By Mr. BURLESON of Texas (for himself and Mr. JARMAN):

H.R. 18587. A bill to amend the Social Security Act to provide for medical and hospital care through a system of voluntary health insurance financed in whole for low-income groups, through issuance of certificates, and in part for all other persons through allowance of tax credits, and to provide a system of peer review of utilization, charges and quality of medical service; to the Committee on Ways and Means.

By Mr. DON H. CLAUSEN (for himself, Mr. ROBERTS, Mr. MCEWEN, Mr. DENNEY, Mr. MILLER of Ohio, Mr. CLEVELAND, Mr. EDMONDSON, Mr. SCHADEBERG, Mr. JOHNSON of California, Mr. PETTIS, and Mr. HAMMERSCHMIDT):

H.R. 18588. A bill to authorize appropriations for the construction of economic growth center development highways and for other purposes; to the Committee on Public Works.

By Mr. DONOHUE (for himself, Mr. HUNGATE, Mr. WALDIE, Mr. FLOWERS, Mr. MANN, Mr. SMITH of New York, Mr. SANDMAN, Mr. RAILSBACK, and Mr. COUGHLIN):

H.R. 18589. A bill to facilitate representation of persons having claims against the United States by legal counsel of their own choosing; to the Committee on the Judiciary.

By Mr. EDMONDSON (for himself, Mr. CLARK, Mr. DON H. CLAUSEN, Mr. HAYS, Mr. MOSS, Mrs. SULLIVAN, and Mr. WRIGHT):

H.R. 18590. A bill to amend title 13 of the United States Code to provide for a recount (by the State or locality involved) of the population of any State or locality which believes that its population was understated in the 1970 decennial census, and for Federal payment of the cost of the recount if such understatement is confirmed; to the Committee on Post Office and Civil Service.

By Mr. GREEN of Pennsylvania:

H.R. 18591. A bill to amend section 905 of the Tax Reform Act of 1969; to the Committee on Ways and Means.

By Mr. HARRINGTON (for himself, Mr. ASHLEY, Mr. BURKE of Massachusetts, Mr. DADDARIO, Mr. HALPERN, Mr. HANNA, Mr. HANSEN of Idaho, Mr. MESKILL, Mr. MIKVA, Mr. MOORHEAD, Mr. MURPHY of New York, Mr. OTTINGER, Mr. ROSENTHAL, Mr. SCHEUER, Mr. STOKES, Mr. TIERNAN, Mr. CHARLES H. WILSON, and Mr. WOLFF):

H.R. 18592. A bill to amend the Fish and Wildlife Coordination Act to provide additional protection to marine and wildlife ecology by providing for the orderly regulation of dumping in the coastal waters of the United States; to the Committee on Merchant Marine and Fisheries.

By Mr. HARRINGTON (for himself, Mr. BINGHAM, Mr. CHAPPELL, Mr. CLAY, Mr. FARBSTEIN, Mr. FRIEDEL, Mr. HATHAWAY, Mr. HOWARD, Mr. MORSE, Mr. NEDZI, Mr. REES, Mr. RYAN, and Mr. TUNNEY):

H.R. 18593. A bill to amend the Fish and Wildlife Coordination Act to provide additional protection to marine and wildlife ecology by providing for the orderly regulation of dumping in the coastal waters of the United States; to the Committee on Merchant Marine and Fisheries.

By Mr. MCCULLOCH (for himself, Messrs. BROWN of Ohio, CLANCY, DEVINE, FISH, MILLER of Ohio, SANDMAN, and STANTON):

H.R. 18594. 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.

By Mr. TUNNEY:

H.R. 18595. A bill to prohibit the movement in interstate or foreign commerce of horses which are "sored," and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. CHARLES H. WILSON (for himself and Mr. TUNNEY):

H.R. 18596. A bill to amend title 5 of the United States Code to provide that for purposes of unemployment compensation the States shall treat accrued leave of exservicemen as wages for past services; to the Committee on Post Office and Civil Service.

By Mr. ZWACH:

H.R. 18597. A bill to aid in the control of drug abuse by establishing a code for the identification of prescription drugs, to be printed on individual tablets or capsules; to the Committee on Interstate and Foreign Commerce.

By Mr. BROWN of Michigan:

H.J. Res. 1321. Joint resolution proposing an amendment to the Constitution of the United States extending the right to vote to citizens 18 years of age or older; to the Committee on the Judiciary.

By Mr. HARVEY:

H.J. Res. 1322. Joint resolution proposing an amendment to the Constitution of the United States extending the right to vote to citizens 18 years of age or older; to the Committee on the Judiciary.

By Mr. MCKNEALLY:

H.J. Res. 1323. Joint resolution proposing an amendment to the Constitution of the United States extending the right to vote to citizens 18 years of age or older; to the Committee on the Judiciary.

By Mr. SCOTT:

H.J. Res. 1324. Joint resolution proposing an amendment to the Constitution of the United States extending the right to vote to citizens 18 years or older; to the Committee on the Judiciary.

By Mr. WIDNALL:

H.J. Res. 1325. Joint resolution to extend the effectiveness of the Defense Production Act of 1950 to August 31, 1970; to the Committee on Banking and Currency.

By Mr. WYMAN:

H.J. Res. 1326. Joint resolution proposing an amendment to the Constitution of the United States extending the right to vote to citizens 18 years of age or older; to the Committee on the Judiciary.

By Mr. FULTON of Pennsylvania:

H. Res. 1156. Resolution to amend the Rules of the House of Representatives; to the Committee on Rules.

By Mr. WILLIAMS:

H. Res. 1157. Resolution making it the sense of the House of Representatives that the United States maintain its sovereignty and jurisdiction over the Panama Canal Zone; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. ROBERTS introduced a bill (H.R. 18598) for the relief of John Harwin Parrish, postmaster at Gladewater, Tex., and for Mary James Kates, owner of the Gladewater Daily Mirror, which was referred to the Committee on the Judiciary.

MEMORIALS

Under clause 4 of rule XXII,

429. The SPEAKER presented a memorial of the Legislature of the State of California, relative to public use of beaches on Federal military installations in California, which was referred to the Committee on Armed Services.

PETITIONS, ETC.

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

551. By the SPEAKER: Petition of the House of Representatives, Republic of the Philippines, relative to application of the principle of equal pay for equal work in U.S. bases and foreign private firms operating in the Philippines; to the Committee on Foreign Affairs.

552. Also, petition of the Interstate Oil Compact Commission, relative to the oil import quota system; to the Committee on Ways and Means.

553. Also, petition of the Governor of the Territory of Guam, relative to his endorsement of the recommendations of the Constitutional Convention authorized by the Ninth Guam Legislature to review the Organic Act of Guam; to the Committee on Interior and Insular Affairs.

SENATE—*Wednesday, July 22, 1970*

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

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

Eternal God, who art from everlasting to everlasting, we thank Thee for this day, for this hallowed place of service, for work to do and strength with which to do it. Spare us from absorption with things as they are, but give us grace and wisdom to create a world as it ought to be.

Look upon this good land and in these testing times make us wise in every decision and resolute in every action to the end that the righteousness which exalteth a nation may prevail in our ways. Turn us backward to appropriate the enduring values of our heritage and turn us forward to exploit the insights, skills, and wonders of this age—for the making of the unfinished world which is yet to be.

In the Redeemer's name. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., July 22, 1970.

To the Senate:

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

RICHARD B. RUSSELL,
President pro tempore.

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

MESSAGE FROM THE HOUSE RECEIVED DURING ADJOURNMENT—ENROLLED BILL SIGNED

Under authority of the order of the Senate of July 21, 1970, the Secretary of the Senate, on July 21, 1970, received a message from the House of Representatives, which announced that the Speaker had affixed his signature to the enrolled 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, and it was signed by the Acting President pro tempore (Mr. ALLEN).

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, July 21, 1970, be dispensed with.

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 HOLLINGS TODAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, following the remarks today by the distinguished Senator from Tennessee (Mr. BAKER), the distinguished Senator from South Carolina (Mr. HOLLINGS) be recognized for not to exceed 20 minutes.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the remarks by the distinguished Senator from South Carolina (Mr. HOLLINGS), there be a period for the transaction of routine morning business with statements therein limited to 3 minutes.

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair now recognizes the distinguished Senator from West Virginia (Mr. BYRD) for 1 hour.

DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970—CONFERENCE REPORT

Mr. BYRD of West Virginia. Mr. President, I take the floor at this time to express my support of the conference report on the District of Columbia Court Reform and Criminal Procedure Act of 1970. In doing so, I wish to compliment the conferees of the Senate and the House in reporting back to their respective houses a conference report which is designed to give law-abiding citizens in the District of Columbia better protection and which is also designed to reorganize the courts and expedite the rendering of justice.

For years now, we have witnessed an ever-increasing rate of crime in the Nation's Capital. Since 1957, Washington, D.C., has risen from 12th place among 16 cities of comparable size, to first place in regard to the crime rate. President Nixon, during the campaign in 1968, referred to Washington, D.C., as the "crime capital of the world," and, although he was criticized for having said it, the appellation was an appropriate one. When we look at the fact that Washington, D.C., with fewer than 1 million people, has many more criminal killings a year than all of England with more than 40 million people, we should, however reluctant we may be to do so, admit that such a notorious and infamous record is one of which we cannot help but be ashamed. Yet, it is one that cannot be denied.

Women are raped on the elevators, raped in the streets, raped in the alleys, and raped in the privacy of their apartments and homes. Gun battles break out in banks and grocery stores and on the street corners. Store owners are shot to death at their cash registers. Women who work in the offices of Members of Congress are hesitant to put in extra hours because they are afraid to walk alone to their cars on the parking lots. Aides to Senators are beaten and robbed on the streets in the shadow of the Capitol Building. Women cower behind padlocked doors and drawn window shades at night and are afraid to venture out on the streets by day. Most areas in the city are unsafe at night, and many areas of the city are unsafe in the daytime. Gangs of foul-mouthed hoodlums roam the streets, taking over the street corners and harassing law-abiding citizens. Many inner-city churches have ceased to conduct evening services and are plagued by vandalism and robberies. Grace Baptist Church at 9th Street and Carolina Avenue SE., announced several months ago that it was moving to the suburbs after a series of attacks on parishioners by groups of youths after evening services. Many downtown Washington stores have added to their security forces in order to reduce attacks on shoppers by juvenile gangs of hoodlums and thugs. Old men and women have been attacked by youths with slingshots. Only last year, an 81-year-old woman who was named District of Columbia "Mother of the Year" in 1963, suffered a broken hip and right leg when she was pulled down a stairwell by a purse snatcher. Government workers are grabbed from behind and knocked down and beaten while being robbed by teenagers. Shootings occur in the schools where students carry everything from steel knuckles and blackjacks to switchblade knives and guns.

Washington, D.C.—your Capital and mine—has become the mecca of the rapist, the mugger, the robber, and the thief—call it the crime capital of the world, if you wish—it is a virtual jungle of fear and crime and violence—in spite of the fact that there are more policemen per capita than in any other city of comparable size in the country.

In calendar year 1962, 1,572 robberies occurred in the District of Columbia, of which 506 were classified as armed robberies; that is, robberies in which a pistol, firearm, or other dangerous weapon was used. Only 7 years later, in 1969, there were 12,423 robberies, including 7,071 perpetrated with a weapon. Of these 7,071 armed robberies in the District, 6,280 involved the use of a gun.

Thus, in a period of 7 years the number of robberies accounted for in the District of Columbia, increased from 1,572 to 12,423.

Similarly, with respect to murder, there were, in 1962, 91 homicides; by 1969 the figure had leaped to 287. Just take a trip to the morgue some Sunday afternoon, if one wishes to see what is going on in the District of Columbia with respect to homicides. I have visited the morgue on several occasions. People are killed with butcher knives, hatchets, and guns. They are set afire after having had gasoline poured on them. Try a visit to the morgue sometime and see for yourselves. It is not a pleasant sight.

During the same period, 1962 to 1969, the incidence of forcible rape had grown from 82 in 1962 to 336 in 1969.

I have said time and time again that the rapist has virtual immunity in this city. I have also said that it is safer to walk the streets of Moscow—insofar as the rapist, the thug, and the mugger are concerned—than it is to walk the streets of Washington, D.C.

I say this, having walked the streets of both cities myself. As a matter of fact, I would say that it is safer—at least as safe, and perhaps safer—to walk in the jungles of the Congo than it is to walk the streets in some areas of the Nation's Capital insofar as the commission of rape, murder, et cetera, is concerned.

These are harsh things to say about the Nation's Capital. But as chairman of the Appropriations Subcommittee on the District of Columbia for 8 years, and as a member of that subcommittee for 10 years—I am no longer a member of the subcommittee—I had the opportunity to see the results of crime in the Nation's Capital over that long period of time. I had the opportunity to study the facts and the statistics, to go out with the police and to see things as they were. So I know whereof I speak and I do not hesitate a moment to state what I believe to be the truth with respect to crime in the city.

Lots of people do not like to hear it. But they will not venture out on the streets in some of the areas of this city in the daytime, to say nothing of the night. Oh, they might go along if they have a half dozen policemen with them. I did the same thing often myself, always with some policemen around.

The truth is that this is a city of fear, a city of crime and violence.

In the last 5 years burglaries have more than doubled, so that by last year the startling figure of 22,992 had been reached.

So, Mr. President, the law-abiding citizen cries out for relief from violence and the fear of violence. And the law-abiding citizens of the Nation's Capital are not alone. Their fears are shared by the millions of tourists who visit this city every year. And it is the responsibility of Congress to act to provide protection for the law-abiding citizens of this Capital and of this country.

A system of justice which does not protect the law abiding has failed in the basic reason for being, and we are very close to failing.

The conference report, while perhaps not what any one of us would most hope for in every respect, constitutes a step forward in the protection of the citizenry of this community and a step forward in the restoration of law in a civilized society. The basic purpose of all government is the protection of society and we have failed miserably in this respect in recent years. In my judgment, the conference report faces up to this fact, and it offers to fulfill that purpose in the Nation's Capital. The conference report is the product of almost 4 months of work by the Senate and House conferees—of which I was not one, of course—and, as a compromise between the originals of the Senate and House versions, I recommend its approval by this body.

It provides desperately needed court reform for the District, and, in addition to the beneficial court reorganization aspects, the conference substitute provides for 17 additional judges to the superior court.

The conference report provides that persons 16 years old and older are to be tried as adults when charged by the U.S. attorney with murder, forcible rape, robbery while armed, burglary in the first degree, or assault with intent to commit one of these offenses.

And why should that not be? They know the difference between right and wrong. They know what they are doing when they are taking a life. They know what they are doing when they are committing rape. They know what they are doing when they are robbing or committing a burglary.

This is a realistic position for the conferees to have taken when one studies the statistics and the facts concerning crime in the District of Columbia.

Persons who commit crimes of violence when armed with a gun or other deadly weapon may, if convicted for the first time for having committed a crime of violence, be sentenced to an additional period of imprisonment up to life, entirely aside from the penalty provided for such crime. A 5-year mandatory minimum penalty upon a second or subsequent conviction is provided, in addition to the penalty provided for such crime, for persons who commit crimes of violence when armed with guns or other deadly weapons.

The so-called no-knock provisions are controversial, but they do not change existing law, except that they merely put into clear statutory form the current law in effect today in the United States, and they provide the additional protection of requiring prior judicial approval of an entry without notice when the circumstances which would justify such entry are known at the time application for a warrant is made.

One of the most controversial features of the conference report is that comprehensive provision which gives judges the authority to take into consideration, in setting pretrial conditions of release, the danger which a person charged with a violent and dangerous crime poses to the safety of the community—and the authority, under certain conditions and proper safeguards, to detain, pending a speedy trial, the chronic "mad dogs" of society who make a profession of violent crime. At the same time, the provisions spell out procedures to afford optimum protection for the rights of an accused who is temporarily detained pending a speedy trial. I believe this to be one of the most important steps that can be taken to combat rampant violent crime, and for good reason.

A year-by-year analysis of the crime figures demonstrates that the District's soaring offense rate most dramatically rose following the 1966 enactment of the Bail Reform Act. That legislation guaranteed to most criminal defendants pretrial release on certain conditions, no one of which could involve the defendant's potential dangerousness to the community. In fact, the judge was simply precluded from considering the factors of dangerousness in determining release conditions for all noncapital criminal defendants under the terms of the Bail Reform Act of 1966.

In 1967, when hearings were held by the Senate Appropriations Subcommittee on the District of Columbia, of which I was then the chairman, testimony disclosed that the District of Columbia courts were being inundated by an increased criminal caseload and all sorts of delaying motions which were demoralizing the courts, the police, the U.S. attorney's office, and Government prosecution witnesses. The prime cause of this was shown to be the Bail Reform Act of 1966—working in concert with the Criminal Justice Act—which, in effect, required the courts to immediately turn back on the streets habitual violent offenders of the most heinous crimes who flouted the whole system of justice by using every tactic to delay their trials while they continued to murder, rape, and rob.

In view of this, is it surprising that there has been a growing fear on the part of the law-abiding public?

When the arraigning magistrate feels he is forced to regularly release back to the streets—on normal or relatively low bail or on personal recognizance—perpetrators of the most vicious crimes, to continue preying on the public until trial—often at some far future date—because the prime consideration is that of assuring presence at the trial, and when no consideration may be given to the safety of the community, then I believe it is time to change the law and without further delay. The present state of the law is proving to be a windfall to the chronic violent criminal, while it is proving to be something of a catastrophe for the law-abiding public and the victims of the criminal element.

This body has an opportunity now, however, to take a step directed toward reversing the skyrocketing statistical trend of violent crimes in the Nation's Capital City. The pretrial detention amendments to title 23 of the District of Columbia Code are aimed at a particular facet of the crime problem with which the judiciary presently has no power to deal; namely, recidivism of arrested criminals whose pretrial release poses a clear danger to the citizens of the District. By giving judges power to insure that certain defendants in certain well-defined circumstances will be unable to prey on the law-abiding citizenry during the period between arrest and trial, a significant portion of criminal activity may be prevented.

It is well known that not all the individual offenses which comprise the totals recited earlier are committed by different criminals. Studies have shown that many offenders tend to repeat their unlawful activities, and some offenders do so at an alarming rate during the period between arrest and trial. A 1968 Metropolitan Police Department study of 130 persons indicted for armed robbery and released during fiscal 1967 determined that 34.6 percent of such released persons were indicted for a subsequent felony committed while released. A review of an investigation of the U.S. attorney's office made by the Judicial Council Committee To Study the Operation of the Bail Reform Act studied 105 robbery defendants indicted and released to await trial in 1968; 63.7 percent of these defendants were rearrested for commission of a new crime while on bail.

Finally, a recently concluded Metropolitan Police Department survey, covering persons arrested for part I offenses during the first 6 months of 1970, determined that 3,007 arrests were made involving 2,743 different persons. Of these, 2,743 different offenders, 239 were arrested more than once during this period, and the 239 accounted for 503 arrests. Furthermore, of the total number of persons arrested—2,743—1,561 had a criminal record prior to 1970, and of this number—1,561—154 were arrested more than once during the first 6 months of 1970.

A few examples of persistent lawlessness permitted under current law, the Bail Reform Act, serve to highlight the breakdown of the bail system to the detriment of visitors to the city and the citizens of the city:

On February 3, 1967, a Peoples Drug store was held up by three men. On February 6, subject "A" and two accomplices were arrested. Subject "A" was indicted for robbery and assault with a dangerous weapon, and was released on personal bond on June 21. On November 9, 1967, a delivery man for the

Kolker Poultry Co. was held up. Subject "A" was subsequently arrested and indicted. Bond was set at $7,500, and subject "A" was released on that bond on February 18, 1968. On December 22, 1967, a Briggs & Co. deliveryman was held up and robbed. Subject "A" was arrested on December 30, 1967, for that offense, bond was set at $2,500, and he was released on that bond on January 12, 1968. On May 23, 1968, a bank was held up and robbed, and subject "A" was arrested on June 1 and indicted. Bond was set in the amount of $10,000 and the defendant was released on that bond on July 15, 1968. On August 15, 1968, another bank was held up and robbed and subject "A" was arrested for that crime 1 week later. Bond was finally set at $75,000 on September 9, 1968, and the defendant remained committed.

Mr. President, a second example of persistent lawlessness permitted under current law was that involving subject "B."

On May 29, 1968, an attempt to rob a Safeway Store was thwarted by an off-duty police officer. Subject "B," who had fled, was arrested on June 11, subsequently indicted, and released on $1,000 bond on June 13. He was later arrested for a robbery and an attempted robbery of the same realty office committed on October 2 and October 15, 1968, respectively. Indictments in both cases followed. On November 1, 1968, the defendant was released on the same $7,500 bond. On October 4, 1968, a drycleaning establishment was held up and robbed. Arrested for this robbery on December 4, subject "B" was released on personal bond on December 10. This defendant was arrested for three other separate robberies committed during the same general period of time. Finally, in February of 1969, the various cases were disposed of in court and the defendant was incarcerated.

Obviously, a system of criminal justice which permits examples of repeated criminal behavior such as these, and many others which can be documented, hardly fulfills its primary purpose of protecting the law-abiding public. Certainly, these subjects by their conduct have forfeited their rights to remain free while awaiting trial. If pretrial detention had been authorized and utilized in these two cases, no less than 10 separate felonies would have been prevented. Think of it. No less than 10 separate felonies could have been prevented in these two cases alone. And, in the case of subject "A," if such detention had been allowed, the court would not have been required to resort to a $75,000 bond in order to protect the citizens of the city, a procedure which, though eminently justifiable, was probably violative of the spirit, if not the letter, of the Bail Reform Act.

It would be a far more honest and reasonable procedure to detain such a person, after full and fair hearing, for no more than 60 days during which time the defendant's trial would be scheduled and held. Statistics referred to earlier indicate that a significant number of criminal offenses would be prevented. The defendant's rights would be protected under the multitude of safeguards incorporated in the bill, including the right to appeal from a judicial decision ordering detention. Most important, however, travesties of justice, such as the examples reviewed above, could be prevented.

In discussing the provisions for detention prior to trial, I make no pretense of giving an erudite expression of the history of the law as it applies to bail or pretrial or other release in criminal matters. I simply wish to point out some facts regarding the background and evolution of Federal criminal law in this respect.

At the outset, I think everyone will agree that the eighth amendment to the Constitution deals solely with "excessive" bail and fines and with "cruel and unusual punishment," and that there is no prohibition in the Constitution against detaining without bail persons charged with crimes punishable by death. It is quite important, it would seem, to keep this in mind. The eighth amendment merely states:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Now, the very same U.S. Congress which promulgated the eighth amendment in 1789, at the same time also enacted a bail statute. The First Congress made a distinction between capital and noncapital Federal crimes and that First Congress provided for bail at some level in all but capital offenses. The pertinent portion reads:

> And upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death, in which cases it shall not be admitted but by the supreme or a circuit court, or by a justice of the supreme court, or a judge of a district court, who shall exercise their discretion therein, regarding the nature and circumstances of the offence, and of the evidence, and the usages of law. (1 Stat. 91, Sec. 33.)

So it was this act of Congress, rather than the Constitution itself, which gave the right to bail in noncapital cases.

But let us look at the eighth amendment of the Bill of Rights and this original bail act in the light of history and the conditions of the times in which they were promulgated and enacted.

In this connection, it should suffice merely to point out that at the time the eighth amendment to the Constitution was ratified, practically all of the more serious crimes carried the death penalty, and there was an all too recent history of instances of burning people at the stake, breaking them on the wheel, and all sorts of other inhuman treatment, which forms of punishment were inherited from English law, although practiced to a lesser degree in the Colonies.

As for the severity of the old English law from which our own legal system was derived, it may be said that apparently believing a reign of terror was the most efficient method of keeping the criminal elements under constraint, legislators in those early days inflicted the death penalty almost indiscriminately upon all classes of offenders. Many of the offenses for which persons were executed in those days were little more than what we know now as misdemeanors. Execution in those days seemed the solution for most crimes.

America inherited this attitude of severity, which continued long after the United States became a nation. Harsh repression was the primary policy toward crime in the newly created States.

The same Congress which enacted the original bail law in 1789 also enacted a Crimes Act and prescribed the death penalty for all the more serious crimes over which the Federal Government had jurisdiction. Accordingly, persons accused of such crimes did not have the right to bail. These crimes, under the then rather limited jurisdiction of the Federal Government, included: First, murder; second, treason; third, robbery; fourth, stealing a ship; fifth, a seaman laying violent hands on the commander of a ship; sixth, revolt on a ship; seventh, piracy or robbery under false colors; eighth, accessory before the fact of piracy or robbery—assisting, counseling, aiding, and advising—and even, ninth, forgery, counterfeiting, or uttering of a public U.S. security. Larceny did not carry the death penalty, but it was provided that those found guilty should be fined not more than four times the value of the property stolen and publicly whipped not more than 39 stripes—the Crimes Act of 1790, 1 Statute 112.

At about the time the original U.S. bail law was enacted, the English law, from which our bail provision and constitutional Bill of Rights admittedly stemmed, listed 240-some offenses which were subject to the death penalty.

Even a century later, in 1891, according to House of Representatives Report No. 108, 54th Congress, First Session, 1896, there were 60 crimes punishable under U.S. Federal law which carried the death penalty. Eighteen of these offenses for which the penalty of death could be inflicted were in the civil code under the jurisdiction of the Federal courts of the United States—as distinguished from military and naval codes.

The history of the law in the respective States more or less paralleled the Federal law in the severity of the punishment meted out for most serious criminal offenses, and even well into the present century, the laws of many States still provided for the death penalty in a number of the more serious crimes, such as murder, robbery, rape, treason, arson, burglary, kidnapping, and so forth.

