. Sacks of the University of Connecticut Law School:

Urge you support recommittal to conference of District of Columbia anti crime bill concur fully with sentiments expressed in July sixteenth letter to you from several Yale law faculty members. Believe there is still time to draft sensible bill which will help curb crime without curbing individual rights.

Mr. President, I ask unanimous consent to have printed in the body of the RECORD a telegram I received from Jerome J. Shestack, chairman of the Section of Individual Rights and Responsibilities of the American Bar Association, condemning the provisions incorporated in the bill.

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

In reply to your inquiry, there is no change in the position of the American Bar Association with respect to preventive detention. As testified to before your committee the ABA is on record as opposing preventive detention proposals of the kind now before the Senate as inconsistent with the standards on pre-trial release adopted by the ABA. Both the section of criminal law and the section of individual rights and responsibilities of the ABA have carefully studied the various preventive detention proposals and have found that they conflict in approach and philosophy with standards which the House of delegates of the ABA has adopted.

Mr. ERVIN. Mr. President, some of the most objectionable provisions were embodied originally in the House bill, and all of them are now embodied in the conference report.

I read into the RECORD a telegram which I received from Stephen B. Goldberg, professor of Constitutional Law of the University of Illinois, reading as follows:

I urge you to continue your opposition to the pending District of Columbia crime bill. Pretrial detention and no-knock provisions probably unconstitutional and clearly no solution to legitimate concerns relating to crime in the District of Columbia.

Mr. President, I hold in my hand a telegram from one of the most distinguished lawyers in the United States, Albert E. Jenner, Jr., of Chicago, a former president of the American Bar Association. It is addressed to me and reads as follows:

As a member of National Committee Against Preventive Detention, member of American Bar Association House of Delegates, member of American Bar Association Council of Section of Individual Rights and Responsibilities, and member of National Lawyers Committee for Civil Rights Under Law, I commend your opposition to the preventive detention provisions of the D.C. crime bill. In my judgment enactment of the preventive detention provisions of the D.C. crime bill would be an unfortunate and insidious material erosion of individual liberties under our Constitution. It will be but the camel's nose under the tent.

I received a telegram from Charles D. Venturo, of Denver, Colo., addressed to me and reading as follows:

Congratulations on commonsense that was used on stopping the National Capital Crime Control Bill. Continue the excellent work you are doing in this field. If this bill is passed we are indeed lost. Stop this bill if America is to be safe and free.

I have a telegram from Hazel M. Murdock, of the city of Washington, addressed to me and reading as follows:

I wholeheartedly admire and support your stand on no knock and detention provisions of D.C. crime bill. Please continue your resistance to erosion of Constitutional rights and liberties. I am white middle-aged D.C. resident born Houston, Texas, who cannot vote.

I have a telegram from David H. Vernon, of Iowa City, Iowa, addressed to me and reading as follows:

Urge defeat of preventive detention provision D.C. crime bill. Speedy trial not preventive detention only reasonable answer.

Mr. President, I have a telegram from Anna Weston, chairman of the Hawkeye area chapter of Iowa Civil Liberties Union, of Iowa City, Iowa, which reads:

Hawkeye Area Chapter of Iowa Civil Liberties Union strongly urges defeat of preventive detention provision D.C. crime bill.

I also have a telegram from Mr. Michael A. Quintana, of Denver, Colo., which like the others I have read, opposes enactment of this proposal. I ask unanimous consent that the telegram be printed in the RECORD.

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

Congratulations on commonsense that was used on stopping the national capital crime control bill. Continue the excellent work you are doing in this field. If this bill is passed we are indeed lost. Stop this bill if America is to be safe and free.

Mr. ERVIN. Mr. President, I also have a letter from the dean of the Yale University Law School, signed by the following members of the faculty of Yale Law School: Ralph S. Brown, Jr., Dennis E. Curtis, John Hart Ely, Thomas I. Emerson, Daniel J. Freed, Abraham S. Goldstein, Burke Marshall, Louis H. Pollak, Fred Rodell, Clyde W. Summers, Harry H. Wellington, and Eugene V. Rostow.