The laws of many States today still provide the death penalty with respect to the more serious crimes such as murder and rape. I think that is rightly so. I think if there were a few executions for premeditated murder and for rape, there would be a greater feeling of safety on the part of the law-abiding citizen when he or she walks or ventures out upon the street in the day as well as in the night.

Some may feel that this is a harsh thing to say. I have witnessed an execution. It is not a happy sight. But, Mr. President, I state my honest belief when I say that if there were some executions for rape in this city, there would be fewer rapes.

Let us think of the victims for once.

Let us think of the victims who undergo an ordeal that is perhaps worse than death, and who, in many instances, suffer death as well. Let it be your sister, let it be your daughter or your wife, and then state how you would feel.

I am a bleeding heart—my heart bleeds for the victims of these atrocious, savage crimes. My heart bleeds for the women who are almost daily attacked in this city, dragged into an alley and raped, with a knife held to their throats. Let there be a few executions and the rapist will not so freely commit his beastly crime.

To cite an example, 2 or 3 years ago there was a Negro woman in this city who was detained for 15 hours and raped by between 15 to 20 different men. Stories of rape appear almost daily in the newspapers of this city—dastardly crimes committed with impunity by savage beasts walking the streets, attacking, raping, and killing innocent, defenseless women.

I say put the rapist in the electric chair, and let women walk the streets again, in safety and without fear.

The point that I was earlier making and which I now reemphasize is that this first U.S. Congress, which in 1789 promulgated the Bill of Rights to our Constitution—including the eighth amendment regarding excessive bail and inhuman punishment, and the fifth amendment relating, among other things, to due process—and which, at the same time, enacted the first bail law, did so under a far different set of conditions and circumstances than those which exist today.

When that early Congress provided, by legislation, that all crimes which were not punishable by death should be subject to bail, in reality, it provided that only relatively minor offenses should be subject to bail, and it excluded from mandatory bail provisions most of the serious offenses simply by making such crimes capital offenses.

It would, therefore, follow—not only as a practical matter, but literally—that in the Federal law—from the beginning and continuing for a century or more—there was no right to bail for those accused of the more serious crimes; and the courts, or judges, in arraigning persons accused of all such serious crimes, could exercise discretion "regarding the nature and circumstances of the offense, and of the evidence, and the usage of law"—1 Statute 91, section 33—as to whether the accused should be detained pending trial.

The result, a harsh reality, was that many of these grievous offenders never had the opportunity to again become a danger to society—for, until their trial, they were detained, and, if found guilty, were hanged. Further, it would seem apparent that the Congress which authored the Bill of Rights and enacted the first bail statute did not consider then that it was infringing upon the rights of those accused in these many serious crimes by denying them the right to bail pending trial.

Another fact which goes to the very crux of the issue, but which seemingly is too often completely overlooked, is that Congress from the outset had, and exercised, the authority to determine the penalties for particular crimes, including those offenses for which the penalty of death should or could be inflicted, and Congress had—and exercised—the authority to determine the classes of cases in which bail should or should not be allowed. This is inherent in the very language of the first Bail Act of 1789 and the Crimes Act of 1790, and there has been no change to the present day. This authority perhaps may best be stated in the language of the 1952 Supreme Court decision in *Carlson* v. *Landon*, 352 U.S. 524, at page 545, in which it was stated:

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

No reasonable interpretation of the language of the eighth amendment to the Constitution, or the original bail law, could seem to lead to any other conclusion but that there is no constitutional right to bail or pretrial release except within the context of the language of congressional enactment, particularly as it applies to more serious crimes. It would also seem to logically follow that—in spite of frequent references in modern day case law and in legal treatises to the traditional right to bail, or constitutional right to bail—Congress has the right to legislate such conditions as are warranted with respect to pretrial detention, bail, or release of the accused, in serious crimes, who poses a danger to society.

With the passage of time, much of the harsh, repressive attitude toward certain types of crime—which was inherited from the English law but continued long after the United States became a nation—was swept away by growing humanitarian sentiment, and this eventually resulted in more humane forms of punishment and more compassionate prison methods and the use of such corrective methods as probation, parole, and so forth. The number of capital offenses was gradually reduced by legislative changes in the statutes to a few of the gravest crimes. However, as previously indicated, it was not until 1892 that the number of capital offenses in the U.S. civil code was reduced substantially.

At the time Congress enacted laws reducing the penalties for many of the more serious crimes from death to imprisonment, there was no change made in the law with respect to bail—nor would it appear that any legislative consideration was given to bail aspects at the time, the major issue being what effect the removal of the death penalty would have as a deterrent to crime. At least in retrospect, it might even be said that this was a matter of inadvertence. It followed, of course, in accordance with the language of the bail statute, that as soon as the punishment for an offense was reduced from death to a lesser penalty, the offense became bailable at some level.

It does not follow, however, that because Congress changed the penalty for crimes which once carried the death penalty to something less, it could not have changed the bail act to retain the provisions with respect to discretionary detention pending trial which these offenses had once carried when they were punishable by death. Nor would it seem to follow that if Congress neglected to change the bail act or did not see the need at that time, it foreclosed itself from doing so at a later date when changed conditions might warrant it.

Is the crime of robbery, or arson, or burglary, any less serious in its consequences to the victims of such crime today than it was when the penalty was death? Or must Congress reimpose the death penalty in such cases in order to permit the courts to exercise discretion, where the facts warrant, in detaining an accused in a violent or serious criminal offense if his release poses a danger to society? Does not the public have the same right of protection today from the violently lawless or dangerous criminal that it, in fact, had when our first Bail Act was enacted? Or has the protection afforded under those old laws been lost because Congress removed the death penalty for these serious offenses? Does anyone believe that Congress changed the death penalty to imprisonment in certain cases because it felt that those crimes were not serious—or did it do so for humanitarian reasons? When Congress reduced this penalty, was it acting in keeping with the times in imposing more humane punishment for the particular crimes committed, or was it doing so in order to permit the accused to go free on bail? It would seem that the answer to all of these questions is obvious.

With Federal judges, for over 100 years after the passage of the original Bail Act, having clear discretion to fix or deny pretrial bail in practically all of the more serious and violent crimes because such crimes carried the death penalty, it becomes somewhat academic as to whether the reasons for detention were to prevent flight or to safeguard the community. Further, because the yardstick prescribed in the 1789 Bail Act was that in considering whether or not to allow bail or detain the accused, the judges were to look at "the nature and circumstances of the offense, and of the evidence, and the usages of law," it is not surprising, as recent studies have found, that, for 177 years, bail was set in an amount based largely on the crime rather than in an amount which would reasonably assure the appearance of the defendant in court, and that money bail has also been used consistently as a method of preventive detention of persons charged with crimes where it was deemed that their release before trial would pose a danger to the peace and security of the community. This is not

surprising; first, because Federal statutory law in the form of the 1789 Bail Act specifically gave the courts this discretion for a period of 100 years or more, or until the death penalty was changed to imprisonment in many of the more serious crimes, and, second, in addition to this precedent, it seems a sound rule to have related the amount of bail to the gravity of the crime, the weight of the evidence, and, among other things, the danger which the accused posed to the peace and security of the community.

Against this background, to now say that the only reason for setting bail in the case of a chronic violent offender is to reasonably assure that the accused will appear in court, is hardly tenable; or to say that the danger of an accused to other persons or to the community is not a reason which should be taken into consideration in fixing bail in a particular case, or is a lesser reason than the possibility of flight by the accused, also seems to me untenable.

Historically, of course, the primary reason for bail, in that class of cases in which release on bail at some level was called for, was the danger of flight from prosecution. In that class of cases, which, in times past and at the time of the enactment of the 1789 Bail Act, included only the less serious offenses, there naturally had to be some responsible relationship—in the fixing of bail—between the gravity of the crime, the weight of the evidence and the particular circumstances of the particular case, and the amount of bail set in each case.

It might be worthy of note that seemingly there were relatively few appeals from rulings of lower Federal courts on the matter of bail in the first century and a quarter following the establishment of our Federal judicial system, and this would appear to have resulted from the fact that the Federal judges had fairly broad discretion in the matter of fixing or denying bail pending trial, particularly in the more aggravated crimes.

Further, even a quick examination of U.S. criminal case law will reflect that the various refinements which began to expand more explicitly the rights of the accused with respect to bail or release, for the most part, resulted from fairly clear abuses of discretion on the part of judges or courts in refusing bail or in imposing excessive bail in cases where an accused was charged with a relatively less serious offense as computed with a serious crime of violence.

Some of these Federal decisions dealt with cases where bail had been refused outright in a minor offense; had been imposed at an obviously excessive level in relation to the offense; had been imposed arbitrarily without looking at the facts and circumstances of the defendant's particular situation, and so on. There were decisions which held that the purpose of bail was to reasonably assure the defendant's appearance at trial and, therefore, there must be a reasonable relationship between the amount of bail fixed and the possibility that the defendant might flee, all based on the circumstances of the particular case. However, there were also cases which held that the court, in determining reasonable bail, did not have to accommodate itself to the defendant's pocketbook and that if the defendant were unable to make bail set in a reasonable amount, his recourse was to move for trial.

The Criminal Pleadings and Trial Rules Act, enacted June 29, 1940, empowered the Supreme Court to prescribe rules of pleadings and practice, which rules were not to take effect until they had been reported to Congress and a full session had elapsed so as to allow Congress to approve or disapprove. If Congress approved, or made no changes, thereafter all laws in conflict therewith had no further force and effect.

Pursuant to this act, an Advisory Committee on Criminal Rules was appointed under the control of the Court to revise, bring up to date, and codify such rules. In 1946, these Federal Rules of Criminal Procedure were finalized and eventually became law under the act. With respect to bail, rule 46(a), title 18, United States Code, entitled "Right to Bail" and dealing with bail prior to conviction, in substance, restated the original Bail Act; that is, it provided that persons arrested for an offense not punishable by death shall be admitted to bail, and that persons arrested for an offense punishable by death may be admitted to bail, by any court or judge in the exercise of discretion, giving due weight to the evidence and the circumstances of the offense. More pertinently, rule 46(c), dealing with the amount of bail, which subsection was included for the first time as a statutory rule, provided that—

> If the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the commissioner, or court, or judge, or justice, will insure the presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the defendant to give bail, and the character of the defendant.

From this time on, until the passage of the 1966 Bail Reform Act, this was Federal statutory law and it clearly stated the purpose of bail prior to trial was to reasonably assure the presence of the defendant and that, among other things, in fixing bail the financial ability of the defendant to give bail was to be considered. In other words, by the enactment of rule 46(c), Congress, in providing more precise standards for the fixing of pretrial bail, had in effect confined its purpose in all noncapital cases to reasonably assuring the presence of the accused at trial. The 1951 Supreme Court decision in *Stack* v. *Boyle*, 342 U.S. 1, which is much cited, of course, was written within the context of this statutory law. In this case, the Court held that a person arrested for a noncapital offense shall be admitted to bail and cited the Judiciary Act of 1789 and rule 46(a)(1) as authority. In accordance with Federal rule 46(c), it also held that—

> Bail set at higher than an amount reasonably calculated to fulfill this purpose is "excessive" under the Eighth Amendment.

It should be noted, however, that this case was actually decided on the fact that the lower court had arbitrarily set very high identical bail—$50,000—for each of a group of persons accused of conspiracy to violate the Smith Act without looking into the circumstances of the case of each accused, and on the basis that other Communists in an entirely unrelated case had taken flight after conviction. It would further seem significant that, in a separate opinion by Justice Jackson, in which Justice Frankfurter joined, it was stated, in discussing the reasonableness of bail in conformity with rule 46(c):

> This is not to say that every defendant is entitled to such bail as he can provide, but is entitled to an opportunity to make it in a reasonable amount.

There was a substantial increase in the number of appeal cases relating to bail following enactment of rule 46(c), particularly in the 1950's and 1960's. Without doing injustice to the large number of well-written and sound decisions based upon the facts of the particular case, I believe it might be said that, generally, as the number of appeals has increased, confusion has also increased with respect to the priorities to be given the various elements to be considered in fixing bail or other conditions of release in noncapital cases, with the more liberal courts or judges seemingly placing the greater accent upon the financial ability of a defendant to make bond, his family ties, his appearance in court on previous charges, and so forth, rather than upon the gravity and circumstances of the crime charged, the weight of the evidence, and the character of the defendant. Some judges have seemingly gone so far as to hold that a person charged with a serious criminal offense not punishable by death who cannot make bond in any amount, must be released on his personal recognizance because, in his case, any bond would be "excessive" under the eighth amendment to the Constitution. This theory, which is strictly contra to the theory of "reasonable bail," as expressed in Stack against Boyle by Justice Jackson—referred to earlier—and in a number of other cases, would seem to be carrying the matter of absolute logic to an illogical end.

In hearings held in 1967 before me, as chairman of the Senate Appropriations Subcommittee on the District of Columbia, regarding the sharply rising cost of crime and law enforcement, information was developed, as I have already indicated, which would make it appear that the passage of the 1966 Bail Reform Act, while providing an equitable format for quickly releasing the large percentage of persons charged with various types of lesser Federal offenses, had resulted in a rapidly worsening situation with respect to serious crime and a sharp increase in lawlessness in the District of Columbia.

In enacting the 1966 Bail Reform Act, Congress took cognizance of many inequities in the Federal bail system and particularly of the problem of the indigent who, when accused, cannot make bail in the usual amount. In essence, it made the same distinction with respect to capital and noncapital offenses as was made in the original Bail Act of 1789 and rule 46(a)(1) of the Federal Rules of Criminal Procedure. It did not include

any provision which would permit consideration of danger to the community in fixing conditions of pretrial release in a noncapital case. However, it permitted consideration of such danger in considering pretrial detention in capital cases and after conviction in noncapital as well as capital cases. In noncapital cases, it placed the accent on "release" rather than on "bail" and provided a number of alternatives to bail. It sanctioned pretrial release on personal recognizance or upon execution of an unsecured appearance bond, unless the judge, in his discretion, determined that "such release would not reasonably assure the appearance of the person as required," in which event, he might impose one of five additional conditions, or any combination thereof. These conditions included: First, placing the accused under the supervision of another person or agency; second, placing restrictions on travel, associations, or place of abode; third, requiring an appearance bond in a specified amount and a deposit of up to 10 percent thereof in cash or other securities; fourth, requiring a bail bond with sufficient solvent sureties or the deposit of cash; and, fifth, any other condition deemed reasonably necessary to assure the appearance as required, including a requirement that the accused return to custody after specified hours.

The law requires the arraigning judge or commissioner to issue an order containing a statement of the conditions imposed and if the accused, after 24 hours from the time of the original hearing, is still unable to meet the conditions of release, he is entitled to have his conditions reviewed by the judicial officer who imposed them and, unless the conditions are amended and the accused released, the judicial officer shall set forth in writing his reasons for continuing the conditions of release, whereupon the defendant may move to have the order amended, which motion shall be determined promptly, and if the person is still detained, an appeal may be made to a court having appellate jurisdiction.

I will not take time in a long documentation as to why the 1966 Bail Reform Act needs to be amended, or why, as it is operating in conjunction with the Criminal Justice Act, it is contributing to the sharp rise in violent crime and an unacceptable breakdown in the administration of justice. There are many pages of testimony in the 1967 hearings of the Senate District of Columbia Appropriations Subcommittee with respect to crime, congestion in the courts, low police morale, and high vacancies on the force, the implementation of the recommendations of the President's Crime Commission, and related matters, which will attest to this. I shall attempt, however, to point out some of the more significant reasons in support of the need for a change in the law—a change which, insofar as the District of Columbia is concerned, is, in effect, provided for in the conference report.

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

Mr. BYRD of West Virginia. I am happy to yield to the able Senator from Ohio.

Mr. SAXBE. To what does the distinguished Senator from West Virginia attribute the seeming reluctance of the opponents of the conference report to submit to the courts the question of the unconstitutionality of these two specific provisions? I find that their opposition to the conference report always goes back to the constitutional question, and when one says, "Well, if it is unconstitutional, we have a court for that purpose," yet they do not want that. Has that disturbed the Senator?

Mr. BYRD of West Virginia. I have mixed feelings with regard to this, may I say to my friend from Ohio. I believe that it is the responsibility of every Senator to attempt to interpret the Constitution as well as his best lights will allow him to do so, in voting for or against a bill when the constitutionality thereof may be in question.

I think we, as Senators, have that responsibility. On the other hand, I can see the validity of the point raised by the able Senator from Ohio. Of course, the courts are the last entity. They have the final say. The courts will say. They will rule on this act. I am willing to let the courts rule on it.

Mr. SAXBE. Is this not an area where reasonable men can disagree?

Mr. BYRD of West Virginia. It is, indeed.

Mr. SAXBE. What disturbs me is that here we have a crisis, and anyone who lives in Washington knows that this is a particular crisis, not just Washington but in the rest of the country, that we are outgunned at almost every level of the prosecution. This is something I know from personal experience at the arrest level; that is, the inability of the police to preserve the evidence, to do the legal and proper thing, to part-time and poorly paid prosecutors, and to crowded dockets which make it terribly difficult for even a dedicated policeman-prosecutor combination to get a conviction, or even to bring an accused to trial.

It has been my feeling that rather than a strict concern over the Constitution in all these things, we have set it up as a thing that we shy away from at all costs. In other words, we do not try to go to the extent of the powers granted in the Constitution to fight crime, especially in time of crisis, but rather that we back away from the limits of the Constitution, thereby giving an advantage to the criminal which he is quick to take advantage of.

I have always been convinced that a greater percentage of our law violations comes about because people think they can get away with it. It is all coolly calculated in the minds of those who feel that they can do it, who feel that their chances of being captured is remote, and even more remote is the possibility that they might be convicted, or even tried so far as that goes. Finally, that they will be sent to the penitentiary. We know that the percentage of those actually arrested and who finally go to the penitentiary is less than 10 percent.

I am as much interested in civil rights as I know the distinguished Senator from West Virginia is. I am interested in living within the Constitution in the handling of crime; but I fail to see why we should not go to the limits of the constitutional limitations, which were well considered, rather than to avoid all possible confrontation and, thereby, giving the criminal another advantage.

The PRESIDING OFFICER (Mr. YOUNG of Ohio). The time of the Senator from West Virginia has expired.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to proceed for 10 additional minutes.

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

Mr. BYRD of West Virginia. I thank the able Senator from Ohio—who was once attorney general of that great State—for his observations.

With respect to the point raised regarding court determination of the constitutionality of this measure, I am willing to let the courts do that. But I do feel that, with due respect to those of our colleagues who do not want to vote for the conference report because of what they believe to be its unconstitutionality, it is our responsibility as lawmakers to interpret as well as we can the constitutionality of our own actions. We take the oath to support the Constitution of the United States. I am not quite willing, therefore, to leave it entirely up to the courts, especially the Supreme Court of the United States as it has been constituted in recent years, to have the whole say in determining the constitutionality of every measure we pass here.

Of course, under the Constitution the Court will determine. But I think I have a right—not only a right but a responsibility—to also do some determining here. But what I have attempted to show this morning is that pretrial detention is not unconstitutional but that it is, indeed, constitutional.

With regard to the reference which the Senator made to civil rights, he is indeed a great defender of civil rights. I, too, am a defender of civil rights and equal constitutional rights.

But too often we forget the civil rights of the victims of crimes—the civil rights of the men, women and children in this community to go to the parks, to walk the streets, to go to the grocery store, to go to school without fear of being criminally attacked, mugged, robbed, or murdered. These law-abiding citizens have civil rights, too. I, for one, think that we should give consideration to their civil rights, and I believe that is what we are doing in this conference report.

Mr. President, as a general proposition, under the present 1966 Bail Reform Act, a person who is engaged in serious crime can be—and generally is—released almost immediately to the street after being caught and charged with such a crime, if he can show that he is without visible assets, or has appeared in court on some previous occasion when he was charged with a crime, et cetera, regardless of the fact that he is a chronic violent offender. Under the Criminal Justice Act, if there is evidence that the accused is without sufficient means to hire a lawyer, he is furnished counsel without charge and other costs of his defense are also provided free. Once back in circulation and free to resume his pursuit of

crime, he has little desire to face the consequences of a trial. So, it follows that there are motions for this and motions for that, continuance upon top of continuance, on one ground or another; and there are always reasons why the accused could not be in court on the day set, et cetera, or his rights have not been protected, et cetera, while the police involved in his apprehension and the victims of, and witnesses to, the crime of which he is accused, together with the assistant U.S. attorney charged with the prosecution, come to the court not just 1 day, but more frequently, time after time, ready to perform their various responsibilities under our system, only to find that the case has again been postponed while the defendant is out on the street, thumbing his nose at the law, laughing at the courts and victimizing the public. The results have been frustrating and devastating.

Let me cite some of the evidence and facts adduced at our 1967 hearings on specific aspects of the situation, as well as what has been happening since.

Testimony was received to the effect that there was an increase of 37.9 percent in crime index offenses in the District of Columbia between fiscal year 1966 and fiscal year 1967 (hearings, p. 2838). This was a tremendous increase in 1 year. The crime index offenses are: criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny (over $50), and auto theft. However, the crime of robbery jumped 68.7 percent in this 1 year—from 2,905 to 4,903. That was a phenomenal increase in violent crime, and I suggest that it had a direct relationship to the Bail Reform Act and the manner in which it was operating in conjunction with the Criminal Justice Act. This was not just a 1-year phenomenon, however. Robberies in fiscal year 1968, according to police department figures, jumped another 34.3 percent over fiscal year 1967. In this 2-year period, robberies went from 2,905 to 6,584—for an increase of 3,679 robberies. In other words, the increase in robberies during this 2-year period was more than the total number of robberies reported in fiscal year 1966. Further, the robberies reported committed in calendar year 1968, compared with calendar year 1967, increased 34.3 percent. There were 8,921 robberies in calendar year 1968. If one compares this with the 2,905 robberies reported in fiscal year 1966, one finds that there was an increase of 207 percent in robberies over a 2½-year period, or more than three times as many as were reported in fiscal 1966. This is an intolerable situation.

Now, let us take burglary. There was an increase of 38.6 percent in burglaries reported in fiscal year 1967 over the number reported in fiscal year 1966. There were 9,221 reported in 1966 and 12,789 in 1967—see the hearings, page 2838. In fiscal year 1968, there were 16,378 burglaries reported—another increase of 27.6 percent. In that 2-year period, there was a total increase of 7,157 burglaries.

I do not believe that this just happened. Something in the law-enforcement system came apart, and the finger points to the Bail Reform Act.

With respect to the sharp increase in criminal felony cases on the trial calendar of the U.S. District Court for the District of Columbia, testimony was received from the office of the U.S. attorney for the District of Columbia that as of October 3, 1966, there were 761 criminal cases pending, being handled by 15 assistant U.S. attorneys with an average caseload of 50 cases per trial assistant. As of October 2, 1967, the cases pending had jumped to 1,229, and while 19 assistant U.S. attorneys were working on these trials, the average caseload had risen to 65—see the hearings, page 3257.

With respect to the cause of the increase, a District court judge testified:

> In large part, the situation which exists with respect to the criminal docket has developed over the last year as a result of the operation of the Bail Reform Act in conjunction with the Criminal Justice Act, whereby anyone charged with a crime can be released on low bond or on personal recognizance and a large percentage of the cases will be provided with counsel. It is little wonder that no one pleads guilty until the last moment, or until he is facing trial, or that every device that can be invented is used to delay the date of trial. The statute says the defendant "shall be released," and the only time I can refuse is if I make a finding he might flee the jurisdiction. (Hearings, p. 3269).

With respect to the effect which quick release to the street of those accused of serious crimes or crimes of violence has on the victims of the crimes and witnesses for the prosecution, an assistant U.S. attorney testified:

> It has a very deleterious effect, especially on not only the victims of the crimes but on the witnesses of the crimes who see the victim at the mercy of the defendant in any given case. (Hearings, p. 2870).

There was testimony that because of repeated continuances, many witnesses for the prosecution just failed to show up or washed their hands of the situation after repeated appearances at court, necessitating the dismissal of the case.

There was also testimony indicating that as the result of the number of serious crimes more than doubling in a very short time, which, in turn, inundated the criminal calendar of the U.S. district court, numerous felonies were reduced to misdemeanors and were disposed of in the court of general sessions.

It was apparent throughout our hearings, that the turning back upon the streets of chronic offenders and perpetrators of the most serious crimes on little or no bail—and without regard to the gravity of the crime or the weight of the evidence—had had a most damaging effect upon respect for the law and had resulted in confusing the distinction between minor offenses and aggravated violent crimes and had undermined respect for all authority. Also, testimony was received indicating that the very fact that great numbers of persons charged with serious crimes of violence were released to the streets on their personal recognizance, or on very low bail, had the effect of encouraging others to commit crime.

The Metropolitan Police produced numerous cases where professional dangerous criminals were arrested time after time for the most vicious crimes and remained on the streets, on bond pending trial, where they continued to carry on their usual "profession." Some of the cases which were outlined at the hearings during the short time available were:

The Connie Wilkins case (p. 2871, et seq.), in which the defendant, who was on parole for armed robbery, between May 11, 1965, and September 23, 1966, was arrested 13 times on charges including numerous armed robberies, kidnaping, housebreaking, and shooting it out with the police, and, of course, repeated parole violations, and he still made bond and was released on parole each time to continue his career of crime on the streets.

The Theodore Evans case (p. 2880, et seq.) involved a defendant on parole who, on November 29, 1966, was indicted for armed robbery and was released on $2,500 bond and the parole board notified. On December 29, 1966, he was arrested for grand larceny and carrying a gun. The parole board was notified and he was released on personal bond. On February 22, 1967, he was charged with shooting a boy in the leg. The parole board was notified and he was released on $2,500 bond. On June 6, 1967, incident to the armed robbery of a business establishment, he was shot and killed.

Then, there is the case of the McCulloch brothers (p. 2883, et seq.), wanted in Maryland, Virginia, and Michigan, for armed robbery. In January 1966, they were released in Detroit on $5,000 bond for armed robbery. On November 22, 1966, one of the brothers was indicted by the grand jury in the District of Columbia for interstate transportation of a stolen motor vehicle and related offenses, and was released on $2,500 bond. On November 30, 1966, both brothers were arrested in Alexandria, Va., for armed robbery. They were indicted and bond set. On the same date, arrest warrants from the State of Maryland for three cases of armed robbery were received by Virginia authorities and lodged as detainers. On December 7, 1966, arrest warrants were issued in the District of Columbia charging the brothers with armed robbery of a jewelry store, and lodged as detainers with the authorities in Alexandria. On January 26, 1967, the brothers made bond on the Virginia charges and were transported to the District, where bond was set at $2,500 and the defendants were released upon posting an 8-percent deposit. They were arrested February 3, 1967, on fugitive warrants and returned to Maryland for trial. Each deposited $6,000 security bond and they were released. Three weeks later, one brother, with three others, was arrested in Washington, D.C., for housebreaking, robbery, assault with a dangerous weapon, and kidnapping. He was indicted on April 14, 1967, and on the same date, his brother was indicted for armed robbery and assault with a dangerous weapon. As of August 8, 1967, one of the brothers was at large under the Bail Reform Act and the other was in custody in the District of Columbia by virtue of the pending indictment.

Mr. President, I ask unanimous con-

sent that I might proceed for an additional 10 minutes.

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

Mr. BYRD of West Virginia. Mr. President, these cases, of course, are now history—and there is always someone who will say that they are isolated exceptions—but, actually, it would be more accurate to say that such cases are happening all the time. To prove this, it is only necessary to pick up a newspaper any day to find that at least one violent offender has repeatedly been charged with one serious offense after another and has continued to be released to the streets to continue his "career."

With respect to releasing dangerous people to the streets under the 1966 Bail Reform Act, a U.S. district court judge testified:

> We do now have this business of reporting to police precincts, and we are getting reports in promptly on them. And last Friday we terminated 13 that had failed to report on the 10th of July to a precinct. But every day I sit in motions releasing people on personal bond that I know are a great danger to the community.

The same judge, in commenting on the fact that an accused could report to a police precinct at 7 o'clock and rob a grocery store at 8 o'clock, advised that:

> . . . reporting doesn't assure anything, but we release these people and I know they are a great danger to the community. (Hearings, p. 2894)

It would appear that the evidence piling up has become conclusive that the social service approach to handling hardened violent criminal offenders will not work and that, regardless of the number of judges appointed—and we should have more judges and more law enforcement personnel—rising violent crime cannot be controlled without a change in the law to give the courts discretion, upon arraignment, to consider the danger the accused poses to the community. The situation has become similar to a contagion which has raged out of control with no preventive serum as yet developed to check it.

We now have had enough experience under the Bail Reform Act to know that it is not working in the manner in which it was hoped, and that the manner in which it is operating has a direct bearing upon the sharp rise in crime and the increase in lawlessness, and there is now ample proof that it needs to be changed. As I have pointed out, the principal reason it is not working is that the Federal statutory law requires that chronic violent criminals who have shown a high probability of danger to society must be released on low bond or personal recognizance because the only yardstick the statute permits in setting bail or other conditions of release is the danger of flight.

Yet, when it is proposed that the statutory law be amended to permit consideration of the danger which such violent offenders pose to society, a chorus of voices is raised protesting that to consider anything other than flight of the accused on pretrial release is unconstitutional; that it violates the traditional presumption of innocence; that it is punishment before conviction; that it is impossible to predict that an accused will commit another crime if released; that it violates the constitutional right of "due process," and so forth.

Such claims, if they have substantial merit, deserve serious consideration, but we know that the law with respect to bail in noncapital cases is not a constitutional right, but a statutory right. The strict presumption of innocence is merely a rule of evidence that comes into operation at the time of trial. It does not require all defendants to be treated as though they were innocent prior to trial. It is the existence of probable cause, based on the weight of the evidence that a person has committed an offense, which justifies his arrest and indictment and the denial of pretrial liberty in certain cases where there are strong reasons for requiring pretrial detention.

We know that pretrial detention has been accepted in capital cases since the Bail Act of 1789, and that such discretion in capital cases was carried over into the 1966 Bail Reform Act. Further, in the exercise of this discretion, the Bail Reform Act of 1966, for the first time, explicitly provides that the danger which the accused poses to society may be taken into consideration. The 1966 Act also permits consideration of such a danger in noncapital cases in determining whether or not a defendant may be detained pending appeal after conviction.

In the matter of due process, the interests of society must be balanced against the liberties of the individual, and restrictions and conditions imposed must be matched with the need to impose them. Nor can a ruling to detain, or to fix other conditions of release of an accused based on the danger he poses to society, be arbitrary or not based on the gravity of the crime, the weight of the evidence, and other circumstances of the particular case. Any defendant is entitled to all of the legal safeguards constituting due process, including a hearing at the time of his arraignment, or a special hearing, so that all appropriate facts may be presented. If, based on facts, the judge, in the exercise of his discretion, determines that the defendant should be detained, or sets reasonable bail which the defendant is unable to make, the defendant has the right to appeal such a ruling and certainly he has a right to a speedy trial. The constitutional guarantee of a speedy trial has become almost meaningless under present conditions, with most of the worst offenders taking every step possible to delay trial. It should be no more difficult for a judge to make a judgment as to whether a defendant poses a danger to society than it is for him to make a determination that the defendant is apt to flee the jurisdiction.

Mr. President, in this regard a judge in the District of Columbia called my office today and said that he had heard on the radio this morning the gist of what I planned to say on the District of Columbia crime bill.

He said that he could not resist calling to say that he unequivocally supports what I was reported as planning to say about the bail system.

He said: "We can literally predict who will commit another crime."

He said the commission of new crimes by men out on bond is a constant story, not the exception.

It would seem established without doubt that the situation which exists today with respect to the chronic violent criminal requires that there be pretrial detention where the facts and circumstances warrant, for, as was stated by a distinguished jurist in my 1967 appropriations hearings:

> Of what value is a system of criminal justice which assures us the most absolute protection from the excesses and errors of the police but renders us more vulnerable to the attacks of those whom the police are charged with restraining?

The conference report allows such pretrial detention in order to "reasonably assure the safety of the community." We must not reject this opportunity—which may not come again soon—to deal an effective blow against chronic criminals who for too long have been permitted to declare open season on defenseless, law-abiding citizens in the District of Columbia.

I urge the adoption of the conference report.

Mr. President, I apologize to Senators who have been waiting to speak. I appreciate their indulgence and patience.

Mr. President, I yield the floor.

Mr. BAKER. Mr. President, no apologies are necessary. The distinguished Senator from West Virginia has done his usual extraordinarily good job in his presentation this morning.

I conceive the thrust of his remarks to be entirely relevant and extremely important to the conference report we are considering today and upon which we will vote tomorrow.

It may be said that there is nothing more important in the administration of our laws than swift, sure, and inexorable justice, and that all the other paraphernalia of preventive detention, high bail, no-knock, or the other provisions of search and seizure, as provided in the U.S. Constitution and in the constitutions of all the States, are only peripheral to the basic issue. The basic issue is the guarantee of a swift and sure trial. If we had swift, sure, immediate justice it would go a long way toward alleviating many problems with which we are forced to contend in this crime package.

As I have said previously on the floor of the Senate, the important thing to remember about the District of Columbia crime bill and the conference report upon which we will vote tomorrow is not that it is new ground, because it is not new ground, but rather that it is the orderly codification and improvement of existing law, much of which we provided, to beef up the administration of justice in the District of Columbia to provide sure and swift justice.

I remember when I practiced law in Tennessee in my younger days which was

shortly after I attended the University of Tennessee Law School, and I was appointed to defend people. After being appointed I had to fight manfully to keep from going to trial the next day. I am sure from personal observation that that had a substantial effect on my client, the defendant, and on me as attorney. The defendant was usually tried and exonerated or convicted before there was any thought of returning to the street and committing another crime. That is the way it properly should be.

Mr. BYRD of West Virginia. I thank the Senator for his comments.

ORDER OF BUSINESS

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

DIRECT POPULAR ELECTION OF OUR PRESIDENT

Mr. BAKER. Mr. President, a major item of legislative business yet to be considered by this body is the proposal to abolish the electoral college and adopt direct popular election of our President. I am a cosponsor of and shall support actively Senate Joint Resolution 1, introduced by Senator BAYH, supported by President Nixon, passed overwhelmingly by the House of Representatives, and ordered reported to the full Senate by the Judiciary Committee.

Direct popular election of our President and Vice President is the only system under which we can be certain that no man will be elected President receiving fewer votes than his opponent and under which each citizen's vote will be counted equally with that of all other citizens. Election results will not be distorted by faithless electors, out-of-date census figures, or a one-State, one-vote rule in the House of Representatives. Further, every citizen will have reason to vote for President, even if his State or congressional district is dominated by the opposing political party, and presidential tickets and campaigns will be designed to appeal to all voters in all States. It is only by popular election that all of these beneficial results can be achieved.

Perhaps the most important objection voiced by the opponents of popular election is that it will be disruptive of our federal system and disadvantageous to small, less populated States. Those stating this contention do so because the electoral college assigns to each State as many electoral votes as the State has Congressmen and Senators, and each State has, of course, two Senators, regardless of its population, and at least one Congressman, even if the entire State is far less populated than a single congressional district in a large State.

While opponents of popular vote contend that the apportionment of electoral votes is an integral part of the great compromise adopted by our Founding Fathers as a protective device for smaller States, a reading of the debates and reports of the Constitutional Convention reveals this to be historically inaccurate. The great compromise was adopted to settle the question of representation in Congress and was then later applied, almost as an afterthought, to the electoral college. Small States were offered protection in the choice of the President, not by the apportionment of electors, but by the provision that each State's voice would be equal in the House of Representatives in the event that no presidential candidate received an electoral majority. The Founding Fathers expected that the electoral college would serve as a nominating board and that the House would make the final determination from among the top five candidates. Of course, the system does not work as intended, and most would agree that this particular provision is now a dangerous impediment to the will of the people.

The claim that the present electoral college system favors small States does not stand analysis. It is based, as Prof. James Kirby has stated, upon a simplistic view of voter strength that does not reason beyond the fact that each State is awarded at least three electoral votes causing the ratio of electors to population to range, based upon 1960 approximate population figures, from 1 to 75,000 for Alaska to 1 to 390,000 for California. The deduction is that each Alaskan has about five times the voice of a Californian in a presidental election.

In my view, this is a classic demonstration of the use of figures to distort reality. The fallacy results because of the unit rule under which the popular vote winner in each State is awarded all the electoral votes of that State. With the operation of the unit rule the apportionment of electors in favor of small States is only apparent, not real. The people of the 15 States with the least favorable population to electoral vote ratio inhabit States with 312 electoral votes, and, in fact, the 12 largest States could elect a President with the 281 electoral votes they control. The candidate who carries these large States by even a handful of votes obtains a far greater number of electoral votes than he can obtain by carrying several smaller States by larger popular majorities. As a result of the winner-take-all system, national candidates concentrate their efforts in those larger States in which party competition is vigorous and which are generally carried by one political party or the other by a relatively small percentage of the popular vote.

Obviously, those who contend that the small States have an advantage under the present electoral college system are in contradiction with others who contend that, in fact, the larger and more urban States have such an advantage. Both contentions cannot be right, and, as I have said, I believe it is the small State advantage claim that is factually inaccurate. But I also firmly believe that those who urge retention of the electoral system because of the large State advantage base their argument on the wrong premise; that is, that the Presidency should be urban oriented to offset the alleged rural orientation of the Congress.

The President is the officer of all the people and, along with the Vice President, is the only elected official who speaks for all the people. For this reason I believe that in voting for the President one man's vote should count equally with that of all other men. I do not believe that the election of the President should be weighted toward big States or small States, toward urban interests or rural interests, toward Republicans or Democrats. I believe that the vote should be given to all the people—equally and directly.

Closely connected to the claims that popular election will destroy our federal system and be disadvantageous to either small or large States is the contention that direct election will produce an incentive for widespread voting fraud. In actuality it is the present system that should encourage more voting irregularity. Under the present winner-take-all electoral system a few fraudulent votes can determine the result of the State's entire electoral vote while under the direct system illegal votes would affect only the number of votes involved, thus greatly reducing the likelihood of any effect on the election outcome. Obviously, the possibility of voting irregularities can occur under any system, but I believe fraud is best prevented by a system that is direct, easily understood, and applied to all other elections.

There is yet one other argument by opponents of popular vote that cannot be overlooked. This contention is that direct election, if adopted, would be disruptive of our two-party system in that it would cause the creation of several ideologically oriented parties which might undermine the moderate political tone that has generally prevailed in our country. The underlying basis of this contention is that ideologically oriented splinter parties are presently discouraged because they rarely, if ever, can win a plurality of the popular vote in any State and thus capture the electoral votes of that State.

I have always believed in the tenets of our two-party system and am of the view that our unique two-party arrangement is largely responsible for the success of our form of government. I do not, however, believe that a direct vote of the people for their President would in any way endanger the present workings of our system.

There are many institutional factors which discourage third parties. Electoral laws, campaign practices, social patterns, the high cost of political campaigning, statutory obstacles to getting on the ballot, and the legal status of the two major parties as supervisors of elections in many States all contribute to the difficulty which minor parties have in attaining any degree of national influence or support.

Prof. V. O. Key contends that since the institution of the Presidency, unlike a multiparty Cabinet, cannot be divided among numerous parties to provide a coalition government, the presidential institution is itself a major reason for the evolution and development and the continuation of the two-party system

as we know it in its present national broad-based character. Other authorities assert that our system of electing Representatives by a plurality vote in single-member districts is the underlying basis of our political party system.

I believe that, if anything, direct election will strengthen the working of the two-party system in presidential elections. Since every man's vote will count, regardless of how badly it may be outnumbered at the State or district level, direct vote will encourage two-party competition in every section of the country. Vigorous, active campaigning in those States and areas where elections are closely contested will be as important as ever, but it will be equally important for candidates for the Presidency to seek votes in States where a given candidate has little hope of winning a popular plurality.

Mr. President, there was a time when the concept of the electoral college served a desirable and necessary function. Today the machinery of the electoral college remains; its reason for being has passed. The machinery itself must be eliminated. The system is more than a harmless anachronism; it represents a dangerous impediment to the voice of the people, an unnecessary barrier interposed between the voting citizen and the highest office in the land.

The vast foreign and domestic responsibilities of our President indicate clearly that no man should be called to assume the office without a universally understood mandate to govern and to lead our Nation. Every other official in the country from justice of the peace to mayor to Senator is elected by direct popular vote of the people. So should it be with the President of the United States.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under previous order, the Senator from South Carolina (Mr. HOLLINGS) is recognized.

DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970—CONFERENCE REPORT

Mr. HOLLINGS. Mr. President, it is quite clear that all of my colleagues who have participated in the debate on the pending District of Columbia crime conference report are unified in the objective of passing legislation which will embody the necessary constitutional and procedural safeguards and still provide effective law enforcement provisions. The question that divides opinion on the issues relates to the problem of alternatives. Certainly no one doubts the need for prompt legislation.

The District of Columbia leads the Nation in criminal offenses, including murder, rape, robbery, aggravated assault, larceny, and auto theft. In a city whose population is slightly over 760,000, more than 56,000 felonies were reported in 1969, but only 2.5 percent resulted in convictions. And the crime rate continues to rise. The number of felonies reported in the District of Columbia has risen 122 percent in the last 5-year period.

In my experience, my apartment was twice broken into, my administrative assistant was mugged; from my window of my apartment, I saw a young lady beaten, and my colleague, Senator LEN JORDAN, was attacked in the elevator of the building where we both lived—all within the shadow of the Capitol.

Although the thrust of the legislation is toward combating crime in the District of Columbia, the implications of this legislation are certainly nationwide and it is important that we consider the provisions most carefully. It is equally important that we consider all criticisms carefully in terms of the legal framework of constitutional safeguards.

The distinguished Senator from North Carolina, Senator ERVIN, whom we all recognize as an outstanding constitutional lawyer, and others have raised what they feel are serious questions concerning this conference report, particularly the no-knock and pretrial detention provisions. In view of his announced concern, and my respect for Senator ERVIN's views, I have approached this legislation very thoroughly. I have reviewed the statements, testimony, and the floor debate closely.

One of the major areas of conflict in the debate centers on the pretrial detention provisions. I was especially pleased to note that the vital principle established by the Senator from North Carolina at the time of the passage of the Bail Reform Act has not been altered in the conference report. No financial condition should be imposed on a man's freedom in order to insure the safety of the community. The man's record, not his wallet, should determine whether he will be held. Consequently, pretrial detention will not be imposed on the poor alone in the guise of a high money bond to insure appearance, but on those, rich and poor alike, found after hearing to meet the exacting tests laid out in the bill.

The question of pretrial detention under the bill has been attacked on the ground that it violates the eighth amendment, the time-honored presumption of innocence, and the due process clause of the fifth amendment. In my judgment, it does none of these. The language of the eighth amendment does not expressly deny or grant the right to bail and is, therefore, susceptible to two interpretations.

One interpretation would be that since the amendment does not specifically grant the right to bail, it can be construed to mean that bail shall not be excessive in those cases where it is proper and that the setting of no bail in certain cases would not be excessive.

The second interpretation would be that because the amendment does not provide for the denial of bail, it can be construed to require the setting of bail in all cases with the caveat that it never be excessive. Reviewing the historical background of the amendment, and the available constitutional interpretations, I am persuaded that the eighth amendment does not prevent Congress from defining the classes of crimes in which bail will be denied.

The eighth amendment was embodied in the American Bill of Rights of 1789 and was modeled after the English Bill of Rights, which did not grant the right to bail in all cases. England, the source of our constitutional and legal system, has long permitted pretrial detention in noncapital cases. Just recently, the Chief Metropolitan Magistrate of London testified before the Senate District Committee that in England bail is left to the discretion of the magistrate and that, in practice, bail is refused on four main grounds: First, likelihood of flight; second, interference with or intimidation of witnesses; third, the likelihood that the accused will commit other crimes if released; or fourth, the necessity of protecting the accused. In 1947, the English Court of Criminal Appeal in *Rex.* v. *Phillips*, 32 cr. App. R. 47, stressed particularly the need to detain persons likely to repeat their crimes, and the substantial probability of guilt—the very factors listed in the pretrial detention provisions of the legislation now under consideration by the Senate.

Eleven of the original 13 States enacted bail statutes, wherein six of them denied bail automatically in capital cases. Authority to deny bail in capital crimes remains the general pattern throughout the United States today. In my own State of South Carolina, rape, arson, and burglary were defined as capital cases in which bail was automatically denied. Although the death penalty typically applies only to a limited number of serious offenses today, it seems clear that when the eighth amendment was adopted it clearly permitted pretrial detention. The only Supreme Court decision which discusses the history of the amendment was the 1952 case of *Carlson* v. *Landon*, 342 U.S. 524, wherein the Court stated that the Congress is not prevented by the eighth amendment from defining the class of cases in which bail is denied. The test denying bail, of course, concerns persons charged with crimes of violence whose release would pose a substantial threat of death or injury to others.

Despite this background in Anglo-American jurisprudence, there are many of us who are uneasy with the notion of detaining a man prior to trial even though on analysis the arguments against doing so can be legally refuted. The man, however, is not being detained because of a determination of guilt, but because his release pending trial is found to be sufficiently dangerous to society to overcome the presumption in favor of pretrial release. If we instinctively dislike pretrial detention, we should instinctively dislike even more the repeated instances of defendants who have been freed on bail committing serious crimes while at liberty. The increase in crime and in crimes committed by those on bail necessitates a return to pretrial detention unless we wish to consciously discard an important weapon in the war against crime. Mr. President, at this point, I ask unanimous consent to have printed in the RECORD at the end of my remarks an editorial from the July 15 Charleston, S.C., News & Courier, which makes this point forcefully.

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

(See exhibit 1.)

Mr. HOLLINGS. The bill now pending permits pretrial detention up to 60 days for defendants charged with dangerous crimes or crimes of violence and detention of drug addicts is to be under medical supervision. The term of detention is, therefore, limited. Additionally, detention is limited to defendants which have been found in adversary proceedings to constitute danger to the safety of the community. It seems clear that when it is judicially determined that an individual's release would seriously endanger the lives and safety of others, the criteria for such release should not be based upon the question of whether or not he is going to show up in court when his trial is called.

We have heard quite a bit about a study of the National Bureau of Standards purportedly showing that 5 percent of that category of persons arrested for violent crime and 5 percent of that category arrested for dangerous crime are rearrested after release from bail for another crime in the same category. In view of the crime statistics we hear, this may seem somewhat low. On closer inspection, however, the NBS report indicated why. Of the 654 persons studied, 29 percent were actually detained on whatever basis, and therefore, not capable of committing crimes while awaiting trial. During the period studied, arrests were made in only 29 percent of the reported offenses in the District. The NBS study suggests that if all the reported cases were cleared by the police—that is, arrests made—the true rate of arrests for those released awaiting trial might have been as high as 40 percent. I refer to the report, page 110. I do not intend to undertake a statistical debate; I merely wish to point out that study or no study we still do not know exactly how many crimes are committed by those awaiting trial. We only know that the addict with a $50-, $75-, or $100-a-day habit must get money somewhere. And we know a significant amount of crime—too much, whatever the percentage—is committed by defendants free on bail. I am persuaded the case precedents in history plus the realities of our experience support the interpretation that although bail may never be excessive there is no absolute right to bail.

As to the violation of the due process clause of the fifth amendment, the Supreme Court stated in 1965:

> The fact that a liberty cannot be inhibited without due process of law does not mean that under no circumstances it can be inhibited.

This was stated in the case of *Zema* v. *Rush*, 381 U.S. 1 (1965) at page 14, concerning the reasonable Government restrictions on the right to travel abroad. The Court went on to state that the test of reasonableness which obviously involves the consideration of the individual's interest in freedom as opposed to society's interest, not only concerns the governmental restriction imposed but also the extent of the necessity of the restriction. In the Carlson case mentioned before, the Supreme Court upheld the denial of bail to alien Communists pending deportation proceedings in the face of the due process argument by stating that the refusal of bail was not arbitrary or an abuse of power under the circumstances.

There is also legislative precedent on the point. Congress in 1964 enacted the District of Columbia Hospitalization of the Mentally Ill Act, 21 District of Columbia Code, section 501, a bill sponsored by Senator ERVIN, which provided for detention in a hospital of individuals believed to be mentally ill and dangerous prior to any court determining the mental illness or resulting dangerousness. I feel, therefore, that the due process clause of the Constitution does not prevent pretrial detention under proper circumstances.

Mr. President, let me address myself briefly to the other matter of which we have heard so much—the so-called no-knock provision of the bill. Here again, the media would lead you to believe that this is a novel provision. Yet, it has been the law for a very long time. The provision now before us, as a general rule, requires that an officer making an arrest or executing a search warrant must knock and announce his identity and purpose. It does, however, permit certain exceptions in what the courts have called exigent circumstances. These are carefully spelled out in the legislation. If the officer has probable cause to believe, first, that notice is likely to result in the evidence subject to seizure being quickly and easily destroyed; second, that notice is likely to endanger the officer or another; third, that notice is likely to enable the escape of the person to be arrested; or, fourth, that notice would be a useless gesture, he may break and enter without notice. The first three exceptions listed are spelled out in *Ker* v. *California*, 374 U.S. 23 (1963). The fourth circumstance was judicially recognized in *Miller* v. *United States*, 357 U.S. 301 (1958) and again most recently in *Bosley* v. *United States*, No. 21, 513, D.C. Cir. (Apr. 9, 1970). In Bosley, the court held that if the police see the suspect sleeping, the door being ajar, they should go in and wake him before stating their purpose—the announcement to a sleeping man being a "useless gesture."

These provisions do depart from existing law in one respect, they require a no-knock authorization in the warrant where possible. While this is a departure, it is one the Senate has already adopted in January of this year in S. 3246, the Controlled Dangerous Substances Act. That legislation authorized no-knock permission in a search warrant for drugs if the issuing judge is satisfied that there is probable cause to believe the property will be quickly and easily destroyed or notice will endanger the officer or another. The pending conference report contains the same authority but adds the positive requirement that if the officer has this knowledge in advance, he must obtain the authorization in the warrant.

Certainly, one of the most insidious types of crime in our society today is the rampant sale or pushing of narcotics. The disposal of narcotics is a very easy matter if the home contains modern plumbing fixtures. All too often, law enforcement officers have been unable to secure an arrest or obtain evidence because drugs "vanish" from the premises during the time they wait for admittance after they have announced their authority and purpose. This is also true of efforts to break up organized gambling.

It seems to me, therefore, that under the present judicial interpretations and the proposed procedural safeguards that are available, the proposed legislation provides a practical and constitutional alternative in handling the criminal problems in our Nation's Capital. I think it is an essential protection for the safety of our law-enforcement officers and a necessary alternative to prevent the proliferation of violence and criminal activity.

There are other provisions that have caused concern to my colleagues. Rather than discuss them in detail at this point, I would only state that I have studied the arguments and do not believe they are at odds with the necessary procedural and constitutional requirements necessary under our judicial system.

As pressing economic and social problems have cried out for solution in the past, Mr. President, Congress has responded with a wide variety of legislation designed to cure social ills and meet new demands. Surely no social ill cries out more for solution than the staggering crime problem in the District of Columbia. In my judgment, the proposed conference report is constitutionally sound and proposes a reasonable step forward in combating crime in our society. The time has come for this Congress to face the responsibilities of securing protection for our citizens. As Aristotle said more than 2,000 years ago:

> The law is order and a good law is good order.