This letter is accompanied by a letter from the dean of the Yale University Law School, Dean Lewis Pollak, and the original letter is addressed to the two distinguished Senators from Connecticut, and reads as follows:

We write to express our conviction that it would be gravely prejudicial to the orderly administration of justice for Congress to adopt the District of Columbia Anti-Crime Bill in the form in which it was reported out by the House-Senate Conference Committee on July 13.

The bill of course contains many desirable features—those relating, for example, to the reorganization and expansion of the District of Columbia's judicial system. But the bill also contains many provisions, chiefly drawn from the House of Representatives version of the bill, which led Senator Ervin, last March, to characterize the House version as being "as full of unconstitutional provisions, unjust provisions, and unwise provisions as a mangy dog is with fleas." Among the provisions that cause us greatest concern are those which would (1) authorize pre-trial "preventive detention," (2) weaken the procedural protections of juveniles, (3) establish new categories of harsh mandatory minimum sentences, and (4) give ambiguous legislative sanction to "no knock" searches. Less important practically, but of enormous importance symbolically, is the provision which would require the plaintiff in a suit against a policeman for false arrest to pay the defendant's attorney's fees even when the plaintiff prevails on the merits: legislation of this sort mocks the very concept of even-handed enforcement of the laws.

I digress from the reading of the letter at this point to remark that one of the few good things that the conference committee did in its consideration of this bill was to strike out this provision which would have required a plaintiff, who recovered a verdict and a judgment against a police officer for false arrest, to pay the counsel fees of the police officer. When it was called to public attention that the bill contained such a provision as that, that was too much even for the conferees to swallow; and I must say, Mr. President, without meaning anything of a derogatory nature, that they have the most inordinate swallowing capacity of any group of distinguished citizens I have ever been privileged to know.

To resume the reading of this letter from the faculty of Yale University:

Three facts underscore the significance of the proposed legislation: The first is that the District of Columbia is the nation's capital. The second is that you who govern the District are not accountable to those who reside there. The third is that the overwhelming majority of the residents of the District you govern are black. If Congress enacts sound legislation, its handiwork may rightfully serve as a model for state legislatures across the land. If Congress—acting in haste and vindictiveness and unconcern for constitutional and prudential limitations—adopts the bill as it now stands, its handiwork will simply evidence man's inhumanity to man.

We urge that the bill be recommitted to conference.

Mr. President, that is a rather strong statement, signed by 12 distinguished law teachers. They say that if the Senate of the United States approves this conference report as it now stands, its handiwork will simply evidence man's inhumanity to man.

Mr. President, on Friday of last week, I called the attention of the Senate to the provisions of this bill dealing with habitual criminals.

On page 142 of the conference bill, we find section 201. This section has three provisions which decree that persons who repeat criminal offenses shall suffer increased punishment; and it provides among other things, that a person who is convicted of as many as three felonies in the District of Columbia can be given life imprisonment.

Mr. President, under the law of this land, these persons cannot be given increased punishment for life or for a long term of years unless it is found, first, that they committed a felony, and second, that they had committed two other felonies before they committed the third felony.

The provision of this bill which undertakes to implement the provisions about habitual criminals is found on page 154, and is embodied in section 23–111.

I hold in my hand a copy of the Constitution of the United States. I call the attention of the Senate to the fact that every Member of this body has sworn to uphold the provisions of this Constitution. I call to the attention of the Senate that none of us has taken any oath to uphold the provisions of the conference report.

Mr. President, I would just like to say, "You cannot do both." A Senator cannot abide by his obligation to support the Constitution of the United States and support the crime bill, too.

I say that because the Constitution of the United States says that no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury. That is what the Constitution of the United States says.

But this District of Columbia crime bill, in section 23–111, says that a man could be prosecuted upon a charge of infamous crimes, which will result in his imprisonment up to 3 years, without his ever being indicted by a grand jury. I am astounded to find such a provision as that in this crime bill.

Then the Constitution of the United States says, in another provision of the fifth amendment, that no person shall be compelled in any criminal case to be a witness against himself.

But section 23–111 of this bill says that a man can be compelled to be a witness against himself. It says that the district attorney or prosecuting attorney, when he seeks to have a person subjected to these increased punishments as a habitual offender, serves upon the defendant a copy of an information alleging the previous offenses against the defendant, and it says here that the defendant must file a response to that information, and he must say whether he committed those offenses or whether he did not.