I believe that by this legislation Congress will be properly discharging its responsibility in attempting to establish an orderly society through sound legislation.

EXHIBIT 1

[From the Charleston (S.C.) News & Courier, July 15, 1970]

PRETRIAL DETENTION

After voluminous and often heated testimony before a Senate subcommittee on constitutional rights, the issue of pretrial detention is coming before the U.S. Senate for decision.

The proposal for detention in jail before trial of someone charged with a crime takes the form of an amendment to the Bail Reform Act of 1966. That act was designed to minimize the use of money bond as a means of detention and a barrier to a person's freedom.

In practice, as Richard G. Kleindienst, Dept. of Justice deputy attorney general, has told the Senate subcommittee, the Bail Reform Act "absolutely precludes a trial judge from considering danger to the community in setting conditions of pretrial release in a non-capital case."

Under the act, every defendant charged with forcible rape, arson, kidnaping, armed robbery, burglary, bank robbery and a number of other crimes has an unequivocal statutory right to release before trial, unless

substantial evidence exists that he will attempt to escape jurisdiction of the court.

Those opposed to reforming the act contend that if a person charged with a crime can be detained prior to trial his freedom is being denied without due cause. Those favoring reform offer compelling evidence that defendants released under the Bail Reform Act are free, until their trial, to continue to prey on the community.

"Eliminating money bond," Mr. Kliendienst has said, "does not eliminate the social need to detain those persons who pose a serious threat to the public safety."

This threat has increased since the Bail Reform Act was passed. A survey made by the U.S. Attorney's Office discloses that of 557 robbery defendants indicted during 1968, some 70 per cent of the 345 defendants released before trial were rearrested for a new crime. Pretrial detention could have protected the public against these criminals.

Under proposed legislation, no one would be detained unless (1) he came within one of a group of carefully chosen categories who may pose a danger to society, (2) the judge finds that the defendant cannot be released on any condition that would reasonably assure the safety of the community, and (3) there is a "substantial probability" of the defendant's ultimate conviction.

Sen. Robert C. Byrd, D-W. Va., has said that the Bail Reform Act, passed with the best of intentions, "is proving a windfall to the chronic violent criminal." Society deserves protection against such persons. Until the judicial system can be geared up to speed trials of those charged with crimes against society, pretrial detention seems to provide the only means by which chronic offenders can be kept off the streets.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now transact routine morning business.

Is there morning business?

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

TOWARD BALANCED GROWTH: QUANTITY WITH QUALITY

Mr. JAVITS. Mr. President, I invite the Senate's attention to a report of the National Goals Research Staff of the President, under its Director, Leonard Garment, which has just been submitted. It is a most provocative report and represents an important step in identifying those national goals which raise legitimate challenges to our frequently random adoption of transitional priorities, themselves based on values which may already be outmoded.

Some of the issues raised, such as education and consumerism, reflect the maturing of our understanding of a commitment to the solution of problems of a longstanding nature; but others, such as environment, population growth, and the distribution of our resources, recognize the emergence of problems whose compelling thrust has been but recently perceived.

In identifying the goals which we should seek, the report does not attempt to set priorities; but it does give us an indispensable blueprint on how we may begin to do so, and also stimulates and provokes us into the urgent need for doing so.

It is really a threshold report to the effort to establish national goals. For those purposes, I commend the report to the Senate; and I ask unanimous consent that a summary be printed at this point in the RECORD.

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

SUMMARY: TOWARD BALANCED GROWTH: QUANTITY WITH QUALITY

(Report of the National Goals Research staff)

President Nixon established the National Goals Research Staff July 13, 1969. The role assigned to the Staff was to analyze social trends, make projections about the kind of society that could result if present trends continue, forecast future developments and pose alternatives for the future domestic life of the Nation. The Staff did not undertake to set goals or to be a planning office. Rather, it studied and compared a variety of national domestic strategies that are available to the Nation and that can help in making the kind of informed choices essential to guide the processes of change.

The past year's work of the NGRS represented an experiment in supporting the formulation of national policies. One objective of the experiment was to aid in the improvement of the national decision-making processes of public and private institutions by anticipating events rather than by simply reacting to "crisis" situations. A second objective was to provide longer-range concepts of future conditions of our society in the recognition that the choices made today will importantly affect the kind of society we will have in 10, 20, or—in some cases—even 50 years. A third objective was to provide the American people with information which would facilitate their participation in setting the Nation's goals and related policies.

In connection with this third objective, the President directed the Staff to prepare a public report by July 4th of this year. He stated that the report should "serve as a focus for the kind of lively widespread public discussion that deserves to go into decisions affecting our common future."

The report of the National Goals Research Staff takes its central theme from the President's call, in his State of the Union message, for the development of a policy on national growth. The report examines a number of areas of American life where the issues of the nature and direction of growth are being argued. But, increasingly, we have become aware that growth is not enough. We have become alarmed at the threats to our environment posed by industrial and technological progress. We have developed a new and acute awareness that the quality of life cannot be measured in quantitative terms.

Concern has bred alarm, and some have urgently demanded that we call a halt to growth altogether. Yet, as the report points out, our need is not to stop growth but to redirect it. We *can* have quantity with quality. In fact, given our rising levels of expectation, we cannot have quality without quantity. But it is equally true that quantity without quality is no longer adequate either as a goal or as a standard of measurement. Plainly, we need to develop a concept of "balanced growth" and the guidance mechanisms through which it can be achieved on a sustainable basis. Many of the policy debates of this coming decade will be over how we strike the balances.

Making intelligent policy choices becomes increasingly complex as society itself becomes more complex, and as the consequences of various courses of action become more far-reaching and more intricately intertwined.

Though the choices are more complex, our means of making those choices have also been greatly advanced.

The vast increase in scientific knowledge, in technological capability, in our understanding of the economic and social forces that shape our society, all greatly increase both our capacity and responsibility to make intelligent choices about our future.

Of all the advances in our understanding of the ways in which human institutions work, none is more significant than those we now are making in our understanding of the means by which results that we want can be achieved and those we do not want can be avoided.

The report emphasizes that as we choose our goals for 1976 and beyond, it is vital that the process of decision be as broadly based as possible—not only involving the intelligence and the energy of people everywhere, but also inspiring an active sense of participation—"a role for everyone."

This report is meant to inspire debate—and to help give that debate form, direction, and meaning.

If people are to make their wishes felt effectively, it is important that they be aware of what the real issues are—that is, what the real questions turn on, where the "pressure points" are, and what the considerations are that must be weighed in any responsible determination of a particular policy. By presenting some of the emerging major debates in this form, it is the objective of the Report that informed, effective, and constructive discussion of the issues involved will be encouraged on the broadest possible basis.

A summary of each of the chapters of the Report follows:

CHAPTER 1—EMERGING DEBATES

America appears to be at a point of profound change, frequently characterized as that from an industrial society to a "post industrial society"—from a society in which production of goods was of primary concern to one dominated more by services and the generation and use of new knowledge. Consequently, we are in a period of marked social change, one aspect of which is the search for a growth policy to guide that change. This report examines several areas in which the choice of a future growth policy is explicitly or implicitly being debated. Its intent is to use these case examples as a part of a learning experience, as one discrete step in the evolution of a policy of balanced growth, as called for by the President. The approach is analytical and not prescriptive. The purpose is to aid the American people and their representatives in what is assumed to be a long process for evolving a growth policy.

The key substantive areas in which the problem of growth is being debated are: population growth and distribution, environment, education, basic natural science, technology assessment, and consumerism. In general, these topical areas do not correspond to the major social problems with which we are presently concerned, including those of our cities, campus unrest, the Vietnam War, and race relations. These represent dissatisfactions over our performance according to our established priorities.

Probably the major message that comes from the existing debates over a growth policy is not that our institutions have proven incapable of doing their job. Rather, many of our institutions have performed very well the tasks which we set for them a few decades ago. However, in so doing, they have created unanticipated problems with which we must now deal, and they must be reori-

ented toward the tasks that are appropriate in a society capable of a new level of performance. The range of criteria whereby we will judge institutional performance will be broader in scope and longer in time perspective. An essential part of this period of transition is the attempt to shift from a reactive form of public decisionmaking, in which we respond to problems when they are forced upon us, to an anticipatory form in which we try either to avoid them or be prepared to deal with them as they emerge.

It is the hallmark of our country that Americans have adjusted to change while preserving the basic qualities of their institutions. This has happened a considerable number of times in our history. In the course of this history, a predominant theme has been one of economic growth, and an accommodation to a larger population. At no time was economic growth considered so dominant a goal that it obscured all other concerns, but neither was the growth per se viewed as other than a good thing.

Today, for the first time, we find the virtues of economic growth questioned, and this issue is put in popular terminology as one of "quantity versus quality." This is, in the view of this report, a false phrasing of the issue, since the new qualitative goals being proposed and the old goals yet unmet can be achieved only if we have continued economic growth. The issue is better put as one of how we can ensure continued economic growth while directing our resources more deliberately to filling our new values.

A large portion of the explanation for this seems to lie in our demonstrated ability to achieve economic stability and growth in the period following the passage of the Employment Act of 1946. Even though our economy is at the moment in a period of transition, the pervading public and official view is that we are a Nation of growing, unprecedented economic resources.

At the same time that we have become a Nation that can afford to care we have also become a Nation that cannot afford not to care. The past decade has been marked by an emerging sense of conscience for the plight of the underprivileged, an awareness of social and economic problems that are the unanticipated consequence of our past actions, a resolution that we can guide our affairs more rationally, and simultaneously, a broad popular demand for citizen participation in the management of their own fate. While this was happening, we also developed new techniques of decisionmaking whose promise spurred the resolution to run things more rationallly, but whose full potential is incompletely understood or tested.

While this resolution to run our affairs both more rationally and more effectively was emerging, two complicating circumstances arose. The Vietnam War placed a strain on our admittedly large resources and belatedly forced us to recognize the necessity of considering priorities more seriously. And, a more complex model of how to go about purposive action evolved in part from the ecologists' experience with the environment, and in part from our increasing knowledge of social science and our mixed experience in attempting social and political reform.

We thus find ourselves at a point at which the following things are true: We have rising expectations and changing values concerning the goals we should set for ourselves both in resolving existing inequities and in improving the quality of our lives. However, while our resources are large and growing, they are finite and we must set priorities more deliberately. In compensation for this complication we have the promise of more rational methods of public decisionmaking as a way of selecting and implementing our priority goals. But, this must be brought about in a context in which there is greater public participation, and greater recognition of the complexities of the world—both social and environmental—in which we live.

CHAPTER 2—POPULATION GROWTH AND DISTRIBUTION

In a nation that once valued its population size and growth, and in which the phrase "fastest growing" was attached to the name of proud municipalities, the question of overall population size and distribution has come under active debate.

The question of population size in the United States is not Malthusian. The issue is not whether we can feed and clothe a population of any size we can realistically envisage, or even supply it with the expanding amount of energy it may demand. It is rather that of whether a technologically advanced and industrially prosperous nation wants, or can continue to pay the price of congestion and contamination that comes from our overall affluence. It is suggested that our size may be limited by the ability of the environment to absorb the wastes that result from our economic success.

Students of the overall size of our population are in no agreement as to precisely what the size will be by the year 2000, nor on what an optimum population size for a nation such as ours would be. But, more recent projections suggest that the increase in our population over the next 30 years may be considerably less than the additional 100 million that had generally been forecasted. In fact, it may even be that the present rate of increase will slacken off so that we will reach the zero growth rate that some demographers have been advocating.

However, the issue of population distribution is a different matter, and one to be taken seriously regardless of what may be the upper limit of the population size. 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. Projection of such a migration pattern is actually a de facto distribution policy since it will affect such decisions as industrial plant location and other types of investment which will make the prophecy of increasing concentration self-fulfilling.

We have before us a set of decisions. One which appears not to be urgent is that of overall-size of the population—even after the effects of a considerable amount of immigration are taken into account. Apropos of population distribution, we need to decide on whether or not we will adopt a deliberate strategy to encourage internal migration to negate the forecasts of ever-growing urban congestion in a few megalopoli. A viable option for such an alternate strategy is a policy of encouraging growth in alternate growth centers away from the large urban masses, coupled with a complementary effort of the use of new towns.

CHAPTER 3—ENVIRONMENT

Man is redefining his relationship to his environment. He has progressed from fearing, to understanding, to using, to abusing, and now to worrying about the physical and biological world about him. Throughout all but the very recent history of the United States, our relationship to the environment has been one of exploitation. We have seen our natural endowment as a source of riches to be extracted and used, or later, to be extracted and processed. Concern for the environment was generally limited to whether or not we were exhausting our inheritance of sources of food, energy, and materials.

The current interest in the environment has two distinctively novel emphases. The first is that the limitations that the environment places on our activities may not be on the input side (sources of food, energy, and materials), but on the output side (a place to dispose of our wastes). The second, which is closely related to the first, is that the environment, in addition to having a limited capacity to absorb wastes, is a complex ecological system in which intervention of an apparently minor sort can, and often does, have far-reaching consequences through a chain of unsuspected reactions.

Both of these aspects of thinking about the environment have important consequences on the way we think about other things. They raise the question of whether or not there may be an upper limit on our economic growth as a consequence of the limitations on how much waste can be absorbed. And, the model of complex ecological systems affects our whole way of thinking about the consequences of our action not only in the enivronmental sphere, but also in the social sphere where we are coming to realize that causation is just as complex.

Some scientists and other anxious citizens assume a doomsday model of the future in which increased economic production will drive us to our destruction. In response, others propose what is called a paradise-regained model which would return us almost to a state of nature. Fortunately, the doomsday model does not forecast that which is inevitable, and the latter, which would probably be unattainable if tolerable, need not be entertained.

A mixed strategy of response to our environmental problems is proposed. We need to expand our inadequate knowledge of ecological systems. But while expanding this knowledge, we must take those measures which we know are called for. We need to consider our current technological and economic alternatives in the light of long-range ecological balance. Additionally, we need to resolve conflicts between our demands for products and services, and the depletion and pollution generated by them.

The market mechanism can and should be used as one of the devices for regulating these demands. Government should play a role through appropriate regulations, taxes, subsidies, and standard setting. Since environmental problems and their solution are of a global nature, we must and are beginning to act in concert with the other nations of the world.

Our environmental problems are a result of our technological and economic successes and of our philosophical view of nature. Now we must learn to use our technology and our economic output better to bring us in harmonious relationship to that environment. As will be found in other sections of this report, it is becoming apparent that the relatively narrow criteria by which we have, in the past, judged technical and economic progress must be expanded to consider a wider range of consequences.

CHAPTER 4—EDUCATION

We have an educational system that is in many respects unparalleled. It has grown in size and resources to the point where we have nearly universal education through the secondary schools and a proportion of our population attending institutions of higher education that is unprecedented. Yet, this system is under severe attack and criticism; it is seen as having been set up to serve the needs of an America that has greatly changed in the intervening years. There are many who argue that it is necessary for the schools to deemphasize quantitative expansion along traditional lines and emphasize adaptation to the needs of a rapidly changing society.

In the past, the public has equated going to school with education. The role of the school was to transmit information and instill traditional values. The society of today is one changing so rapidly that skills and information become outmoded, and traditional values are under challenge. Furthermore, the proportion of information that children re-

ceive from the mass media is so large and the range of values to which they are exposed so diverse that it may well be that the schools should be devoted to giving them the cognitive skills for integrating information, and a framework within which to sort out the diverse values to which they are exposed.

In addition to what may fundamentally be a new orientation demanded of the schools, they are being asked to respond to current problems in two ways. First, it is said that they should be relevant to the needs of the student, which is to say that they should teach him as an individual to be able to deal with contemporary problems. Second, the higher institutions of learning, in particular, are being asked to solve the present problems of society.

The choices with which the schools are confronted involve, on the one hand, teaching problem-solving skills, fostering the development of students as individuals, and conducting problem-oriented research. Or, on the other hand, there is the option of continuing to transmit the old knowledge and values at the primary and secondary levels, and continuing to transmit the traditional knowledge and seeking to develop knowledge for its own sake at the higher levels of education.

By and large, it would seem that we must look for some appropriate mix rather than shift over to a complete doctrine of relevance. In the meantime, we need to develop further understanding of the educational process and of how to evaluate it. We must further develop an experimental posture toward innovation in education which will reflect our basic uncertainty as to how to go about the many problems with which the educational system is faced.

All of the above holds for the educational system at large. With respect to the children of minority groups, we have the special task of ensuring equal educational opportunity, and of understanding and dealing with those special disadvantages which are imposed on them by their environment.

Taken all in all, the educational system, which is the crucial single institution for the development of our citizenry so that they can live happily, shape our system wisely, and contribute to both the direction and rate of its growth, is in a state of severe stress. The educational system is having its own "growth" problems which, if not solved, will have a profound impact on the growth of the Nation as a whole.

CHAPTER 5—BASIC NATURAL SCIENCE

The American scientific establishment has grown and the capacities of its researchers have developed to the point that our capability in basic research has made us preeminent in the world. Having achieved that position, basic natural science finds itself in a crisis of both financial and social support. Historically, Federal funding, the main source of basic scientific research, has been large relative to the scientific resources available to do the work. In the recent past, as the scientific establishment continued to grow, the supply of funds leveled off so that the previous relationship has in effect been reversed. There is too little money relative to the number of scientists involved. At the same time, in the past half decade, scientists and their works began to come under fire as a result of the association of scientists with the military, and with industrial technology which has produced environmental pollution. In concert with these two developments, our national priorities have shifted to the solution of social problems, and basic scientists are being asked to shift their focus of work from the development of knowledge for its own sake to working on basic problems which have relevance for today's social issues.

The result is serious strain on an institution which furnishes us with our most fundamental understanding of ourselves and of our world, and which has been the source from which technology has evolved in recent times to serve economic growth. In the past few decades, we have been very successful in making basic science useful, but now we find ourselves in a crisis as to how to ensure its future usefulness, and of how to balance the long-range utility of basic knowledge with present urgent needs.

One of the major decisions with which we are faced is that of the level of support we will furnish basic science in the future. This is clouded by the problem of making basic research "useful" in the short run. It is in the nature of basic research that answers to practical problems may be found in unsuspected areas of inquiry. Some problem areas, at a given time, have a greater potential for exploitation than others. Setting research priorities on the grounds of probable utility is often a choice of possible short-term benefits against the longer-term ones which might result from a more rapid expansion of the basic pool of knowledge by permitting science to pursue the internal logic of its own development.

What is indeed, and may in fact be developing, is a forum in which the partially conflicting needs for maintaining the integrity of the core of basic research and the practical needs of the society are resolved.

In conjunction with the need to work out an appropriate level and distribution of funding, we must face the fact that an articulate minority are attacking the very rationale and spirit of science and of rational inquiry itself—the most elementary tools man has for the orderly guidance of his affairs.

CHAPTER 6—TECHNOLOGY ASSESSMENT

The Nation's infatuation with technology is at a turning point as profound as that of its relationship to the environment. Historically, we have tended to do that which was technically possible, if it were economically advantageous, on the simple ground that this represented "progress." However, as technology has increased with great rapidity, it has forced on us increasing unplanned social change and environmental problems we did not anticipate and do not want. At the same time, our notions of the complexity of social and environmental problems have made us increasingly cautious with respect to the actions we plan to take. Our level of affluence has given us a longer time perspective within which to assess the consequences of our actions. As with so many other of the debates with which we have been concerned, the technology assessment movement—which embodies this new attitude toward technology—asks us to judge our actions by a wider range of criteria than we have used in the past.

Formally, technology assessment is a term coined in the Congress to label a set of procedures to aid the Congress in making decisions for the orderly introduction of new technology and the evaluation of technology already in use. However, it is better viewed as a manifestation of a larger phenomenon of a decreasing willingness of both the public and its representatives to tolerate the undesirable side effects of things done in the name of progress. The public has protested effectively against the displacement of people by highways, aircraft noise, and the building of new powerplants. Specific actions have indicated that we have the disposition to forgo immediate economic benefits in order to avoid social and environmental costs which once would have been accepted with no more than pro forma consideration. The existence of formal technology assessment, now in both the congressional and executive branches, is to be taken as no more than a specific manifestation of the broader concern.

There are major policy problems with the prospect of doing technology assessment in a formal fashion. One is that of establishing criteria for deciding which among all of the new technologies emerging shall be selected for assessment, and how inspections, standards, and controls shall be established. Another is the extent to which technology assessment shall become a "way of life" in the American economy with increased consideration of the second-order consequences of technology through all strata of decision-making, both private and public. Most general, however, is the problem of how we will manage the impact of the possibility of technology's adverse effects with the demand for new technology to ensure economic development. Among other things, we may have to accelerate our efforts to detect new benign technological opportunities and facilitate their rapid introduction to offset the impact of inhibiting the introduction and use of harmful technology.

CHAPTER 7—CONSUMERISM

American business prides itself in its ability to develop, produce, and deliver a great flow of new technologically sophisticated products of a wide variety. Yet, its very success in this has produced a wave of complaints. There have been consumer movements in the past based on issues of product safety and quality, deceptive practices, monopolistic practices, aesthetics, and so on. However, what marks the new consumer movement as distinctive is that it features resentment that the stream of new products is so large and the differences among products so small that choice among them is said to have been made difficult. Furthermore, it is argued that the technical complexity of many of them is such that the untrained individual cannot evaluate them.

The result has been the evolution of a system of consumer protection which, since 1964, has featured commission and special assistants at the highest levels of Government, increased activity in the regulatory agencies, and finally in 1969, a Presidential enunciation of a "Buyer's Bill of Rights." Laws have been passed and new standards set. Testing procedures have been tightened. Consumer information services have grown.

The anomaly of the present consumerism market is that a highly market-oriented economy has produced a situation, in which it is said by at least an influential minority, that the doctrine of consumer sovereignty—the notion that the consumer can regulate business by his free choices—is no longer tenable for some undefinable but sizable segment of the marketplace. Some extreme manifestations of this position would have a considerable impact on the way our economy runs. Already, the consumerism movement has had an important and probably beneficial influence on business practice. This movement consists of a myriad of small issues, but the large one confronting us is that of developing a proper policy posture that will give the desirable amount and kind of protection to the consumer and, at the same time, preserve a business environment in which the economy can continue to grow.

The consumerism movement has been regarded by some as a fad. It is important to note that the complaints which stimulate the present consumer concerns are an integral part of a technologically sophisticated, market-oriented economy such as we have so deliberately developed in recent decades and which seems certain to continue.

CHAPTER 8—ECONOMIC CHOICE AND BALANCED GROWTH

The search for a policy of balanced growth has major implications for the allocation of economic resources and is crucially dependent upon economic growth. Conventional economic policy goals include full employment, an acceptable rate of growth, price stability, and a satisfactory balance of payments. Added to these now is a new set of

goals under the vaguely defined label of "quality of life." These concerns mirror a desire by many Americans to create a society better able to enjoy what it produces, and to grow in ways harmonious with its physical environment.

The setting of new goals and the establishment of priorities among them are matters of social choice. Economic analysis can help in understanding some of the central aspects of these choices, but it cannot dictate the answers. The choices themselves are those of the people, expressed individually through their private institutions and through their governments. The key choices are among competing ends. Economic analysis can contribute toward the meeting of these ends once they are chosen, and an economic policy of sustained growth can make it possible for more of these ends to be achieved.

CHAPTER 9—TOWARD BALANCED GROWTH

This report is motivated by the President's explicit call for the development of a national growth policy. It is assumed that both the meaning and form of this policy will evolve and that contributions such as this are but steps in that direction. This report takes an inductive approach to the overall problem by identifying a number of issue areas in which it seems meaningful to say that a debate bearing on growth policy is taking place. The issues which were selected are those which the National Goals Research Staff judged would make a distinctive contribution to the Nation's awareness. An example of an exclusion might be that of urban problems, a subject truly essential to our growth, but a matter much discussed by others of greater competence on that topic.

The major lesson to be extracted from the substantive problems reviewed here is the high desirability of an explicit growth policy with a relatively long-term perspective. In instance after instance, it was found that today's problems are a result of successes as defined in yesterday's terms. The object lesson has not been that our institutions are incapable, but that in the past we set performance criteria for them in terms now recognized as too narrow but which at one time were appropriate. We have become widely aware of the second-order consequences of our action, and we have demonstrated our resolution to take them into account when we can anticipate them. What we need is increased ability to anticipate those consequences and an explicit policy framework within which to evaluate them.

The central ingredient in the development of a growth policy will be for the American people to decide just what sort of country they want this to be. This process is in being, as reflected in these debates. Hopefully, this report and other events will serve as vehicles to facilitate discussion and choice. To further facilitate this process, we will have to develop better institutional arrangements for the people to relate to the leadership and better mechanisms of policy analysis to serve all parties.

While it is clear that an explicit growth policy is desirable, it seems equally clear from these debates that it is likely that what will emerge is not a single policy but a package of policies consistent with each other, each designed to meet one or more of our national objectives. This package of policies will shape both the directions of our society and the balance among the many segments of society in terms of priorities and interrelationships. It will not be a set of policies which the government alone can develop and effect. It will be a set of policies which emerge from the decisions of the government and the people, and which, in turn, will affect the decisions of both the government and the people.

APPENDIX A

These are only a few examples of possible developments, many of which have begun or may begin to emerge in the 1970's. Many of these developments may not appear in the 1970's or even later, but the list suggests that, as we view the prospects for our Nation, we must broaden our vision to take into account a variety of developments which will bring many new dimensions of human experience.

As illustrated by these selected trends and forecasts, the 1970's promise to be a decade of extraordinary change. Our Nation in 1980 could be one in which cities are more clogged with immovable traffic, air is less breathable, streams polluted to the point where expensive processes will be necessary to get usable water, seashores deteriorating more rapidly, and our people suffering needlessly from having not developed the necessary institutional arrangements for achieving the promise of this decade of change.

On the other hand, America in 1980 can be a Nation which will have begun to restore its environment, to have more balanced distribution of regional economic development and of population; a Nation which has abolished hunger and many forms of social inequality and deprivation; and a Nation which will have begun to develop the new social institutions and instruments necessary to turn the promises of this decade of change into reality.

If we are to see the second of these possible features realized in the America of 1980, we must begin now to define what we wish to have as our national goals, and to develop in both our public and private institutions the specific policies and programs which will move us toward those goals.

THE ATLANTIC COMMUNITY DEVELOPMENT GROUP

Mr. JAVITS. Mr. President, I invite the attention of the Senate to the development of a company called the Atlantic Community Development Group, of which I had the honor to be the inspirer originally, as chairman of the Economic Committee of the NATO Parliamentarians' Conference, in the early 1960's.

This has become a massive private enterprise effort of mutualization, a consortium of the greatest companies and banks in the industrial world at this time, to assist in the development of Latin America; but the idea is being extended to Asia, where a company already has been organized, and one is in prospect in Africa and one will ultimately come in the Middle East. The success of this enterprise is so critically important as bearing on the validity of the enterprise system as a technique for world development, quite apart from governments, that I commend this study to my colleagues.

Incidentally, the Overseas Private Investment Corporation, which we will organize soon, which has already been authorized by law, though a Government entity, follows the same general idea of stimulating this kind of world activity. It has tremendous consequences in relieving us of budget strain and other disadvantages of the kind of foreign aid we have been carrying on for years, which cannot be displaced, but a good deal of whose work might be done in this way.

I ask unanimous consent that an article on the development of this company, published in the July 11, 1970, issue of Business Week, making reference to its very gifted executive director, Ernst Keller, be printed at this point in the RECORD.

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

THE COMPANY THAT NURTURES LATIN BUSINESS

"ADELA is the kind of company that doesn't exist in developed countries, because they don't need it," says Ernst Keller, managing director of the Lima-based ADELA Investment Co. He adds: "There is no problem in finding capital for developing countries—the scarcity is management men."

ADELA (the Atlantic Community Development Group for Latin America) provides both money and management knowhow for Latin American business. Indeed, like available Jones, the multifaceted entrepreneur in Al Capp's comic strip, ADELA will supply just about any financial or managerial service. Keller claims that the company has helped mobilize close to $1-billion worth of investment in Latin America.

Since ADELA was organized in 1964, it has put $82-million in share capital and loans into 99 companies in 19 countries. ADELA organized many of the ventures, ranging from mining and meat packing to steel mills, food retailing, and computer service centers. And for every $1 that ADELA invests in its projects, other companies, banks, and lending institutions invest at least $9.

ADELA and its subsidiary, ADELATEC Technical & Management Service Co., are now working on a series of new ventures:

A company to warehouse, transport, and distribute farm products in Latin America, with Anaheim International of Fullerton, Calif. (Another company, Latin American Agribusiness Development Corp. is looking for ventures. Its partners include Bank of America, Cargill, Inc., Deere & Co., and Gerber Products Co.)

The Jamaica Negril Estates, formed with the Jamaican government's Urban Development Corp. This involves an option to buy a big tract of beach and swamp for a $140-million resort complex, new town, and farm belt. ADELATEC drew up the project and ADELA is talking to potential investors.

A hotel chain called Hotel Associates, with Braniff Airways, Inc. It will cost about $150-million, coming mainly from local investors.

Among other things, ADELA is promoting Latin American economic integration by organizing multinational industrial ventures that exchange materials and products across national borders. It is setting up a holding company to provide services to industrial leasing companies in several countries, and it has spawned a litter of smaller private investment companies in seven Latin countries.

Eventually, Keller hopes to move into mutual funds.

Meanwhile, ADELA nurtures the businesses it has already created by helping with everything from market surveys to financial reorganization. It sells the same services to outsiders.

POWER BACKING

In all this, ADELA is backed by the financial strength and the technical and managerial knowhow of the world's most powerful corporations—239 of the biggest banks and industrial companies in the U.S., Canada, Europe, Japan, and Latin America. They each subscribed up to $500,000 of ADELA's $60 million in authorized capital, and have paid in over $50 million. With such blue-chip backing, ADELA exerts financial leverage far beyond its own resources. It borrows additional funds from member banks, and it gets long-term loans from such sources as the Inter-American Development Bank and Germany's Kreditanstalt für Wiederaufbau. Other investors, local and foreign, take shares in ventures organized by the company; they feel their money will be safe and return a good profit under ADELA's wing.

ADELA was launched with 56 initial stock-

holders, mostly U.S. and European companies, amidst the turmoil in Latin America that followed the Cuban revolution. Senator Jacob K. Javits (R-N.Y.) persuaded the Ford Foundation to finance the study that led to its founding. One aim was to spur economic development by funneling more outside capital into the area; another was to strengthen private enterprise and create a better business climate. Some shareholders thought these were worthy objectives, but were frankly skeptical about ADELA as a moneymaker. In fact, one European banking house promptly wrote off its shares as a straight loss. Nevertheless, ADELA earned profits of $2.9 million in its last fiscal year and paid a 4% dividend to stockholders. Now a similar venture with many of the same shareholders, the Tokyo-based Private Investment Company for Asia, is helping organize and finance companies in developing nations of the Far East.

LEADERSHIP

Keller has put his personal stamp on ADELA. A hard-driving, outspoken Swiss, the 50-year-old Keller had been assistant vice president of W. R. Grace & Co.'s South American division and had founded his own investment firm in Lima.

For ADELA, he recruited a staff that is both young and multinational. Executive Vice-President Eugene R. Gonzalez, for example, is an American born in Chile. Vice-President Desmond Cameron, an Englishman, came to ADELA from Schroder bank in London; Peter Rabbow, one of five ADELA managers, is a German; Arturo Yermoli, an ADELATEC manager, is a Chilean industrial engineer who worked in Argentina. About 40 executives and staff members work out of Lima and 50 are scattered in other offices in Latin America, Washington, and Zurich.

"Keller motivates his people very strongly," says Howard C. Petersen, chairman of Philadelphia's Fidelity Bank, one of ADELA's founders and now its chairman. "I think one of the attractions is that there is a certain relevance in what they do. As a consequence, ADELA can perhaps get better and more strongly motivated men than other companies."

HOW IT WORKS

Keller describes ADELA and ADELATEC as "a service organization and mover of human and financial resources." Staffers in Lima and resident representatives in 13 countries look for investment opportunities. When one is turned up, ADELA converts it into a concrete "bankable" project with feasibility, market, engineering, and financial studies.

"Only then do we become an investment company," says Keller. "We can only provide seed capital. We go around hat in hand getting money from other investors—Latin American, foreign, institutional."

That is not too difficult for a company that has the world's biggest banks as stockholders. "We maintain good contacts with shareholder banks," says an ADELA executive. "So all we do is write an informal, chatty letter describing the project and asking if they are interested. If so, we supply the project study made by our analysts."

In Bolivia, for example, ADELA financed the development of new properties by a small tin mining company, Cia. Minera del Sur. It put up $1 million in loans and equity, and New York's First National City Bank, an ADELA shareholder, loaned $500,000. In Buenos Aires, ADELA financed a major expansion by meatpacker Frigoríficos Argentinos, S.A. (FASA), by lending $1.5 million and placing another $2 million of loans with banks.

IN MANAGEMENT

ADELA's role, though, goes far beyond ordinary investment banking. "One of its major contributions has been on the management side," says Petersen. "If you have the management, the money follows."

Once financing has been obtained, explains Keller, "our services begin again. The project must be planned, programmed, designed, purchased, and installed."

One of the company's biggest projects is Cía. Pino Celulosa de Centroamérica, a $70-million pulp and paper mill that will exploit a vast stand of virgin timber in Honduras. The Honduran government development bank, the Central American Bank for Economic Integration, and the International Finance Corp. are putting up part of the share capital. ADELA and ADELATEC made a preinvestment study and a feasibility study, helped organize the company, obtained financing, and looked for a foreign paper company with knowhow to run the mill. Negotiations are under way with the International Paper Co. to manage the venture and put up 51% of the equity. ADELA will buy $3.5-million worth of shares and sell them off gradually to local investors.

Bringing in Latin partners and taking only a minority interest in companies helps ADELA avoid the charge of "economic imperialism" that is a favorite political issue in the region. Julio Juncosa Seré, president of the fast-growing FASA, says that because ADELA is multinational, it was an attractive source of "impartial credit." Since FASA competes with British and American-owned meatpackers, it was reluctant to have ties to financial groups in those countries. "We had other offers and turned them down," Juncosa says.

In a typical minority investment, ADELA aided Armat Metalúrgica, a Chilean maker of coin blanks, in financing a new plant. ADELA bought a 25% interest in the company for $333,000 and loaned another $250,000. Armat now exports to Israel and Uruguay, and has a contract to supply coins for Argentina's new "hard peso."

ADELA's industrial stockholders participate directly in some of the manufacturing companies it organizes. Germany's Fried. Krupp, for example, supplied equipment and the financing for an Ecuadorian steel rolling mill.

SOME MISSES

ADELA has had some notable failures, among them Promecan, a Peruvian fishing boat builder. The company has overexpanded, and ADELA helped refinance it by buying 40% of its stock for $700,000 and lending it another $1.7-million. Keller also persuaded his old company, Peruinvest, and the Peruvian government development bank to put money into Promecan with the aim of diversifying the company and overhauling its management. Then a crisis hit the fishing industry, customers cancelled their orders, and Promecan went broke.

Says a top ADELA executive: "When we brought Promecan out to breathe, suddenly there wasn't any air." Promecan has gone through bankruptcy now, though, and is back in business with a Japanese partner.

Recently, much of ADELA's emphasis has been on strengthening Latin America's thin financial markets by setting up financial intermediaries. ADELA has launched "financieras" (private investment companies) in a number of countries, and has formed industrial leasing companies in Mexico and Brazil. In Mexico, it is setting up a company that will "warehouse" commercial paper up to five years' maturity by buying and holding it for its own account. In Brazil, it plans to buy into a brokerage house.

ADELA also develops local capital markets by helping family owned companies go public. Last year, it bought out La Cortina, a Venezuelan carpet manufacturer. ADELA plans to convert the company to public ownership by selling shares to Venezuelans.

Now ADELA is starting to promote Latin American exports. The newly created Adela Trade Development Co. will bring together expertise in financing, management, production, packaging, and transport to expand trade within the region and exports to overseas markets. "You are a dead duck if you think only in terms of a local market," says ADELA manager Fortunato Quesada, a former Peruvian diplomat.

In such ventures, the risks are increased by Latin America's political ups and downs. But old Latin hands, like Keller, keep their cool.

Keller says: "There is no question that investors who have not lived in Latin America are being scared off by the present tendency toward greater nationalism—in some cases, quite radical nationalism. But nationalism exists everywhere, with different names. In industrial countries, it is called protecting the balance of payments."

ENROLLED BILLS SIGNED

The President pro tempore announced that on today, July 22, 1970, he signed the following enrolled bills, which had previously been signed by the Speaker of the House of Representatives:

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.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON REGISTRY OF MINORITY CONSTRUCTION CONTRACTORS

A letter from the Secretary of Housing and Urban Development, Washington, D.C., transmitting, for the information of the Senate a registry of minority construction contractors (with an accompanying document); to the Committee on Banking and Currency.

REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on potential savings by centralized control of overseas air passenger transportation, Department of Defense, dated July 21, 1970 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on improvements needed in Federal Aviation Administration procedures for determining excess spare parts, Department of Transportation, dated July 22, 1970 (with an accompanying report); to the Committee on Government Operations.

PROPOSED INDIAN FINANCING ACT OF 1970

A letter from the Secretary of the Interior, transmitting a draft of proposed legislation to provide for financing the economic development of Indians and Indian organizations, and for other purposes (with accompanying papers); to the Committee on Interior and Insular Affairs.

PROPOSED FEDERAL SALARY COMPARABILITY ACT OF 1970

A letter from the Chairman, United States Civil Service Commission, transmitting a draft of proposed legislation to amend title 5, United States Code, to direct the President to adjust the rates for the statutory pay systems, to establish an Advisory Committee on Federal Salaries, and for other purposes (with accompanying papers); to the Committee on Post Office and Civil Service.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A joint resolution of the Legislature of the State of California; to the Committee on Commerce:

"ASSEMBLY JOINT RESOLUTION No. 4

"Relative to a national wildlife refuge for South San Francisco Bay

"Whereas, The establishment of a national wildlife refuge for the southern portion of San Francisco Bay to preserve open-spaced and recreational values in the natural environment of the bay for benefits to man and to protect a wildlife habitat of national significance from the increasing threat of urbanization has been endorsed, after extensive studies, by the Bureau of Sport Fisheries and Wildlife of the Department of the Interior, and resolutions in support of such action have been adopted by 23 government agencies of the San Francisco Bay area; and

"Whereas, House and Senate bills to establish the refuge were introduced during 1969 and these bills, which were in committee on the adjournment of the first session of the 91st Congress, will be reintroduced and hearings held on the question of the proposed refuge after January 1, 1970; and

"Whereas, The proposed refuge area of open water, sloughs, tidal, shallows, flats, marshes, saltponds, and upland meadows is a natural habitat for 100 species of water birds and 42 species of land birds and, as a vital part of the Pacific Flyway, is host to thousands of migratory wild birds making the long fall flight from the Arctic to Baja California and South America; and

"Whereas, The South San Francisco Bay region provides the habitat and resting areas for several species of bird and animal life which are on the verge of extinction, and prompt acquisition of land for a national wildlife refuge is essential in view of the continuing pollution and destruction of the natural environment of the region by rapidly expanding urban development; and

"Whereas, The proposed national refuge, carefully managed for the protection of wildlife, would also provide the people of the San Francisco Bay area and of the nation with access to the bay and its wildlife for observation and enjoyment, offering opportunity for picnicking, photography, fishing, and other recreational activities compatible with the primary purpose of the refuge, and would enable students of all ages from elementary school to college to use the refuge as an outdoor laboratory for the study of biology, ecology, history, and sociology; 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 establish a national wildlife refuge for the southern portion of San Francisco Bay; 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, to the Secretary of the Interior, to the House Committee on Merchant Marine and Fisheries, to the Senate Committee on Commerce, and to each Senator and Representative from California in the Congress of the United States."

A joint resolution of the Legislature of the State of California; to the Committee on Interior and Insular Affairs:

"ASSEMBLY JOINT RESOLUTION No. 49

"Relative to Pyramid Lake natural resources

"Whereas, Pyramid Lake in the State of Nevada is a unique and beautiful national asset deserving of preservation and protection for the enjoyment of present and future generations; and

"Whereas, The potential recreational and economic value of Pyramid Lake to the people of the State of Nevada and particularly to its owners, the Paiute Indian people whose reservation encompasses the lake, is beyond question; and

"Whereas, Pyramid Lake is a natural geologic sink which receives the flood flows of the Truckee River system and which historically received the entire flow of the river system; and

"Whereas, It is well substantiated that the diversion of Truckee River water over the past sixty years has caused, except for exceptionally wet years such as 1969, the progressive lowering of the level of Pyramid Lake; and

"Whereas, The unique recreational and economic resources of Pyramid Lake are being endangered as its level declines due to the diversion of water from the Truckee River system to meet the many competing demands; and

"Whereas, While uses of water from the Truckee River system in California unquestionably have some adverse effect upon Pyramid Lake, the fundamental problem centers upon the annual average diversion of 241,000 acre-feet of water at Derby Dam in Nevada for use in the Newlands Project and upon the operational criteria adopted by the Secretary of the Interior for the Truckee-Carson River system; and

"Whereas, Stabilization of the water level of Pyramid Lake and the provision of minimum flows necessary to sustain fish life and spawning in the Truckee River below Derby Dam would enhance the lake's fishery resources and create economic benefits to the Paiute Indian people who own the lake; and

"Whereas, A properly developed Pyramid Lake would provide high quality recreation for large numbers of residents of California; and

"WHEREAS, The United States Department of the Interior is charged with responsibility for assuring the protection and wise use of the nation's natural resources and controls in major part the waters of the Truckee River-Carson River system; and

"WHEREAS, The conflicting interests of various bureaus within the United States Department of the Interior have precluded satisfactory resolution of the water management problems of the Truckee River-Carson River system; and

"WHEREAS, These conflicting interests are centered in the Bureau of Indian Affairs, the Bureau of Sports Fisheries and Wildlife, the Bureau of Land Management, and the Bureau of Reclamation; and

"WHEREAS, The level of Pyramid Lake will continue to decline until such time as these conflicts are resolved; and

"WHEREAS, A resolution of the water management problems of the Truckee River-Carson River system is beyond the capabilities of the States of California and Nevada; and

"WHEREAS, The Assembly Committee on Water, in its evaluation of the proposed California-Nevada Interstate Compact concerning the waters of the Lake Tahoe, Truckee, Carson, and Walker River Basins, has concluded that a final resolution of this conflict and of the water management problems of the Truckee River-Carson River system can only be attained through positive action by the Secretary of the Interior; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California memorializes the President and the Congress of the United States and the Secretary of the Interior to take those actions necessary to assure the protection and preservation of Pyramid Lake; and be it further

"Resolved, That the Secretary of the Interior is requested to take immediate action to achieve coordination of the activities of the various bureaus within the Department of Interior in order to solve the problems relating to management of the Truckee River-Carson River system; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, to the Chairmen of the Senate and House Committees on Interior and Insular Affairs, to each Senator and Representative from California in the Congress of the United States, and to the Secretary of the Interior."

ESTABLISHMENT OF A JOINT COMMITTEE ON THE ENVIRONMENT—JOINT REPORT OF COMMITTEES ON COMMERCE, INTERIOR AND INSULAR AFFAIRS, AND PUBLIC WORKS (S. REPT. NO. 91-1033)

Mr. JACKSON. Mr. President, the Commerce, Interior, and Insular Affairs and the Public Works Committees today filed a joint report on Senate Joint Resolution 207, a resolution to establish a Joint Committee on the Environment. The report recommends the enactment of Senate Joint Resolution 207 as amended by the committees. A companion measure, House Joint Resolution 1117, has already been passed by the House.

The establishment of a nonlegislative Joint Committee on the Environment will give the Congress a new institution which can provide a continuing overview of both present and emerging environmental problems and can be an important source of data and information for the standing committees of the Congress. This measure has received the careful attention of the Senate committees who exercise primary jurisdiction over environmental matters and its enactment has been unanimously recommended.

The PRESIDING OFFICER (Mr. SCHWEIKER). The report will be received and the joint resolution will be placed on the calendar, and the report will be printed.

EXECUTIVE REPORTS OF A COMMITTEE

As in executive session, the following favorable reports of nominations were submitted:

By Mr. FULBRIGHT, from the Committee on Foreign Relations:

John G. Hurd, of Texas, to be Ambassador Extraordinary and Plenipotentiary to the Republic of South Africa.

Mr. FULBRIGHT. Mr. President, I also report favorably sundry nominations in the Diplomatic and Foreign Service

which have already appeared in the CONGRESSIONAL RECORD and, to save the expense of printing them on the Executive Calendar, I ask unanimous consent that they may lie on the Secretary's desk for the information of any Senator.

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

The nominations, ordered to lie on the desk, are as follows:

Helmut Sonnenfeldt, of Maryland, and sundry other persons, for appointment and promotion in the Diplomatic and Foreign Service.

BILLS INTRODUCED

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

By Mr. BROOKE:

S. 4109. A bill for the relief of Santa Bonanno Merlino; to the Committee on the Judiciary.

By Mr. TYDINGS (by request):

S. 4110. A bill to amend Section 8 of the Act approved March 4, 1913 (37 Stat. 974), as amended, to standardize procedures for the testing of utility meters; to add a penalty provision in order to enable certification under Section 5(a) of the Natural Gas Pipeline Safety Act of 1968, and to authorize cooperative action with state and federal regulatory bodies on matters of joint interest; to the Committee on the District of Columbia.

ADDITIONAL COSPONSORS OF BILLS

S. 3252

Mr. GRIFFIN. Mr. President, on behalf of the Senator from Texas (Mr. TOWER), I ask unanimous consent, at the next printing, the name of the Senator from California (Mr. MURPHY) be added as a cosponsor of S. 3252, to amend the Internal Revenue Code of 1954, as amended.

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

S. 4041

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

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

S. 4075

Mr. LONG. Mr. President, on July 10, 1970, I introduced S. 4075, a bill to provide for limitation of the importation of sulfur. Since that time, the junior Senator from Texas (Mr. TOWER) has expressed his desire to be a cosponsor of that bill. I, therefore, ask unanimous consent that the name of the Senator from Texas be added to S. 4075 as a cosponsor.

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

S. 4099

Mr. GRIFFIN. Mr. President, on behalf of the Senator from Iowa (Mr. MILLER), I ask unanimous consent that, at the next printing, the name of the junior Senator from Texas (Mr. TOWER) be added as a cosponsor of S. 4099, to amend section 2771 of title 10, United States Code, relating to final settlement of accounts of deceased members of the Armed Forces.

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

SENATE RESOLUTION 432—ORIGINAL RESOLUTION REPORTED TO PROVIDE ADDITIONAL FUNDS FOR THE COMMITTEE ON APPROPRIATIONS

Mr. RUSSELL, from the Committee on Appropriations, reported the following original resolution (S. Res. 432); which was referred to the Committee on Rules and Administration:

S. RES. 432

Resolved, That the Committee on Appropriations hereby is authorized to expend from the contingent fund of the Senate, during the Ninety-first Congress, $35,000, in addition to the amounts and for the same purposes, specified in section 134(a) of the Legislative Reorganization Act, approved August 2, 1946, Senate Resolution 204, agreed to June 16, 1969, and Senate Resolution 315, agreed to February 2, 1970.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on yesterday, July 21, 1970, he presented to the President of the United States the enrolled 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.

The Secretary of the Senate also reported that on today, July 22, 1970, he presented to the President of the United States 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 to pay a judgment in Indian Claims Commission Dockets numbered 314, amended, 314–E and 65, and for other purposes;

S. 3685. An act to increase the availability of mortgage credit for the financing of urgently needed housing, and for other purposes; and

S. 3889. 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 U.S. obligations directly from the Treasury.

AUTHORIZATION OF CERTAIN MILITARY APPROPRIATIONS DURING FISCAL YEAR 1971—AMENDMENT

AMENDMENT NO. 789

Mr. SCOTT. Mr. President, I am submitting today an amendment to H.R. 17123, an act to authorize appropriations for Defense, that I believe each member of this body can join in supporting.

As President Nixon has emphasized, we are moving from a wartime economy to a peacetime economy. This shift in national priorities is unquestionably in the interest of the country as a whole. We must remember, however, the cases of individual citizens whose jobs may be eliminated in this process.

In March, the elimination of 58,600 positions in the Department of Defense was announced. The vast majority of the people displaced by this reduction in force were career civil servants. Future reductions will also involve career employees. To seek new jobs poses a tremendous hardship to these people. Similarly, the Federal Government can ill afford to lose their skills and experience.

The amendment I am submitting would affirm the sense of the Congress to be that government departments and agencies, when filling vacancies, give priority consideration to Federal career employees who have been displaced from positions eliminated in the Department of Defense or other departments or agencies as the result of reductions in force.

My amendment would also declare the sense of the Congress to be that departments and agencies should comply fully with the Presidential memorandum of April 24, 1970, and with the displaced employee program of the U.S. Civil Service Commission, both aimed at effecting priority consideration for displaced employees.

Sufficient normal vacancies occur each year to permit the Government to absorb qualified displaced persons who want to continue in the Federal service. All that is required is a conscientious effort by departments and agencies to place these persons. The Congress should lend its voice to the efforts of the executive branch and the Civil Service to insure that this task is accomplished.

The PRESIDING OFFICER (Mr. SCHWEIKER). The amendment will be received and printed, and will lie on the table.

NOTICE OF FURTHER HEARINGS ON GEOTHERMAL STEAM

Mr. MOSS. Mr. President, on behalf of the Subcommittee on Minerals, Materials, and Fuels of the Interior Committee, I announce that a further public hearing has been scheduled for Tuesday, July 28, on S. 368, to authorize the development of the geothermal steam and associated resources on the public lands.

The Atomic Energy Commission, which has done some extremely interesting work in artificially produced geothermal steam, and the Federal Power Commission have been requested to attend the hearing and make presentations within the immediate future.

It is the committee's earnest hope and expectation that a bill can be worked out very shortly that will insure orderly development of this greatly needed source of energy, which may be relatively pollution-free in many areas, and which will be fair and equitable to the pioneers in geothermal development.

All interested Members of Congress and the public are invited to participate in these hearings. It is requested that the Interior Committee staff be notified by those wishing to be heard.

ADDITIONAL STATEMENTS OF SENATORS

THE 200TH ANNIVERSARY OF THE DECLARATION OF INDEPENDENCE

Mr. BOGGS. Mr. President, 190 years ago three citizens of Delaware—the first State in the Union to ratify the Constitution—made a pilgrimage to the city of Philadelphia.

The journey of one of those signers of the Declaration of Independence provided a dramatic sidelight in our State's history to the daring and unprecedented action in the crucial session of the Continental Congress of 1776.

Delegate Caesar Rodney, who had returned to his home in Dover because of a serious malignancy that had spread over half his face, was notified that the Declaration would be acted upon within 24 hours.

This patriot thereupon got out of his sick bed, and although running a high fever, rode horseback during a stormy, rain-swept night the 80 miles from Dover to Philadelphia, changing horses many times in order to obtain the topmost speed.