It says, therefore, that he has to incriminate himself, and that is contrary to the fifth amendment. It not only violates the fifth amendment, but it violates these other provisions.

The original Constitution of the United States, in section 2 of article III, says:

The trial of all crimes, except in cases of impeachment, shall be by jury.

When the Bill of Rights was added to the Constitution, those who drafted and ratified it put a second guaranty of the right of trial by jury in this provision of the sixth amendment.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed.

That is what the Constitution says in two places—that the trial of all crimes shall be by a jury. But section 23–111 says that when a person is charged with being a habitual criminal, under the provisions of this act, he shall have no right of trial by jury, that the case shall be tried by a judge without a jury.

It does not say only that, but more. The due process clause has been uniformly interpreted by the Supreme Court of the United States to place upon the prosecution the burden of establishing the guilt of a defendant before he can be punished. That is what the Constitution says. Not only does it say that, but also, it says that the prosecution must establish his guilt beyond a reasonable doubt from the testimony. But that is not what this bill says in respect to habitual offenders. It says that the burden is on the habitual offender to show that he is not due to receive this increased punisment, and it says that he must show that by the greater weight of the evidence.

Never in my long experience in the Senate or in my experience in the House of Representatives or in my experience as a member of the legislature of North Carolina have I seen one section of one bill which violated as many provisions of the Constitution as does section 23–111. It violates the provision of the Constitution that says no man can be placed on trial for an infamous crime—that is, a felony, under Federal law, or sentenced to imprisonment for more than a year—except upon an indictment by a grand jury. It shows the contempt for that provision of the Constitution, and it shows contempt also for that provision of the Constitution which says that every man is entitled to a trial by jury before he can be punished. Yet, it says here in the conference bill that there is going to be a trial by the judge and not by a jury.

All the case law is to the effect, and the Constitution is to the effect, that the burden is on the prosecution to prove the guilt of the defendant beyond a reasonable doubt from the testimony. This section says that is not so. This section says that the burden is on the defendant to show that he is not to be punished as a habitual criminal and that he must show it by the greater weight of the evidence.

Last Friday I called the attention of to Senate to decisions of the supreme courts of some 25 or more States which have habitual criminal laws, and those decisions are to the effect that a person cannot be tried as a habitual criminal except by a jury; that he cannot be convicted of being a habitual criminal except by evidence which satisfies a jury beyond a reasonable doubt of his guilt—that is, that he committed the previous offenses. Yet, this bill shows a contempt for at least five separate provisions of the Constitution. If the Members of the Senate vote for this bill, they will have to vote for a bill which in one section only, having nothing to do with preventive detention and having nothing to do with no-knock provisions, violates the Constitution of the United States, which every

Member of Congress has taken an oath or made an affirmation that he will support.

I yield the floor.

AUTHORIZATION FOR THE SECRETARY OF THE SENATE TO RECEIVE AND THE PRESIDENT PRO TEMPORE OR THE ACTING PRESIDENT PRO TEMPORE TO SIGN DULY ENROLLED BILLS DURING ADJOURNMENT OF THE SENATE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to receive duly enrolled bills from the House of Representatives and that the President pro tempore and the Acting President pro tempore be authorized to sign duly enrolled bills during the adjournment of the Senate until midnight tomorrow.

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

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. KENNEDY. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 11 a.m. tomorrow.

The motion was agreed to; and (at 5 p.m.) the Senate adjourned until tomorrow, Wednesday, July 22, 1970, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate July 21, 1970:

U.S. MARSHAL

Johnny M. Towns, of Alabama, to be U.S. marshal for the northern district of Alabama for the term of 4 years, vice Roy Lee Call, retiring.

COMMUNICATIONS SATELLITE CORPORATION

Rudolph A. Peterson, of California, to be a member of the Board of Directors of the Communications Satellite Corporation until the date of the annual meeting of the Corporation in 1973, vice William W. Hagerty.