Historians Merle Sinclair and Annabel Douglas MacArthur, in their detailed and documented account about the signers of the Declaration of Independence, said of Rodney:

> He had served his province for more than 20 years, and was a recognized leader in the movement to rescue Delaware from British rule.

Rodney arrived in time to sign the Declaration along with two other great patriots of Delaware, Thomas McKean and George Read.

The pilgrimage of that time, in July of 1776, was to Philadelphia, metropolis of the Colonies and having a population of almost 35,000. That city, as historians Sinclair and MacArthur relate, was "the logical meeting place."

It has now been recommended, Mr. President, that Americans—in fact, all citizens of the world—be given the opportunity to journey on another pilgrimage, 200 years later, to the birthplace of our Nation.

Once again, the logical place, as the historians said of 1776, will be Philadelphia.

The commemoration of the 200th year of our freedom—in 1776—will be national in scope and involve every State, city, town and hamlet, and all our territories and possessions.

But the city of Philadelphia, "the city of brotherly love," will be one of the main focal points and the scene of a possible unusual international exposition on a truly universal scale.

Pilgrimages, Mr. President, are one of mankind's oldest and most cherished urges to recapture faith, hope, principles, and ideals.

The American Revolution Bicentennial Commission, created and established by Congress, has submitted to the President its report containing recommendations for the commemoration of one of the most important peaceful—and I emphasize the word "peaceful"—events in world history in this bicentennial decade—the 200th year of our country's history.

The hardworking Commission—of which Dr. J. E. Wallace Sterling is Chairman, and Hobart Lewis, the president and editor in chief of Reader's Digest, the Vice Chairman, and M. E. Spector, the dedicated Executive Director—has, I know, been confronted with many questions.

It sometimes must have seemed as if every American wanted to help commemorate the event but that each had a different idea. Thus, Mr. President, hard decisions had to be made on the basis of fact, on what would be possible, and what was suitable.

The Commission has proposed a national "Festival of Freedom," divided into three major components: First "Heritage '76," second, "Open House USA," and third, "Horizons '76." Proposed commemoration activities of considerable magnitude are outlined for the Washington, D.C., area, Boston, Miami, and other cities.

The Commission was charged by law and by the intent of Congress to propose and oversee a possible world's fair, if the Commission deemed it suitable. I congratulate the Commission in its selection of Philadelphia. The Commission, as Congress intended, will be in charge from start to finish over all national events, including this proposed world's fair and this is as it should be because the Commission has organized or helped organize some 50 State commissions and scores of local bicentennial commissions; the National Commission must coordinate all these activities.

I ask unanimous consent that the brief portion of the Commission's report dealing with the world's fair be included in the body of the RECORD at the conclusion of my remarks.

I also ask unanimous consent, Mr. President, to have printed in the body of the RECORD at the conclusion of my remarks a brief analysis by the American Law Division of the Legislative Reference Service, Library of Congress, of certain responsibilities of the Commission as required by law and congressional intent.

The American Revolution Bicentennial Commission has met its responsibilities thus far in admirable fashion. It has many difficult tasks ahead in this bicentennial era. I am sure that all States and cities are prepared to help, and I know that Philadelphia has and is preparing a broad program for a universal fair.

In this age of plastic and chrome, the Commission has taken particular note of other possible ways in which to commemorate our freedom, not only going back to the past but looking forward to the future, socially and morally as well as materialistically.

I extend my congratulations to the public Commission members, the ex officio Cabinet members and the eight Members from the Congress. And last, but not least, I think the Commission staff, under Mr. Spector's excellent direction, deserves our compliments. These staff members include the Deputy Executive Director, Hugh Hall; the Director of Policy and Planning, Dr. Lynn Carroll, and his assistants, Martha Jane Shay and Nancy Porter; the Administrative Officer, Lamar Whitaker; the Deputy Administrative Officer, Edward T. Simms; the Executive Secretary, J. K. Morrison III; the General Counsel, Gene Skora; Administrative Assistant, Mrs. Particia L. Reynolds; the Special Events Officer, Pat Butler; and the International Affairs Expert, William Blue.

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

The American Revolution Bicentennial Commission's report to the President contains the following recommendations and suggestions regarding the possibility of an International Exposition in the City of Philadelphia in 1976 as part of the commemoration of the 200th year of our freedom:

"One facet of such international participation is an international exposition endorsed by the Bureau of International Expositions. The Commission has deliberated seriously and long about international participation. It has been greatly aided by the Department of Commerce which, with the cooperation of other Federal agencies, has carefully studied proposals presented to the Commission by the Cities of Boston, Philadelphia and Miami, and by the National Capital Region.

"As a result of these deliberations and studies, the Commission recommends: that the President commit the full support of his office to a great and imaginative multi-city exposition in 1976 to celebrate the American quest for life, liberty and the pursuit of happiness. There should be no commercially-oriented world's fair in the traditional sense anywhere in the nation during the Bicentennial Era.

"Philadelphia: To recognize that America is the product of many foreign lands, institutions and peoples, the Commission urges the fullest international participation in the fiscal year, 1976. For this purpose, the Commission is aware of the value of a Bureau of International Expositions (BIE) sanctioned event. Accordingly, if Philadelphia, where the Declaration of Independence and the Constitution were signed, will commit itself to an exposition which will have commemorative, historical emphasis, and which is cultural and inspirational, rather than commercial, in intent, the Commission invites that city to undertake the challenge of such an exposition."

Analysis of Certain Responsibilities and Powers of the American Revolution Bicentennial Commission—From the American Law Division, Legislative Reference Service, Library of Congress:

Just how broad the powers of this Commission are, and specifically if the Commission has the sole right to select and recommend to the President a possible site for a World's Fair in 1976?:

"Specifically, the enactment creating the American Revolution Bicentennial Commission sets forth the duties of the Commission as follows:

"(a) It shall be the duty of the Commission to prepare an overall program for commemorating the bicentennial of the American Revolution, and to plan, encourage, de-

velop, and coordinate observances and activities commemorating the historic events that preceded, and are associated with, the American Revolution.

"(b) In preparing its plans and programs, the Commission shall give due consideration to any related plans and programs developed by State, local, and private groups, and it may designate special committees with representatives from such bodies to plan, develop, and coordinate specific activities.

"(c) In all planning, the Commission shall give special emphasis to the ideas associated with the Revolution . . .

"(d) Not later than two years after the date of enactment of this Act, the Commission shall submit to the President a comprehensive report incorporating its specific recommendations for the commemoration of the bicentennial and related events . . .

"(e) The report of the Commission shall include recommendations for the allocation of financial and administrative responsibility among the public and private authorities and organzations recommended for partcipation by the Commission . . ."

Opinion as to the Actual Legislative Intent of the Legislation:

"In reporting the resolution to the Senate, the committee report (S. Rept. 1317, 89th Congress) stated in part:

" 'The Commission would (1) provide a creative and helping hand to State, local and private groups in their commemorations; . . . (3) plan for celebrations at the national level . . .'

"The House committee, in reporting the House Resolution (H.J. Res. 903), adopted an excerpt from the Senate report which included the above quoted language (H. Rept. 1672, 89th Congress).

"This language tends to indicate an intent on the part of the Congress to create a single Commission to plan and coordinate on a most comprehensive basis the commemoration of the American Revolution bicentennial. While World's Fairs usually tend to emphasize material and cultural achievements and forecasts rather than purely historical events, we see no reason why a World's Fair for the year 1976 could not appropriately be oriented toward a commemoration of the most historical events of the American Revolution. It seems to us, also, that because of the special importance that the nature, purpose, and operation of the Fair be fully integrated with the plans of the whole commemoration, the responsibility for recommending the site for such a Fair, if any, should rest with the Commission. The designation of the Secretary of Commerce as an *ex officio* member of the Commission, rather than as the office authorized to make recommendations regarding World's Fairs—which he normally is—suggests that it was contemplated that in this instance the Congress intended that any recommendation concerning a site for a 1976 World's Fair would be made by the American Revolution Bicentennial Commission.

"Further indication of the intent of the Congress was found in the committee reports with respect to the 1967 amendment (Public Law 90–187, 81 Stat. 567). The following excerpt from the committee reports (H. Rept. 509 and S. Rept. 609, 90th Congress) shows that, at least within the Judiciary Committees, the Commission was regarded as authorized to consider the question of a major international exposition:

" 'It appears that the Commission will consider the question of a major international exposition as a part of the bicentennial celebrations. In view of the fact that the Department of Commerce has the major responsibility in the executive branch for fairs and expositions held in the United States, it seems appropriate that the Secretary of Commerce should be an *ex officio* member of the Commission.'

"Thus, it can at least be argued that in enacting the 1967 amendment to the Act of July 4, 1966, the Congress intended that the Commission would be the only Federal agency charged with the responsibility of recommending a World's Fair in 1976 assuming, of course, that such a fair is planned as a part of the program to commemorate the bicentennial of the American Revolution.

"It is pointed out, however, that there is no specific language in the legislation which would give the Commission the *sole right* to select and recommend a site for the World's Fair in 1976."

Dates and Amounts of Authorizations for Appropriations:

"In proposing the legislation enacted as Public Law 89–491 the President recommended an authorization of $200,000 for 'the 24-month period beginning on the date of the enactment . . .' (see H. Rept. 1672, 89th Congress). However, the proposed resolution was amended by the committee on the Judiciary of both the House and Senate to delete the authorization of funds. It was felt in such committees that 'because of the great interest of all Americans . . . the Commission should be privately financed by publice donations' (see S. Rept. 1317 and H. Rept. 1972, 89th Congress). It was not until December 12, 1967, when section 7(a) of the Act was amended that funds ($450,000) were authorized for the Commission for the period through fiscal 1969 (Public Law 90–187). On October 10, 1969, this authorization was extended for one additional year, through fiscal 1970 (Public Law 91–84)."

Dates and Amounts of Actual Appropriations:

"The first Federal funds available to the Commission ($150,000) were appropriated on July 9, 1968, some two years after enactment of the basic legislation (Public Law 90–392). Additional funds, $175,000, were appropriated on October 29, 1969, by Public Law 91–98. Thus a total of $325,000 of the $450,000 authorized through fiscal 1970 has been appropriated."

MILITARY ASSISTANCE TO SAFETY AND TRAFFIC

Mr. TOWER. Mr. President, last Wednesday, July 15, the Secretary of Defense and the Secretary of Transportation announced Project Military Assistance to Safety and Traffic, called MAST, which utilizes military helicopters to speed to hospitals highway traffic victims and others injured far from medical help.

The project is being tried on an experimental basis in San Antonio with the cooperation of the Army's 507th Air Ambulance Company stationed at Fort Sam Houston, the Bexar County Sheriff's Department, and the Texas Department of Public Safety.

Project MAST is designed to test the feasibility of applying to civilian life the technical expertise we have learned in speeding battlefield casualties to medical help. The Defense Department attributes rapid evacuation by helicopter as one reason for a decline in the death rate of wounded soldiers from 4.5 per 1,000 during World War II to 2.3 per 1,000 in Vietnam.

Mr. President, I am pleased to announce that it took only 2 days for Project MAST to prove its worth. At 9:30 a.m. Friday, July 17, David J. Gomez, 16, fell from a truck near Dilley, Tex., and was run over by the truck. He was rushed to a small rural hospital where a doctor determined that only more advanced intensive care facilities could save his life.

Emergency airlift was requested and 1 hour and 35 minutes later an Army helicopter had traveled the 70 miles from San Antonio to Dilley, loaded Gomez aboard, and returned to Baptist Hospital in San Antonio where Gomez underwent immediate surgery.

A hospital spokesman said Gomez would not have lived had he not received intensive care. Gomez remains in intensive care but was reported today in "fair" condition.

Mr. President, Project MAST has proved its worth. Of course, the pilot project will continue in order to assess economic feasibility and other considerations. But no one can assess the worth of a human life. In my opinion, Project MAST paid for itself several times over within only 2 days.

I am hopeful that this program may be expanded to other parts of Texas which can be served by military air ambulances, and to other parts of our Nation as well. In rural areas where intensive medical care facilities are many miles away, air ambulance service can mean literally the difference between life and death, as it was for young Gomez last Friday.

I ask unanimous consent that a newspaper article describing Friday's lifesaving activity, written by Lewis Fisher, and published in the July 18 San Antonio Express-News, be printed in the RECORD. I also ask unanimous consent that a press release issued July 15 and an article written by John Mort and published in the July 16 Houston Chronicle, both describing Project MAST, be printed following the article by Mr. Fisher.

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

[From the San Antonio Express-News, July 18, 1970]

HELICOPTER AIRLIFT SAVES YOUTH'S LIFE

(By Lewis Fisher)

A Dilley teen-ager apparently owes his life to the first flight of a military helicopter airlifting a civilian traffic victim Friday morning to a metropolitan hospital.

The military-civilian cooperative effort was announced Wednesday by Defense Secretary Melvin R. Laird and Transportation Secretary John A. Volpe. The San Antonio pilot program was the first in the nation to begin, and Friday's airlift was its first test.

David J. Gomez, 16, was in satisfactory condition Friday night at Baptist Hospital in San Antonio following his flight from Wintergarden Hospital in Dilley.

At 9:30 a.m. Friday, Gomez fell off a farm truck he was riding near Dilley and was run over by the wheels. He was taken to Wintergarden Hospital, where Dr. George Douglas decided that only more advanced intensive care facilities could save Gomez' life.

At 10:30 a.m. Dr. Douglas requested the emergency airlift from Fort Sam Houston and arranged for Gomez' care with Dr. John Williamson, a colleague at Baptist Hospital.

"We were in the air within two minutes," recalled Capt. Samuel B. McLamb, pilot of the UH–IH craft which was one of two on 24-

hour alert at the 507th Medical Company (Air Ambulance) hangar at Fort Sam Houston.

At 11:20 a.m. the helicopter arrived at Dilley. Five minutes later Gomez was inside, along with his mother, Mrs. Olivia Gomez, and his brother Richard. The helicopter took off and set down on the Baptist Hospital's specially-constructed helipad facing Madison Square at 12:05 p.m.

Within minutes Gomez, then in critical condition, was undergoing surgery in the intensive care unit.

Gomez was suffering from a broken left thigh, broken shoulder blade, an eye injury, multiple rib fractures and chest and internal injuries. Baptist Hospital spokesmen said ordinarily he would not have survived.

"Speed was imperative," said Dr. Williamson. "Airlifts like this are tremendous assets."

Co-pilot with Capt. McLamb was Capt. Gary Brownell. Crew chief was Spec. 5 Robert Bohler and corpsman in attendance was Spec. 5 Jeff Geary. All are veterans of medical airlifts in Vietnam.

Noted Capt. McLamb, who plans to enter medical school in September, "This was the same as Vietnam, without the hostile fire."

PROJECT MILITARY ASSISTANCE TO SAFETY AND TRAFFIC—MAST

The following is the substance of a news release being made today.

Secretary of Defense Melvin R. Laird and Secretary of Transportation John A. Volpe today are announcing a joint test program to determine the value of helicopters in providing medical assistance to auto accident victims and other persons needing emergency medical care.

The test program, to be conducted in the San Antonio, Texas, area from July 15 through December 31, will use Army helicopters and medical corpsmen to provide medical assistance to civilians involved in emergency situations. It will utilize techniques developed during the Korean and Vietnam Wars to provide medical aid and evacuation for wounded soldiers.

The rapidity of evacuation by helicopter has been determined as one reason for the death rate of wounded soldiers declining from 4.5 per 1,000 in World War II to 2.3 per 1,000 in Vietnam.

Most assistance is expected to be for victims of highway accidents, but the test will also provide transportation for doctors needed by critically injured or ill persons, especially in remote rural areas.

The Army's 507th Air Ambulance Company, Fort San Houston, will maintain one UH–1 "Huey" helicopter and crew on constant alert to respond to emergency calls. The UH–1 can transport three stretcher and four sitting patients plus flight crew and medical personnel.

Request for assistance by the Army will be routed through the Bexar County Sheriff's Office. Sixteen civilian and two military hospitals in the 10-county area of the test program are to be involved in the program.

It is expected that the program will help determine the effectiveness of communications and coordination systems, training requirements for civilian and military participants, number of missions during an average time period, and the feasibility of the use of reserve Army aviation units.

Decision to initiate the program was based on Departments of Defense and Transportation studies in conjunction with the Departments of Justice and Health, Education and Welfare and other federal, state and local authorities.

MILITARY TO TRY AIR AMBULANCE IN SAN ANTONIO

(By John Mort)

WASHINGTON.—Federal officials announced today a pilot project in which air evacuation methods learned in Vietnam will be applied to civilian emergencies in this country, particularly traffic accidents.

The experiment will be conducted in San Antonio beginning today and lasting until the end of the year.

Military helicopters will be used along with military medical personnel.

The program will work this way:

A law enforcement officer will radio the local sheriff's office requesting a helicopter. Military crews on a standby basis around the clock will scramble and fly to the scene of the accident, emergency aid will be administered and then the victims flown to the nearest hospital.

Medical personnel will radio ahead to the hospital emergency room what kind of injuries have been suffered.

An air ambulance company at Ft. Sam Houston will conduct the experiment in coordination with the Bexar County Sheriff's office.

Four civilian hospitals in San Antonio have helicopter landing pads. There is another at Brooke General Hospital at Ft. Sam Houston.

While the program is aimed primarily at taking care of traffic accident victims, it also would be concerned with flying doctors to treat critically sick persons in remote rural areas and also to bring these sick people in to hospitals.

The project was announced jointly by Defense Secretary Melvin Laird and Transportation Secretary John Volpe.

Laird said that trauma resulting from accidents is the greatest cause of death among persons under 35 years of age.

He said the military has learned in Vietnam that battle deaths can be cut substantially by rapid evacuation of wounded in helicopters.

Laird said federal officials will study "the cost effectiveness" of the pilot project and if it is found worthwhile, similar projects will be conducted in other areas of the nation.

The Defense Department will pay for the program.

Laird said several states and communities have experimented with using helicopters for medical emergencies but often had found the costs of training personnel and of the aircraft prohibitive.

But as the war winds down in Vietnam, he said, many helicopters will become available as surplus.

"Also, we've trained a great deal of military helicopter pilots since 1965. Many of them are returning to civilian life and will be available for this work."

Volpe said if the project works out effectively, the military may continue to provide the air ambulance service for civilian communities.

The San Antonio project will cover a 10-county area. Fifteen helicopters (UH-1s), 21 pilots and 10 corpsmen trained in medical aid and evacuation will be assigned to the test program. Almost all of the men are veterans of Vietnam.

THE TRUE STORY OF ROTC

Mr. GOLDWATER. Mr. President, it is practically impossible for the services to get favorable attention from the press and other media of the country, so in the hope that Senators might be able to know the true picture of ROTC as they see repeated stories of colleges dropping the units that I should like to offer the following statistics.

This is prompted by a report in the press that Trinity College, at Hartford, Conn., and New York University will end their ROTC programs by June of 1971, and that Princeton University and Washington University in St. Louis will end theirs in June of 1972.

To read only this part of the whole story might give the reader the impression that ROTC is in real trouble. Far from it; there are 72 schools awaiting application for Air Force ROTC and 171 have it at the present time. The Army has 279 units, and 40 colleges are awaiting applications.

As a person who acquired his commission in the Army and ultimately in the Air Force Reserve through ROTC, it has long been my suggestion to the branches of the service that any college that does not want ROTC should have it taken away immediately, and every college that we can accommodate should be allowed the privilege of a unit. It does not surprise me that some of the radical left institutions are dropping ROTC, but the services will be far better off without them, and I would not be surprised if a better product were coming forth as commissioned officers.

I ask unanimous consent that an article on this subject be printed in the RECORD.

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

AIR FORCE WILL DROP ROTC AT FOUR COLLEGES

The Air Force has agreed at the request of four universities to disband reserve officer training corps units at the schools over the next two years.

Trinity College, Hartford, Conn., and New York University will end their ROTC programs by June 1971, and Princeton University and Washington University in St. Louis by June 1972.

OIL IMPORTS

Mr. GRIFFIN. Mr. President, I want to register my strong concern regarding the action taken last week by the House Ways and Means Committee, which, if adopted by Congress, undoubtedly would prevent the abolition of oil import quotas in the foreseeable future.

Of particular concern to me is the effect of such action on the temporary quota which was placed on imports of Canadian oil. While I am far from happy with the 10-month quota placed on Canadian imports, the House Committee action would, in effect, "lock in" a quota system for all oil imports, including Canadian oil, for an indefinite period of time. Despite the fact that, theoretically, the committee action would not prohibit the elimination of quotas or the establishment of high quotas, the net result is likely to be the same.

Such action is not in line with the "interim control" measures announced by the President at the time of instituting quotas on Canadian oil imports and is clearly counter to the recommendations of the Cabinet Task Force on Oil Import Control.

In announcing the imposition of quotas on Canadian oil, the President tempered his action by stating:

It is expected that discussions will continue with Canada looking toward the conclusion of an agreement permitting freer exchange of energy resources between the two countries.

The task force in recommending a changeover from a system of quotas to a

system of tariffs concluded that national security reasons do not exist for restricting Canadian oil imports indicating that such oil "is nearly as secure politically and militarily as our own." Accordingly, the task force recommended:

That, after an appropriate transition, Canadian and Mexican imports be exempt (from higher tariffs) if common energy accords can be arranged with these governments.

Since 1959 when Presidential Proclamation 3279 placed the mandatory oil import quota system into effect, the only restrictions on Canadian imports have been as the result of voluntary agreements between the United States and Canadian governments. Under the House committee action any form of control over oil imports, including voluntary agreements, would not be permissible. All flexibility to the President in dealing individually with different import situations and different national security considerations would be removed.

To underscore the disastrous effect which the House Ways and Means Committee action could have on the consumer, the employees of industries utilizing oil resources, as well as the industries themselves, let me focus on my State of Michigan.

Under the present quota system, the task force determined that the cost to consumers in Michigan in 1969 was $209 million and approximately $5 billion nationally. In other words, each person in Michigan paid $24 in 1969 as the result of quotas on foreign oil imports. For a family of four the cost would be nearly $100.

To be more specific, oil import quotas cost Michigan residents in 1969 over 10 times as much as the State spent on all environmental programs in that year and only slightly less than the total State budget for all higher education assistance or the amount allocated for all welfare payments.

On top of this burden to Michigan residents has been added the restriction on Canadian oil imports from March 1, 1970, to December 31, 1970. At the time when the quota of 395,000 barrels per day on Canadian oil imports into the Midwestern and Eastern parts of the United States was put into effect, the level of daily imports had reached nearly 550,000 barrels. While a portion of this high level is normal in the early winter months, a substantial part is also due to the decrease in the availability of domestic sources for Michigan users, as well as other users in Northern and Midwestern States.

For instance, Michigan crude oil production has declined nearly 40 percent in the last decade and at present accounts for only 27 percent of the demand for crude petroleum in the State. In addition, other domestic resources have leveled off or decreased their supplies to Michigan with the exception of West Texas. However, the cost to Michigan users from this source runs from $0.50 to $1 per barrel above Canadian costs. This oil is the most expensive domestic source for Michigan users.

With respect to gasoline prices, it has been estimated that consumers in the Midwest may have to pay an additional 11½ cents per gallon because of the quotas on Canadian oil imports.

It should also be pointed out that in some instances Canadian crude oil is the only source of supply to Michigan and other Northern States. This is particularly true with respect to manufacturers of petrochemicals, a major product in Michigan. Such producers who are denied access to low-cost Canadian petroleum are forced to pay at least 60 percent more for crude oil and, thereby, cannot realistically compete with foreign producers. In fact, to avoid the restrictions of our present policy, a number of U.S. producers have simply located their new plants abroad. The effect on employment is obvious. Furthermore, indefinite continuation of present restrictions on Canadian imports is likely to lead to the shutdown of additional plants within the State resulting in the layoff of hundreds of employees. In view of Michigan's current high unemployment level, the prospect of further layoffs is not at all pleasant.

While present oil import policies place a heavy burden on Michigan, as well as the entire country, serious adverse consequences may ensue if oil imports can be controlled only through the quota mechanism.

Although our oil import program has always been justified in terms of our national security, and we obviously need to protect our domestic petroleum supply, there should be a limit on what we have to pay for that protection.

Accordingly, I intend to oppose vigorously any measure which requires the exclusive use of quotas to control oil imports. Furthermore, I believe that a better balance can be struck between national security considerations and the economic well-being of the country by adoption of either the Cabinet task force recommendations or some similar system. The American consumer deserves no less.

AMERICAN CASUALTIES DROP

Mr. DOLE. President Nixon's efforts to wind down the war in Vietnam have resulted in not only an overall troop reduction from a high of 532,500 when he took office to the present 413,900, but they also are reflected in the substantial reduction in the number of Americans killed and wounded.

Weekly U.S. casualty reports this month continue to reflect a downward trend, evidence that the destruction of enemy supplies during the Cambodia operation and the success of the Vietnamization program have lived up to the President's expectations.

Statistics show that from the first half of 1968 to the first half of this year, American deaths in Vietnam have been reduced by two-thirds, that is 66.7 percent. The number of Americans wounded has likewise been reduced by a similar margin, 66.9 percent. Deaths for the first half of 1969 contrasted with the first half of 1968 show a reduction of 38.8 percent; and from 1969 to 1970, by 49.7 percent.

The number of Americans wounded the first half of 1969 as contrasted to 1968 shows a reduction of 25.8 percent; from 1969 to 1970, 55.4 percent. Approximately one-half of those classified as "wounded" are not hospitalized and remain in the field for treatment. The figures for the first two quarters of each year are used because 1970 is only half over.

THE ASSAULT ON AMERICAN INDUSTRY

Mr. GOLDWATER. Mr. President, because I know that Senators are deeply interested in the security of our Nation, I invite attention to an extremely fine speech relative to this subject which was delivered July 10 before the Commonwealth Club of San Francisco by Mr. Robert Anderson, president and chief operating officer of North American Rockwell Co.

Mr. Anderson declared that the United States is now in second place behind the Soviet Union in the development of new weapons at a time when the military-industrial relationship in this country is under concerted attack. He concludes with the assertion that this Nation must continue its technological leadership because to default "means the passive acceptance of major risks in our national security.

"And without security all else is fruitless," Mr. Anderson said.

America's defense shield must not be shaped by harangue and denunication and newspaper headlines. It must continue to be forged in the councils of the Presidency, within the Joint Chiefs of Staff, and in the Congress of the United States.

I believe that Senators will agree with me that Mr. Anderson places the whole subject of America's defense establishment with its industrial backing into its proper and reasonable perspective.

I ask unanimous consent that the speech be printed in the RECORD.

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

THE ASSAULT ON AMERICAN INDUSTRY

(Remarks by Robert Anderson, President and Chief Operating Officer, North American Rockwell, before the Commonwealth Club, San Francisco, California, July 10, 1970)

GENTLEMEN: The military-industrial relationship that we hear so much about in this country was not invented in 1968 or 1969.

It has existed for nearly two hundred years, but it's only become a significant factor with the advent of sophisticated weapons systems which demand the closest teamwork between industry and the government.

That teamwork has meant much to this Nation's security.

Yet, despite the high priority we all place on national survival, the defense industry today is being subjected to incredible denunciation. The attack has a violence unparalleled in American history.

Although some of the provocative headlines would have us believe otherwise, most Americans do not believe that large corporations are inherently evil, or that preparation for defense is of itself immoral.

Yet so vehement have been the attacks, that many sincere people are troubled when they read of excessive profits, cost overruns, lack of government control over expenditures, and so on.

We have a two-fold danger facing us in the continued harangue by those who oppose this relationship. The first is the undermining of public confidence in the integrity of defense procurement. The other is the destruction of morale of the dedicated men and women who are part of the defense establishment—whether in government or industry.

The critics have had the field to themselves, confident that there would be no vigorous opposition, and hoping that there would be just silent acceptance of the charges.

To refute that thought is the reason I'm here today. This is the right time and the right audience—American businessmen who can form a serious judgment, not on what is spectacular, but on what is factual.

I can't be entirely objective in my approach, for North American Rockwell is one of the nation's major aerospace contractors and was recently awarded the very large Air Force B–1 weapons system contract.

However, I do believe there are two factors that enable me to take a broad view of the entire controversy. First, North American Rockwell is one of the major aerospace companies that is substantially engaged in both commercial and government activities. Also, in my own case, because I came from the automotive industry less than three years ago, I believe I can view the matter with a new perspective.

Aerospace represents a great portion of American industry. There are one million, two hundred thousand people employed in building this country's military and commercial aircraft, its defense missiles, its space vehicles, its advanced guidance systems and its rocket engines. It's the largest manufacturing employer in the nation.

Aerospace in 1969 had sales of more than 28 billion dollars. Its export sales of more than 3.1 billion dollars made it the biggest industrial contributor to our balance of payments.

The opponents of this business, which has contributed so much to the military security and the economic growth of the country, have rallied around the phrase, "The military industrial complex," giving the words an accusatory ring.

It was General Eisenhower, as you know, who originated the phrase when he urged the nation to guard against "the acquisition of unwarranted influence by this complex," and he has been quoted out of context ever since.

Completely lost in the sound and fury created by those who picked up only the partial statement is the full meaning of his remarks. "A vital element in keeping the peace," General Eisenhower continued, "is our military establishment. Our arms must be mighty, ready for instant action, so that no potential aggressor may be tempted to risk his own destruction . . . We can no longer risk emergency improvisation of national defense; we have been compelled to create a permanent armaments industry of vast proportions." End Eisenhower quote.

It is essential to keep in mind that the role of the military/industrial complex is not in making public policy, but in carrying it out. Viewed in that respect, industry and government must work together toward common goals. It would be a national disgrace if they did not.

Fortunately, the two have always worked together and practically all of us in this room have been witness to the results.

You remember the morning of April 12, 1942, when Jimmy Doolittle lifted the first of his B–25 bomber squadron from the decks of the carrier Hornet and headed for Tokyo. How do you assess the value of Doolittle's bravery combined with the military-industrial effort that placed those bombers at the right place, at the right time?

Perhaps some of you were in the B–17 bombers flying over Germany when the first of the P–51 Mustang long-range fighters drew alongside to afford protection. Who can correctly assess the contribution of the industry that developed the aircraft which helped turn the tide of the air war?

We do not confine our security contributions to aircraft alone. Many of you remember the strident urgency of 1954, 1955, and 1956 when it became known that this nation could very well be on the receiving end of Russian nuclear intercontinental ballistic missiles.

We had the Atlas ICBM propulsion system ready—on time; we had the Thor intermediate ballistic missile propulsion system ready—on time.

These achievements and events are fresh in our minds yet we are witnessing today, with these continous unwarranted attacks on our defense industry, a gradual erosion, a weakening of this nation's defense posture. That, gentlemen, is a matter of grave concern.

John Kennedy, in his inimitable manner, could alert the nation with a ringing statement.

"There can be only one possible defense policy for the United States.

"It can be expressed in one word.

"The word is first.

"I do not mean first, but.

"I do not mean First, when.

"I do not mean First, if.

"I mean First-Period."

End of Kennedy quote.

To the critics, however, the words of Eisenhower and Kennedy are nothing more than rhetoric, and rhetoric which they twist to other ends.

Let's look at some of the charges.

One of these pertains to the size of the defense and aerospace industry. "Most of the big military contractors," they say, "could not survive without weapons business,"—with the implications that corporations are influencing defense expenditures.

True, there are a handful of major aerospace companies almost entirely devoted to government work. However, according to Moody's Industrials, the defense portion of the 25 largest prime defense producers in 1969 accounted for less than one-seventh of their total business. Most aerospace companies are becoming increasingly diversified, with a wide range of commercial and industrial endeavors. Typically, they subcontract half of their prime contracts.

Let me assure you that American industry can survive without the so-called "crutch" of defense spending. Nevertheless, the defense industry is being hurt badly by the ceaseless attack on the integrity of its highly skilled employees who see years of dedicated effort being dismissed as of no importance or as of outright moral harm.

Another belief propagated is that spending for aerospace and defense needs has grown during the past five or six years at the expense of providing for health, income security, aid to the poor, education, and other social programs.

First, let me emphasize that it is the elected representatives of the people, and not industry, who rightfully set national priorities.

The significance of Congressional-established national priorities was stated with great clarity last December by Dr. Arthur Burns, now chairman of the Federal Reserve Board, who said, "The explosive increase of federal spending during (the decade of the '60s) is commonly attributed to the defense establishment, or more simply to the war in Viet Nam.

"The fact is, however," Dr. Burns continued, "that civilian programs are the preponderant cause of the growth of the federal budget. When we compare the budget of 1964 with the estimates for this fiscal year, we find that total federal spending shows a rise of $74 billion, while defense outlays are larger by only $23 billion. . . . Thus, the basic fiscal fact is that spending for social programs now dominates our public budgets.

Dr. Burns' comments are underscored by the fact that in this current fiscal year, we will spend less on defense as a percentage of our gross national product—7 percent—than in any one year in the past 20 years.

Today, an estimated 36 percent of the Federal budget is allocated for defense—this is in contrast with the 61 percent in 1952.

More than half of the defense budget of 77 billion dollars is for personnel and operating costs. Military personnel costs this year are around $23 billion. Another $22 billion goes to operations and maintenance. Less than half is used to procure equipment and services from industry.

Moreover, in those declining percentages there is a hidden fact that could spell acute danger for this nation.

This country is in second place behind the Soviet Union in the development of new weapons system. Let me repeat, we are behind the Russians at this moment.

The Soviet Union has invested the equivalent of $16 billion this year in defense-related research, development and applications. What has the United States allocated?

$13 billion dollars—three billion less than the Soviet Union.

Those figures, by the way, are taken from statements by Dr. John S. Foster, Director of DOD's Defense Research and Engineering.

Continuation of that downward trend, spurred by these relentless attacks, is a direct threat to America's long-time confidence that it can meet any challenge in defense, in atomic energy, or in space.

What adds to the seriousness of this lagging research and development effort is the certainty that never again will we have the luxury of time to catch up if an enemy attacks. Never again will we have the nearly two years between the invasion of Belgium and the sinking of the Lusitania. Never again will we have a year and more between the Battle of Britain and the disaster at Pearl Harbor.

Defense-related research and development is a vital activity.

However, the cirtics are suspicious of any activity, including research and development, because of what they contend are the "fat profits" in aerospace participation.

What IS the profit picture?

The most penetrating and exhaustive analysis of corporation profits was a study by the Logistics Management Institute, a non-profit organization, which compared the profits of 40 companies substantially engaged in defense production, with 3,500 companies not engaged in defense.

The results of this broad-based analysis showed that profit on sales for the commercial and industrial companies was almost double that for defense-related works, and profit on investment in non-defense efforts, since 1963, was 40 percent to 74 percent greater.

Last November, Congress authorized the General Accounting Office to undertake a study and review, on a selected basis, the profits made by contractors and subcontractors where there is no formally advertised competition.

The results of that study will be available at the end of this year, and I am convinced they will support the previous LMI study.

At North American Rockwell, we've had a

striking demonstration of this disparity in percentage of profits. Our Commercial Products Group, last year, had sales which amounted to only 40 percent of the $2.6 billion corporate total—yet that group contributed over 75 percent of our entire corporate earnings.

What could be more graphic than those percentage figures?

Related to this matter of profits is another popular myth about the supposedly low risk involved in aerospace programs. The critics would have the public believe there is no risk in advancing the frontiers of technology; or to the extent there is risk, that the Federal Government underwrites all the risk involved in space and defense programs.

Again, the facts just do not support this belief.

Until recently, when there was a change in the contract ground rules, financial risk had shifted so heavily to the industry side that a company could be betting its corporate existence that it would be able to remain afloat while producing the goods or services required by the Government.

As an automotive man, I was amazed by my first encounter with the Total Package Procurement Concept.

The fixed-price total package procurement process embraces the entire span of a program from concept through development, into production. The concept was supposed to eliminate both schedule slips and unpredictable cost increases. Further, it was intended to balance the contractor's commitment along the thin line between appropriate financial risk, on the one hand, and catastrophic corporate loss on the other.

In practice, the concept not only delayed the procurement of many needed systems and equipment, but it also fostered an utterly unrealistic budgeting process.

The Harvard Business Review referred to this concept as "being at war with reality." It simply did not recognize the facts of life as known by American industry.

Can you imagine an automobile manufacturer contracting at a fixed price to deliver a model 1977 automobile six years from now? And an automobile, let me add, is infinitely less complicated than a modern weapons system.

That's exactly what was asked of the aerospace industry.

Those much-publicized cost overruns were not synonymous with waste; neither were they a symbol of excessive profits. Rather they were the surface reflection of the cost uncertainties inherent in developing and manufacturing advance systems.

No business is ever perfect, of course, but what is never captured in the blazing headlines of cost overruns is the reality of endless changes, of inflation, of the costly impact of solving problems which could not be foreseen. These are the realities which accompany the advancement of technological frontiers.

It was thought in the last decade that these cost risks could be contained by the magic formula of the fixed-price contract. Many companies—and many procurement specialists within the Department of Defense—knew better. Even the procurement policies which were established—carefully read—recognized the distinction between producing a system which had been fully developed and engineered.

Unfortunately the distinction was lost sight of and the policies were applied unrealistically.

Despite all this, if a company wanted to stay in the business, it had to go along. It was like walking blindfolded in a minefield —and we've seen some of the results.

I do not need to recount the story of the many companies which have suffered a severe contraction of profits, and in some cases very large losses.

It is encouraging to note that the unrealistic policies of the past have been recognized by the Department of Defense as just that; unrealistic.

Under Deputy Secretary of Defense David Packard we have new, positive, realistic thinking on this contract question. Recently, he issued a milestone directive that talks common sense regarding improvement in the management of programs, the necessity for practical trade-offs between operating requirements and engineering design, risk assessment, and sensible program scheduling.

The Secretary placed his finger on the solution when he said, and I quote, "When risks have been reduced to the extent that realistic pricing can take place, fixed-price type contracts should be used." End quote.

With the major contracts now being let by the Department of Defense, industry will be able to fulfill its responsibilities more effectively and efficiently than in the past. They allow the latitude necessary in developing these highly complex, highly sophisticated weapons systems, while at the same time giving the Government its full dollar's worth.

The critics who err about the size and influence of defense procurement also err in assuming defense spending is out of control. In fact, one Senator's own words contradict his assertion that, quote "Military spending in the United States is out of control," unquote. This senator also says, "A great many gimmicks should be done away with. The services should reduce or stop, because of their obvious ineffectiveness, such programs as Pert, Pep, Value Engineering, Human Engineering, and the Zero Defects concept." End of quote.

Encompassed by these terms, Pert, Pep, and so on, is a tremendous achievement by both industry and the Department of Defense—the establishment of a systematic methodology to carry out extremely complex tasks. Without these techniques of program control and employee motivation this country would have been unable to field the Minuteman missile, or to land men on the moon, or to carry out a host of other difficult projects.

Let me stress that the very purpose of these advanced management concepts is to save time and money and to produce the best possible product. Their effectiveness is demonstrated by the fact that they are being adopted on almost every complex project in civil construction, and in commercial and industrial fields.

We're not trying to stamp out constructive criticism. We expect it; we can learn from it. But we are entirely opposed to the extremists who aim, not at correction, but at destruction. They want to disband our military establishment, and abandon our defense-related capacity.

John Kenneth Galbraith, for example, has stated that the solution of all our ills is nationalization of the defense industry.

What would be the consequences of nationalization? Another post office operation? In July 1969 Fortune magazine said: "There is some danger that the generally competent and innovative American aerospace industry could become simply a job shop to government." "The companies," Fortune said, "could end up in the situation of the old-fashioned American shipyards, which relegated the design function to the Navy's former Bureau of Ships or to outside naval architects, and thereby lost the production efficiencies that accrue when designs are drawn with productibility in mind." (Close quote.)

To me, nationalization would be national disaster, and I believe the best answer to Mr. Galbraith was the silence that greeted his proposal.

In this troubled world beset by man-made problems in population, in transportation, in housing, in communications, and in pollution, there is need for exactly the type of expertise demonstrated by the aerospace industry during this past year in America.

The problems facing us are gigantic, nation-wide, even world-wide in scope. Their solution will require technical skill and management skill of the highest order. The best management, in terms of inventiveness is in the industry that has built the world's foremost supersonic, trisonic, and hypersonic aircraft; the industry that has developed "miracle" guidance systems; the industry that has ringed this nation with defensive ICBM's, and bridged the gap to the moon.

But I do not want to leave you with the mistaken impression that we stand now as pillars of strength ready to take on all adversaries. We have been hurt by this endless tirade of abuse, and all of us in business must act vigorously to overcome this constant erosion of American defense capability.

We are determined to resist that erosion.

Our positive refutation to the strident, uninformed voices will be our continuing effort to furnish the most efficient and effective systems required for the defense of this nation.

This nation *must* continue its technological leadership. To default, to let that leadership slip away to Russia without further protest, means the passive acceptance of major risks in our national security.

And without security all else is fruitless.

America's defense shield must not be shaped by harangue and denunciation and newspaper headlines.

It must continue to be forged in the councils of the Presidency, within the Joint Chiefs of Staff, and in the Congress of the United States.

The need for a strong industrial base, for a strong, free American industry to help carry out their decisions, is self evident.

In this technological age, let us continue to answer the world-wide technological challenge.

Let the industry that has responded so many times before get on with the job.

Gentlemen, thank you.

GENERAL GEORGE CASEY AND GENERAL NGUYEN VIET THANH—EXAMPLES OF PATRIOTISM

Mr. TOWER. Mr. President, recently our military has received much criticism, I feel that it is important to remember that many of our military men feel a great responsibility to their country and are fine examples of patriotism. I ask unanimous consent to have printed in the RECORD a new commentary concerning Gen. George Casey and Gen. Nguyen Viet Thanh. Both men gave their lives for their countries. Their records of service help to balance the currently fashionable view of the militaristic soldier.

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

FRANK REYNOLDS COMMENTARY ON ABC–TV EVENING NEWS, JULY 9, 1970

It seems fair to say that professional soldiers are not at the top of the list of the most admired men in America these days. For many people, just to hear the words, "The generals in the Pentagon", or "The generals in Vietnam", is to think of heartless types concerned only with personal glories, caring nothing about the men they commit to battle.

Perhaps that was not entirely an inaccurate image of high commands in past wars, but it is completely wrong in the present one.

In the last two months, both the United

States and South Vietnamese have lost general officers who were wholely devoted to their profession and to their troops. General Nguyen Viet Thanh of the South Vietnamese Army was killed in a helicopter crash just a few days after the Cambodia invasion began. South Vietnamese generals are generally thought of as a bunch of corrupt smugglers or black market operators and unfortunately some have fit that description.

But there are exceptions. After General Nguyen Viet Thanh died, it was discovered that his entire estate consisted of a few sets of fatigues, one dress uniform, one wife and seven children. No palatial villa by the sea, no Swiss bank account, not even a motor bike.

General George Casey, the Commander of the First Air Cavalry Division, who is now missing in Vietnam was one of those men who had "soldier" written all over him. There was no trace of the martinet in him; he was a man for whom the responsibilities of high command were much more important than its privileges. He accepted all of the first, and abused none of the second.

General Casey and General Nguyen Viet Thanh knew war and hated it, perhaps more than the rest of us. They were splendid examples of military men who are not really militaristic. We don't give them much credit these days as some of us shout and all of us long for peace now, but it is still an imperfect world and the time will certainly come when not only will the George Casey's be needed, they may even be appreciated.

AS I SEE SOUTHEAST ASIA—PAPER BY GENERAL NICKERSON

Mr. GOLDWATER. Mr. President, one of America's distinguished military leaders, after having served many years in Southeast Asia, including duty in China and Korea, culminating his service as commanding general of the 3d Military Amphibious Forces in Vietnam, has written his impressions of Southeast Asia.

He has prepared a paper which has been published by the Supreme Council, 33d degree Ancient and Accepted Scottish Rite of Free Masonry. I have known Gen. Herman Nickerson for many years, and I have watched him in service in Southeast Asia. I know of the tremendous respect and admiration that people in all branches of the service have for him.

What he has written is a short paper that I think could be well read by Senators; therefore, I ask unanimous consent that it be printed in the RECORD.

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

AS I SEE SOUTHEAST ASIA

Communism is and has been, from its very beginning, a world revolutionary movement.

Nevertheless, in recent years, there has been a tendency in the free world to minimize the dangers of revolutionary communism due to fragmentation in leadership, the multiplicity of states and parties, the decline in unity of the communist world, and its declining appeal to underdeveloped countries. These factors may very well have slowed the world revolutionary aspect of communism.

However, once communism became firmly established in Russia, it also became expansionistic and imperialistic with the avowed goal of world domination. These basic characteristics of communism have not changed. In fact, with the declining appeal of revolution they have concurrently so strengthened their military position that a military confrontation becomes more possible than ever. Their goal of world domination would be achieved by "peaceful means" (revolution) or, if need be, when the time comes, by the force of arms.

An inherent quality of expansionism is that it will not permit itself to lose what it has already gained, just as a dictator cannot permit himself to mellow. Witness Hungary and Czechoslovakia. The Soviets demonstrated a willingness and readiness to use force to ensure that the tide did not commence to turn against them.

In the Middle East, the Soviets are sacrificing their "ideological pride" in pursuit of their goal of world domination. They have inserted themselves and become dominant in a region where the Czars failed for centuries. They can afford to worry about ideology later. The fact is that they have supplied arms to the Arab nations, not for the sake of supporting the Arab cause, but to promote their long range goal of domination in this area of the world. Rest assured that, if there is danger of their losing their foothold in the Middle East, they will be just as willing to resort to force as they were in Czechoslovakia.

In Vietnam and Southeast Asia, it is again expansionism—whether it is Russian or Chinese type is immaterial—it is communist expansion with the goal of world domination. The Russians may pay lip service to their desires to end the war in Vietnam—but the fact is that they continue to support North Vietnam materially and there are no indications that that support has in any way diminished. The expansionist pressures become more evident every day—in Laos as well as South Vietnam, and the beginnings of the same in Thailand. Instead of debating the credibility of the "domino theory" perhaps we should start becoming concerned about the "house of cards theory"—if we withdraw, all of Southeast Asia may collapse simultaneously.

It is time we recognized the real threat of communism today—it is a godless, dictatorial, imperialistic, expansionistic movement with the goal of dominating the world and each and every success of the communists makes our position more and more vulnerable. We must develop the internal posture necessary to thwart their goal.

Now let's consider the United States' position in Southeast Asia. The U.S. involvement is in response to the plea for help from the Republic of Vietnam. Traditionally we have responded by coming to the aid of people faced with an aggressor in their land. It is a counter-insurgency involvement.

A counter-insurgency is a war of limited objectives. Even with the rules or engagement as we have seen them applied in Southeast Asia, the present action in Cambodia, aimed at eliminating sanctuaries there, is only a logical and proper tactic for the military commander to undertake.

In the northern five provinces of the Republic of Vietnam, called I Corps, the same kind of sanctuaries exist, both in Laos and in the DMZ.

The problem is to understand that the communists will not be forced to negotiate until they have suffered a meaningful military defeat. The North Vietnamese Army occupied Hue and then was completely defeated there in 1968. I know of no victories at all for these invaders unless the temporary occupation of Hue is judged as such. I don't consider Hue anything but a military and political defeat to the communist. Yet, with sanctuaries available, the enemy continues the war with the apparent assurance of their winning coming from American public opinion.

There can be no doubt that the long range objective of the communists is the political domination of Southeast Asia including the old Indo-China area as well as Thailand, Malaysia and even Burma.

Hanoi is waging an aggressive war against the South Vietnamese people in order to bring them under the communist Lao Dong party dictatorship of North Vietnam. Most people tend to forget that there are no South Vietnamese Armed Forces waging war in North Vietnam. On the contrary, the North Vietnamese communists are waging a cruel and tragic fratricidal campaign against the South Vietnamese who are trying to prevent being dominated by military force. There is also the feeble excuse that the communists merely desire to unite the two Vietnams. However, in order to subscribe to the principle of "re-unification by force" we should be made aware of other similar situations. Would it be any more or less abhorrent if West Germany attacked East Germany in order to attain the noble goal of re-unification? What if South Korea and Nationalist China executed an aggressive war against North Korea and Communist China? Are we ready to accept the same principle of forced reunification and support it militarily and financially? Naturally, the principle of forced re-unification is not a valid agreement for naked aggression.

A quick glance at the recent headlines in a daily newspaper and periodicals gives absolute proof of the dishonorable intentions of the communists in North Vietnam. I speak of the so-called "other war" in Laos and Cambodia. Anyone looking at a map of Southeast Asia can instantly see that the undeclared war by North Vietnam against the Laotian people cannot be attributed to forcibly unifying Vietnam. The 3 million Laotian people are not a threat to Hanoi under any stretch of the imagination. The Plaines des Jarres is not relevant to the Vietnam War. Nor can we look the other way with regard to the rights of the Cambodians. When Hitler took such warlike aggressive actions against his neighbors, World War II began. Yet, today lethargy and apathy are the keywords rather than espousing the principle of freedom.

Further to the west, Thailand is currently engaged in a guerrilla war with the communists supported by Hanoi and Peking. Here, North Vietnam cannot use the pretext of unification, imperialism, or any other false banner. The world sees this action as the true indication of the communists' objective to dominate Southeast Asia through wars of subjugation. The North Vietnamese Army is the best equipped and trained land force indigenous to this part of the world today. General Hoan Minh of North Vietnam was quite accurate when he said "The people's war outlook of our party is a new creative development of the Marxist-Leninist ideas of revolutionary violence and revolutionary war." This certainly supports Mao Tse Tung's classic remark that "power comes from the muzzle of the gun," which of course was based upon an old discarded western adage that "might makes right."

The communists do not entertain any illusions concerning a negotiated settlement of the problem of Vietnam. General Do, a North Vietnamese Army general, known to be commanding communist forces in South Vietnam, stated "Our basic intention is to win militarily. We use military victories as decisive factors to end the present conflict. We want to end the war through military victories and not peace negotiations. Negotiations are a form of diplomatic struggle. We are military men and we must concern ourselves with military struggles and not consider diplomatic struggles . . . and even when we are fighting diplomatically, we must multiply our military victories if we want to succeed diplomatically." Thus, it is obvious

that the communists do not desire peace but only to achieve their objective of subjugating South Vietnam.

The basic tenets of North Vietnam's prescription for victory is:

(1) That the U.S. must withdraw all troops without reciprocity.

(2) That the communist military and political forces in South Vietnam must be stronger than the forces of the government of the Republic of Vietnam.

(3) That the communists must dominate the rural areas, important strategic areas and especially the cities. They consider the city areas as the main battlefields where the ultimate decision will take place either through subversion or battles.

In order for them to achieve their goal, they must first destroy the Rural Pacification Program currently being conducted by the Republic of Vietnam Government. They are assassinating hamlet, village and district officials in order to terrorize the people and to disrupt the pacification effort. The communists will then attempt to force a coalition government, and through subversion and, at the opportune moment, seize absolute control of South Vietnam, bringing the people under the dictatorship of Hanoi.

There have been many people in the United States and in other parts of the world who expounded various beliefs and solutions to this conflict. We only have to review our newspapers of 2 and 3 years ago and we will find many who stated that the United States was intransigent and did not desire peace.

Where are the voices that emphatically stated that when the United States stopped bombing North Vietnam, there could soon be productive and meaningful negotiations?