IN THE COAST GUARD

The following-named temporary officers to be permanent commissioned officers of the Coast Guard in the grade of lieutenant (junior grade):

Frederick K. Farner
James G. Lester
Ellis W. Grimes
Lywald W. Hendricks
Michael J. Schiehl
Larry E. Sartin
Robert D. Bowen
John F. Ebersole
Henry D. Jacoby
Michael W. Olivo
James L. Phaup
Marvin L. Grier, Sr.
Robert G. Gipe
Howard A. Tawney
Michael F. Cook
Robert J. Sancrant
John R. Neu
Harry F. Schmecht
Joseph P. Solometo, Jr.
Roland W. Callis
James T. Marcotte
George S. McDowell, Jr.
William R. Paul
John B. Cullens
Raymond J. Pratte
Robert A. Danforth
Ronald D. Lapp
Perry A. Biles
James T. Cushman
John H. Cragin II
William E. Wyche, Jr.
William G. Whetstone
Wilburn K. Elkins
Donald C. Crooks
Richard B. Disharoon
Richard G. McLean
Richard D. Wescott
August E. Redlinger
Charles H. Eason
James M. Hough
Robert W. McKee
James H. Thomson
John D. Derenthal
Joe F. Poteat
Bennett C. Osborne
Larry G. Bickmore
James J. Shaw, Jr.
Terence T. Post
Terence M. O'Connell
Richard L. Zeiders
Leo B. Tyo
Roger D. Enstrom
Warren C. Hoyt
Harvey B. Packard
Dallas G. Schmidt, Jr.
Peter R. Hoffman
Jerald B. Rainey
Robert A. Byers
David G. Johnson
Rob R. Hathaway
Donald D. Stansell
Willis E. Sanders
Douglas J. Wood
Wallace R. Potvin
William Z. Erwin
Keith King
Dale E. Long
Donald L. Meinen
Ralph B. Steinfeldt
Gerald A. Parr
Roger A. Garlow
Leonard M. Strong
Christopher D. Willis
William R. Knight III
Michael E. Maliniemi
Ronald R. Crooker
Jerry L. Echols
Robert V. Renaud
Danford A. Silva
Francis R. Tardiff
John A. Buzga
James E. Doyle
Lawrence L. Jenkins
William B. Clow

The following-named officers of the Coast Guard for promotion to the grade of lieutenant:

Edward C. Cummings III
Frederick K. Farner
James G. Lester
Ellis W. Grimes
Lywald W. Hendricks
Michael J. Schiehl
Larry E. Sartin
Robert D. Bowen
John F. Ebersole
Henry D. Jacoby
Michael W. Olivo
James L. Phaup
Marvin L. Grier, Sr.
Robert G. Gipe
Howard A. Tawney
Michael F. Cook
Robert J. Sancrant
John R. Neu
Harry F. Schmecht
Joseph P. Solometo, Jr.
Roland W. Callis
James T. Marcotte
George S. McDowell, Jr.
William R. Paul
John B. Cullens
Raymond J. Pratte
Robert A. Danforth
Ronald D. Lapp
Perry A. Biles
James T. Cushman
John H. Cragin II
William E. Wyche, Jr.
William G. Whetstone
Wilburn K. Elkins
Donald C. Crooks
Richard B. Disharoon
Richard G. McLean
Richard D. Wescott
August E. Redlinger
Charles H. Eason
James M. Hough
Robert W. McKee
James H. Thomson
John D. Derenthal
Joe F. Poteat
Edward K. Mullan
Robert N. Lynch
Kenneth N. Ryan
Michael D. Rems
Anatol Rozumny
George L. Vanbelkum
John W. Reiter
Richard J. Andrews
Jon W. Young
Tom H. Graening
Mark E. Libby
James A. Fetters
Charles M. Wrighter
Robert G. Frame
John H. Distin
Michael K. Bell
Evan L. Stoll, Jr.
Bruce Y. Arnold
James H. Getman
Carmond C. Fitzgerald
John C. Voden
Michael F. Cowan
Michael A. Bradaric
Walter W. Prelle
Charles R. Lewis
George M. Devanney
Richard S. Tweedie
James R. White
George P. White, Jr.
Lynn H. Degrow
Russell J. Collins
John W. Martin
Richard A. Knisely
Richard B. Cook
Thomas W. Snook
George J. Sepel
Henry J. Dresch
Roger A. Brunell
Richard M. Larrabee III
Robert E. Williams
Paul J. Pluta
John A. Donofrio
Geoffrey C. Kline
James L. Barth, Jr.
Robert A. Montgomery, Jr.
Thomas J. Schaeffer
Andrew J. Sedlock
Louis P. Manfra
Neil Wise
French H. McElrath
Richard B. King II
William R. Slate
James H. Wihlborg
John R. Donaldson
Daniel J. Hines, Jr.
James F. Verplanck
Kenneth L. Ervin
George J. Munkenbeck, Jr.
Harry J. Godfrey III
Clifford J. Appel
Allen T. Maurer
Helmut E. Walter
Rex M. Wessling
Lawrence F. Cox, Jr.
Gordon A. Olson
David B. Lorenz
Charles S. Kennedy, Jr.
Chad B. Doherty
Ronald E. Beck
Mark L. Solberg
Joseph F. Angelico
Milton R. Rose
David M. Strasser
Theophilus B. Houston, Jr.
Lewis Miller
Timothy J. Wood
Thomas C. Greene
Wayne R. Till
Donald J. Freedman
James R. Townley, Jr.
Terry W. Sinclair
Stephen F. Mullins
Gary J. E. Thornton
Robert E. White III
David E. Prosser
Robert F. Riley, Jr.
James R. Peek II
John R. Painter
Philip J. Berger
Douglas M. Miller
William H. E. Nock III
David H. Lyon
Michael S. Macie
Randall J. Peterson
Robert E. Long
Mark A. McDermott
Drew R. Hamblin
David J. West
James P. Mahone
Stephen W. Clark
Jack A. Lang
Jerome C. Cobb II
James L. MacDonald
Winston G. Churchill
Richard C. Motter
Robert W. Sitton
Bennett C. Osborne
Larry G. Bickmore
James J. Shaw, Jr.
Terence T. Post
Terence M. O'Connell
Richard L. Zeiders
Leo B. Tyo
Roger D. Enstrom
Warren C. Hoyt
Harvey B. Packard
Dallas G. Schmidt, Jr.
Peter R. Hoffman
Jerald B. Rainey
Robert A. Byers
David G. Johnson
Rob R. Hathaway
Donald D. Stansell
Willis E. Sanders
Douglas J. Wood
Wallace R. Potvin
William Z. Erwin
Keith King
Dale E. Long
Donald L. Meinen
Ralph B. Steinfeldt
Gerald A. Parr
Roger A. Garlow
Leonard M. Strong
Christopher D. Willis
William R. Knight III
Michael E. Maliniemi
Ronald R. Crooker
Jerry L. Echols
Robert V. Renaud
Danford A. Silva
Francis R. Tardiff
John A. Buzga
James E. Doyle
Lawrence L. Jenkins
William B. Clow
James L. Hassall

The following-named officer to be a member of the permanent commissioned teaching staff of the Coast Guard Academy as an associate professor in the grade of commander:

Ronald C. Kollmeyer

The following-named officers to be members of the permanent commissioned teaching staff of the Coast Guard Academy as assistant professors in the grade of lieutenant commander:

George P. Vance
Bruce A. Patterson

The following-named Reserve officers to be permanent commissioned officers of the Coast Guard in the grade of lieutenant commander:

Richmond D. Greenough, Jr.
David V. V. Wood

The following-named Reserve officer to be a permanent commissioned officer in the Coast Guard in the grade of lieutenant:

Gary F. Van Nevel

IN THE MARINE CORPS

The following-named officers of the Marine Corps for temporary appointment to the grade of major general, subject to qualification therefor as provided by law:

Homer S. Hill
Leo J. Dulacki
Carl W. Hoffman
William G. Johnson
H. Poggemeyer, Jr.
William C. Chip

The following-named officers of the Marine Corps for temporary appointment to the grade of brigadier general:

Edward J. Miller
Wilbur F. Simlik
James H. Berge, Jr.
James R. Jones
William G. Joslyn
Donald H. Brooks
Charles D. Mize
Norman W. Gourley
Paul G. Graham
William R. Quinn
Harvey E. Spielman
Andrew W. O'Donnell