Where are the voices that fervently said that if the United States started to withdraw its military forces fruitful negotiations would result? We stopped the bombing on 1 November 1968 and have subsequently withdrawn 115,000 troops. Where are the fruitful and productive negotiations? Even with 150,000 more troops being withdrawn, what will make the communists talk peace? In prior "wars" we have won a military victory or at least have exerted sufficient pressures on the enemy to cause meaningful talks and actions, such as the return of our prisoners. How do we reduce our strength in men and materials in the Republic of Vietnam and, at the same time, secure the release of our prisoners of war?

The intentions and objectives of the communists in Vietnam and Southeast Asia are very clear. Only the future will reveal whether we know the communists as well as they know us.

Compare all other wars, or police actions, which this Nation has engaged in over the years of our history with this counter-insurgency. How do we secure anything in the way of an honorable settlement, except a stand-off?—a draw? On one side, we will have the North Vietnamese with the Viet Cong guerrillas and infrastructure supported by the communists (Russia and China); and on the other side, the Republic of Vietnam Armed Forces with their elected government officials at hamlet-village levels, supported by the United States. That leaves Laos and Cambodia, the areas where, at present, sanctuaries are assets to the communists and are not considered a part of the counter-insurgency per se. I ask you, how do we force the communists to talk peace under these circumstances? Again, how do we secure the release of our prisoners of war? What is the minimum support for the Republic of Vietnam and for how long?

The U.S. advocates of peace in Southeast Asia at any price may be honest patriots, but I fail to understand their mental processes which conclude that the freedom of the United States is not weighing in the balance. How can these citizens of our country be so unaware of what the communists have told us? World domination is their objective; and that means the defeat of the United States by whatever means—force and violence, murder, lying, subversion of our youth by infiltrating our schools and communication media, to name but a few.

I believe that our President did what he, as Commander-in-Chief, had to do. He cannot preside over the loss of this counter-insurgency; and, at the same time, permit the communists to gain the role of world leadership.

Now that the die is cast for all the world to see, how does this Nation force the decision in its favor? And how do we calm the troubled waters within our borders? The unrest among the students is said to be the honest (emotional and otherwise) motivations and concern of patriotic Americans. I submit that these students have been partially or totally brainwashed—conditioned in their earlier years—by the "commie" line slipped into our public schools. I recall vividly that 20 years ago I became aware of the communist line of reasoning in the elementary schools in one of our very fine public school systems. Have any of you any such memories? Our awareness of communism is something like our pollution ostrich-head-in-the-sand performance, isn't it? We just don't believe that all people aren't reasonable, honorable, and law abiding. We should know better. The average U.S. citizen doesn't understand communism and doesn't care to know that the communists are dedicated to take all steps necessary to win world domination . . . to bury *us*.

Credibility is a fragile commodity but it is made more durable by an attitude of demonstrated respect—respect for the rights of all people, regardless of nationality, race, color, creed, or material wealth. Time may not be in our favor but I submit that the need for respect, demonstrated at all levels of our society, is vital for our survival during this age-gap era. We must make youth know that we, who are over 30, do respect them. The young Americans who fought and are fighting now, in Vietnam, are the bravest of the brave—worthy of the honor and respect of youth and age alike. And the vast majority of these heroes are under 30 years of age!

If we must settle for a *draw* in this counter-insurgency, we can win back part of domestic world opinion, if we can show we really care what our young servicemen and women have done for their country during these years when being in the uniform of our Nation has not been considered the "in-thing" to do.

All these words don't amount to anything without action. The pen has been the winner over the sword recently when the pen has been in the hands of the communists. Why is it that the experiences of military professionals who have dedicated their entire adult lives to the defense of our country do not have the credibility rating they have earned? When you consult a doctor and are told you need a serious operation to save your life, the most you would do would be to ask for another doctor's opinion. If they agreed, you would accept their professional judgment and have the life-saving surgery. On a far higher level in the scale of risk, our top military men have not been heeded, and our national survival *is* in the balance. Can we restore respect for the uniforms of the Armed Forces of the United States and our police in time to retain our indivisible Nation under God?

Consult your leaders. Back your Commander-in-Chief. We must win because the consequences of defeat are unacceptable. As General Eisenhower said in his last public statement: "A camouflaged surrender would result in the United States 'writing off' Southeast Asia for the foreseeable future. We could survive such a catastrophe—but our citizenry should be clear that the whole security system which has maintained peace and freedom for the past generation, would be eroded—if not destroyed—by an American retreat from our commitments in Southeast Asia."

Hanoi has not won on the battlefields of Southeast Asia. Hanoi has not won in Paris. Hanoi has persevered in this war because of its reading of American public opinion. Hanoi can win *only* by the pressures of American public opinion. We must curb our natural impatience; and we must restore credibility through educating ourselves as to the true situation. With an informed American people neither undue optimism nor undue pessimism will prevail. And a substantial majority of the American people will rally behind our President. There is no other honorable course of action.

CAPTIVE NATIONS WEEK

Mr. JAVITS. Mr. President, during this week commemorating the captive European nations, I wish to pay tribute to the courage and determination of the peoples of the captive nations for their continuing efforts to achieve their personal freedoms. In this same month of July, we Americans celebrate our own Declaration of Independence and freedom. At the same time, we do not, and cannot, forget the tragic plight of those East European peoples whose fundamental human rights are still denied them.

It has been 25 years since military hostilities in Europe were concluded and Nazi tyranny finally put to an end. Yet, today, half of Europe stills suffers under tyranny. An entire generation of East Europeans has grown up knowing nothing of individual liberty. Those who fought and sacrificed so much during World War II for their freedom have been deeply disappointed in their hopes and expectations. Even the hopes of the brave Czechoslovakian youths of 1968 have been cruelly suppressed as have the earlier movements in Poland, Hungary and East Germany. That these peoples still hope and work so fervently for release from their bondage is truly an inspiration which commands our sympathy and support.

Recent talk of some sort of European security conference, along with negotiations now proceeding between West Germany and the Soviet Union, Poland, Czechoslovakia, and East Germany, makes it especially important that the United States reaffirm its objective of ultimately seeing freedom restored to Eastern Europe. "Normalization" of relations between East and West in Europe must not be allowed to mean acquiescence in the perpetual denial of human freedom in one half of an artifically divided Europe.

The Brezhnev doctrine of limited sovereignty for Eastern Europe enunciated in 1968 after the Soviet invasion of Czechoslovakia, is not acceptable to free men. The United States needs to continue its resolve to use all the resources of diplomacy, morality, and world public opinion so that freedom is ultimately restored to the peoples of the captive nations.

THE POST OFFICE DEPARTMENT AND ITS ENVIRONMENTAL ACTION

Mr. BOGGS. Mr. President, Postmaster General Winton M. Blount today reported on his Department's efforts to combat the pollution of our environment.

This is the Postmaster General's second announcement within 24 hours concerning the quality of life in our Nation. Yesterday, he announced plans to issue a commemorative stamp that will focus attention on the environment.

This announcement by Postmaster General Blount will cause other Federal agencies to detail their activities in this field. I believe each of us would be interested in such a detailed report.

The Postmaster General has designated Assistant Postmaster General Henry Lehne to coordinate antipollution activities within our mammoth postal system. He has been assisted in this responsibility by a post office environmental coordinator, W. Norman Meyer. In a very short time, these gentlemen have produced most impressive results. I salute them and wish them continued success.

In the area of air pollution abatement, the Department has been particularly active. In many of their installations, they have converted boilers that previously burned coal and low-grade fuels to natural gas and other fuels that result in less air pollution.

This is true in my own State of Delaware. Such action has been taken in the postal facilities in Newark, Georgetown, Laurel, Lewes, New Castle, Rehoboth, and Seaford. The largest postal facility in the State, Wilmington, has not been converted, but it is under the supervision of the General Services Administration.

The Post Office Department operates a fleet of 115,000 vehicles. The majority of them currently are being equipped with modern antipollution devices. Experiments are being conducted with other new antipollution techniques.

The Department also is conducting surveys at the more than 40,000 postal facilities across the Nation to determine better ways to dispose of trash, quell noise, and cleanse air inside large, poorly ventilated buildings. In rural areas, the survey has also extended to an examination of sewage systems, in an effort to insure that the best available sewage treatment techniques are utilized.

Mr. President, again I compliment the Postmaster General and his staff. I also look forward to learning what the other agencies are doing for our environment, as well as future developments within the Post Office Department.

U.S. TECHNOLOGICAL SUPERIORITY

Mr. TOWER. Mr. President, in a recent interview, Dr. John S. Foster, Jr., Director of Defense Research and Engineering of the Department of Defense, expressed his concern that in an emotional effort to cut defense spending we might severely damage our technological and strategic superiority—both of which are vital to our national security. I feel that his remarks are timely and ask unanimous consent that they be printed in the RECORD.

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

[From the Air Force magazine, July 1970]

ARE WE HEADED FOR STRATEGIC SECOND PLACE? TECHNOLOGICAL SUPERIORITY—KEY TO U.S. SECURITY AND SURVIVAL

(A report on an exclusive Air Force magazine interview with the Pentagon's Director of Defense Research and Engineering, by Edgar E. Ulsamer, associate editor, Air Force/Space Digest)

The security and survival of the United States depends on strategic and technological superiority. Yet this country is perilously close to the point of being "second best" on both counts.

These sobering views were expressed to Air Force/Space Digest by the government's ranking weapons technologist, Dr. John S. Foster, Jr., Director of Defense Research and Engineering, of the Department of Defense.

Because of the need to compensate for the Soviets' ability to conduct major research and development programs in total secrecy, a tactical advantage denied the United States, Dr. Foster concludes that "we simply can't survive under parity." He illustrates the practical significance of covert Soviet technological efforts by pointing out that the U.S. intelligence community, in two consecutive years, and to a lesser extent in prior years, had "underestimated" the growth of the Soviet military effort. Ironically, public reaction to warnings by Secretary of Defense Melvin R. Laird concerning the Soviet threat, even though the warnings proved to be understated, frequently was one of incredulity. Mr. Laird was accused of saber-rattling and of overstating the strategic threat to the United States.

The Soviet military momentum, Dr. Foster points out, is manifest in two areas:

Rapidly expanding strategic capabilities. The Soviet strategic offensive inventory is currently being increased by the equivalent of about 700 Minutemen II missiles annually while the total U.S. force level is now, and will continue to be, about 1,700 land- and sea-based strategic missiles. The effect on U.S. security is immediate, and a Soviet first-strike capability by about 1975 is a real possibility.

The steady increase in military and military-related R&D by the Soviet Union, which exceed the combined levels of the Department of Defense, NASA, and the Atomic Energy Commission by about twenty-five percent. The annual rate of increase in the Soviet technological effort continues to range between ten and thirteen percent while the *shrinkage* in the comparable U.S. effort is now, and will continue to be, "several percentage points a year." The effect on U.S. security is long-term, with the Soviet Union seemingly aiming at broad technological superiority over the United States by the end of this decade.

THE STRATEGIC THREAT

The US strategic force level has remained constant since 1965, at 1,000 Minuteman and fifty-four Titan missiles, about 550 strategic bombers, and forty-one Polaris submarines. The Soviet force level, according to Dr. Foster, includes a land-based missile component "significantly larger than ours." It consists of more than 280 SS–9 missiles in operation or in the process of being deployed. SS–9 missile deployment has been averaging about fifty per year. This missile has approximately ten times the payload of the Minuteman II missile, and testing indicates the Soviets may seek to deploy three independently targeted (Multiple Independently Targeted Reentry Vehicles—MIRV) nuclear warheads on each SS–9, each one substantially larger than the single warhead of Minuteman II.

The USSR also has operational or is deploying a total of more than 830 SS–11 missiles and is increasing its inventory of this missile type at an annual rate of about 100. The SS–11 is roughly equivalent to the Minuteman missile in terms of payload.

According to Dr. Foster, the US, for the moment, enjoys a substantial lead over the Soviet Union in sea-launched ballistic missiles. This preeminence is likely to be dissipated by 1974 or 1975 because of the high rate at which the USSR is introducing "Y class" (comparable to the US Polaris class) submarines into its inventory. Nine Y class submarines are currently operational, and an additional twenty-five Y class submarines are known to be under construction. The total payload of all presently operational Soviet sea- or land-launched ballistic missiles exceeds that of the United States by a factor of two. Combined, the Soviet ballistic missile force, as presently configured, can carry three times the nuclear megatonnage that US strategic missiles can deliver.

Beyond sheer numbers, two factors—their ability to survive attack and their ability to penetrate—determine the credibility and efficiency of ballistic missiles in a deterrent role, Dr. Foster emphasizes. As for the first category, all land-based US and Soviet missiles are "hardened" while the two countries' sea-launched ballistic missiles are "dispersed," thereby achieving a form of equality so far as initial survivability is concerned. Survivability of the Soviet land-based missiles is enhanced, however, because the Russians have already deployed "a relatively complete ballistic missile defense, at least in the first phase, around the Moscow industrial area where they emplaced four facilities with about sixteen launchers each." Dr. Foster stresses that on the basis of the best available evidence there is "no reason to doubt the effectiveness of this system."

More important to the security of the United States than this Moscow industrial area system, Dr. Foster believes, is the existence of Soviet ballistic missile defense acquisition and tracking radar ("Henhouse," in NATO parlance) installations located at about "half a dozen points around the Soviet Union and arranged in much the same way that we propose to deploy Safeguard [the US antiballistic missile defense system]." Some of these radar installations are already operational, and others are still under construction, with completion of the system expected in two or three years.

In terms of sheer physical magnitude, the Soviet "Henhouse" radars are described as twice the size of the Pentagon. The fact that the Soviet system's interceptor, the Galosh missile (larger than our proposed Spartan ABM and roughly equal in size to our Minuteman ICBM), is as yet deployed only in the Moscow area, is not surprising, Dr. Foster points out. The radar installation is the long-lead-time component of any ABM system, and the interceptor force, therefore, is not deployed until the radar is close to operational status. Coverage (area defense), in terms of effective interception, extends from the "Moscow system's" phased-array radar acquisition and tracking installations along about a 500-mile radius, according to Dr. Foster.

Presumably this will be true also for the other radar sites if and when the Soviets deploy the Galosh interceptor missile, thereby creating an effective bulwark around most of their ICBM silos and bomber bases.

Somewhat enigmatic in terms of ballistic missile defense is the role of the Soviet Union's so-called Tallinn system, employing the SA–5 surface-to-air missile.

Crediting the Tallinn system with "a rather good capability against aircraft," Dr. Foster

indicates that U.S. defense planners believe it has "only a limited capability against ballistic missiles, when working in conjunction with its own, local radar system.

"I do believe, however, that if the SA–5 system is given information from the large ballistic missile acquisition and tracking radars, then it could have considerable capability in making successful intercepts of incoming ballistic missiles," Dr. Foster says.

Dr. Foster, who has been in his present Department Defense assignment since 1965, emphasizes that the high level of the Soviet ABM efforts is the "primary" reason why "MIRVing" the U.S. ballistic missiles is mandatory. If the U.S. missiles are not given a greater capability to penetrate the growing Soviet ABM system, Dr. Foster stipulates, the credibility of U.S. deterrence is jeopardized. (The secondary reason for MIRVing, he says, is to make "the surviving [after a first strike] sea-based and land-based U.S. missiles more effective.")

In assessing the ballistic missile capabilities of the U.S. and the USSR with regard to "penetrability," Dr. Foster places considerable emphasis on the superior payload and total megatonnage of the Soviets, saying "what counts most in the long run is payload. The way the Soviets have configured their force, this comes to about three times the megatonnage" of U.S. missiles.

THE BOMBER DETERRENT

The third component of the strategic, nuclear forces of the two countries is bombers. The Soviet Union has 200 long-range and 700 medium-range bombers in its inventory at this time. About 300 of the nuclear-range bombers could be deployed against the United States, "either on one-way missions, or by using half of them in a tanker role with the remainder performing two-way nuclear attack roles." In the latter eventuality, the effective Soviet bomber inventory, Dr. Foster says, comes to about 350 aircraft, compared to about 550 US bombers. Both countries either have under development or plan to develop a follow-on advanced bomber.

The Soviet Union, Dr. Foster points out, "is developing a new strategic aircraft which could perform nuclear bombing attacks against the US. The Russians don't have a strategic force of this new type of aircraft as yet, however." The Air Force has just named North American Rockwell Corp. to develop the United State's next strategic bomber, the B–1 (*see April '70 AF/SD, page 37*).

The principal "worry involving the effectiveness of the US bomber force, and I suspect this is equally true so far as Soviet thinking is concerned, is whether the strategic alert force, on warning, can be safely airborne before the missiles of the enemy submarine force, presumably located close to the bomber bases, strike," in Dr. Foster's view.

Vulnerability to submarine-launched missile attack is "more severe in our case than in that of the Soviet bomber force, for reasons of geography. The flight distances involved in [the] case of the USSR are on the order of 2,000 miles if the Russians move their bomber fields inland. This puts considerable restraint on our [range-limited] Polaris submarine missiles. By contrast, even if we were to move all our bomber bases away from the coastal areas, the maximum distance geography permits us to attain would be just about 1,000 miles," Dr. Foster emphasizes.

THE TRIAD CONCEPT OF DETERRENCE

Presently, US policy pivots on three different offensive strategic weapon systems (land-based missiles, sea-launched missiles, and strategic bombers) "employing different technologies and each one capable of providing deterrence by itself." It is the result of the twofold circumstances that "three strings on our deterrence bow are most desirable, on the basis of our experience during the past ten years, [and] because the underlying technologies can indeed give us three viable, separate systems."

Dr. Foster points out that "so far as these three weapon systems are concerned, we don't, and we can't, know everything about their underlying science and technology. From time to time, in the past, we encountered problems and difficulties [with one or the other of these systems] because of changes in Soviet capabilities or because of advances through our own studies and research. These difficulties were of a nature that could cause gross malfunction of a large portion of a particular force. Sometimes the corrections could be made in a matter of weeks or months, and sometimes this required years."

For this reason, Dr. Foster considers it "unacceptable to rest security of America on a single force which for the foreseeable future, would be prone to the same kind of vulnerability through change and technological surprise as has been characteristic of its past."

Dr. Foster, furthermore, is sanguine about "the viability of these three systems in the foreseeable future.

"Bombers can be based on alert and can have sufficient active defense to permit them time and sufficient warning to become safely airborne in case of nuclear attack.

"We have this capability today, and I believe that, through the deployment of our ABM system and the development of the B–1 bomber [which permits substantially greater dispersal and faster flushing], we will have this capability in the future," Dr. Foster points out.

"Further, the bomber has another invaluable feature: It penetrates enemy defenses in a very different way from that use by ballistic missiles. This forces the enemy to deploy an entirely different strategic defensive system."

As to extending the viability of land-based ICBMs well into the 1980s, Dr. Foster considers most "promising among the several approaches under review, a combination of active defense systems and mobility." The Safeguard system, he believes, "is the best way to approach active defense. If the threat should grow to beyond those levels that can be coped with by a full implementation of the Safeguard system around the Minuteman fields, then it would be possible to add—if and as necessary—more, but smaller radars since they don't have to be as capable [for the hard point-defense role] as the current missile site systems, and to increase the number of interceptors," he says.

"On the strength of our present calculations, the cost of intercepting incoming objects is about equal to the cost of developing new offensive systems.

"We can now provide defense systems for less expense than the cost of the Soviet offensive systems. We have to allow, however, for the future possibility of the Soviets developing new penetration techniques that might change this cost ratio around. Looking at the end gain, I suspect that over the years the cost of defense will about equal the cost of offense," Dr. Foster says.

Dr. Foster exudes a high degree of confidence that the United States can, and must, create an effective missile defense system to provide for the survival of several hundred Minuteman missiles as well as of the cutting edge of the US bomber fleet—a surviving force "capable of meting out an unacceptable level of assured destruction on an aggressor contemplating a first strike against the US."

(Dr. Foster rejects as "a complete falsehood" the claim that both sides have enough weapons to kill the other many times and that, therefore, further expansion of this country's deterrent forces is both unnecessary and provocative: "This simply is not true. What is true is the fact that the case for peace or war rests on the prevention of any serious imbalance in capabilities of the potential adversaries," he says.)

THE MOBILE MINUTEMAN FORCE

Studies of how a portion of the Minuteman force can be made mobile have shown "that the technique that looks rather feasible involves either a wheeled or surface-effect (also known as ground-effect machine—GEM) system, which enables the missiles to flee on warning to hardened, underground shelters. There would be many more shelters than there would be missiles, the end gain being that we could construct substantially more shelters than the number of reentry vehicles that the enemy can place on his missiles," Dr. Foster says.

"We consider this to be a favorable exchange ratio because we can build additional target points, *i.e.*, shelters, for considerably less than $1 million, whereas we believe that it costs the Soviets considerably more—by a factor of five to one or even higher—to provide additional warheads" according to Dr. Foster.

As yet undecided is whether such a mobile system should employ special, heavy trucks capable of speeds in the thirty- to fifty-mph range, or surface-effect machines operating in the sixty- to 100-mph range. In the case of a GEM system, about twelve months of special design work would be necessary "before we could proceed with advanced development of such a system, which some planners favor over the wheeled method which has been under study for almost a decade," Dr. Foster says.

The Minuteman missile, Dr. Foster finds, can be adapted "rather directly" to either a wheeled or GEM system, requiring only limited changes to provide for more rapid launch capability and transportability.

THE SEA-LAUNCHED BALLISTIC MISSILE

There is at this time no serious technological threat in sight that would render obsolete the US submarine-launched ballistic missiles, the third component of this country's triad of deterrences, according to Dr. Foster.

"The sea is such a difficult medium in terms of detection that Secretary [of Defense Melvin R.] Laird has concluded that for the next few years our [SLBM] missiles will continue to enjoy relative invulnerability. It is very difficult for a submarine to find another submarine, for a surface ship to find a submarine, or for an air- or satellite-based system to find a submarine. We don't, of course, dismiss the possibility that in the future some new technique might evolve which would make submarine detection easier than it is now. The one worry we have about our SLBMs is the fact that because the sea is such a *difficult* medium, it is very difficult for us to find out just how successful the Soviets are in detecting and tracking our Polaris submarines.

"To assure the continued utility of our sea-based missiles, we are proposing some actions in the Fiscal 1971 budget that will extend the relative invulnerability of the Polaris platform through the remainder of the 1970s," Dr. Foster explains.

But by the 1980s, "we believe it will be necessary to replace the Polaris system with a new platform capable of launching longer-range missiles and with improved submarine characteristics," he adds.

Current study efforts involving an Underseas Long-Range Missile System (ULMS) are "not being pushed very hard at this time," Dr. Foster points out.

THE SIGNIFICANCE OF MILITARY SPACE

The United States, in Dr. Foster's view, enjoys a considerable lead over the USSR in

terms of basic space technology and in applying such technologies to practical military requirements. US programs in the areas of "communications, mapping, warning, surveillance, weather, and other activities directly related to the military have been extremely rewarding. On a short term basis, I believe the continuation of these efforts to the degree that we now propose is well warranted," he says.

As for the requirement of manned military space operations, he theorizes that "over a longer range, we will come to realize that there are military needs in space that cannot be accomplished without placing much larger payloads in orbit [than are being planned now by NASA]. It is much more efficient, and less complex and costly, to perform the whole job in orbit. The main cost of our present communication satellite systems, for instance, is absorbed by ground elements.

"The costs of the ground terminals are determined to a major extent by the capability of the satellite, both in terms of the power that is needed on the ground and the power available in the satellite," he says, adding that for this reason an onboard system could perform the military mission better and more economically.

While he regrets the cancellation of the MOL program, Dr. Foster believes that the current, joint NASA-DoD effort involving a space-transport system, including a two-stage reusable space shuttle, "can be worked out in a manner that is mutually satisfactory." (Current differences of opinion between the Air Force—DoD's executive agency on the program—and NASA center around the military's need for larger payloads, higher orbits, and a substantially increased, so-called cross range, *i.e.*, the ability to maneuver the 707-size orbiter stage in airplane fashion following its return from space. NASA favors a low cross range to facilitate the basic design task.)

Assuming that this controversy will be resolved, Dr. Foster believes that the NASA space shuttle "should be pursued vigorously; the Department of Defense supports it strongly and we believe that, when available, it will be of great use to us."

THE MOUNTING SOVIET R. & D. MOMENTUM

Nothing is as worrisome to US defense planners as the destabilizing influence on our long-term deterrent capability that results from the present high momentum in Soviet weapons development and R&D.

To evaluate the technological capabilities of the US and the USSR, Dr. Foster employs two criteria: the status of technology today, and the current level of R&D effort and its portents.

In the first case, he believes that the United States still has an overall lead on the Soviet Union but that there are a number of specific areas of technology where the Russians are ahead of this country. Among them he cites greater Soviet efforts and experience involving high-yield nuclear weapons in the one-to sixty-megaton range, and space-based experimentation involving high-energy physics. The US lead in most areas of technology, according to Dr. Foster, ranges "from about a year to a few years, which doesn't mean that we will lose all technological superiority that rapidly, since, in certain areas, that might require five or even ten years."

Because of the "cutback in US R&D efforts by a few percentage points annually, and the Soviet increase of between ten and thirteen percent each year—plus the fact that Russia's R&D effort in the area of space, nuclear energy, and direct military matters already exceeds ours by about twenty-five percent—the US is fast approaching the point of becoming second best in terms of total technological capability," Dr. Foster fears.

In sharp conflict with these trends, Dr. Foster points out that "US security depends on our being technologically superior. I don't believe that we can maintain our national security if we have parity or are in second position with regard to research. This is so because the Soviet Union enjoys a veil of secrecy over its R&D effort and weapons deployment. To counter this advantage, the United States simply must be in a position of 'essentially having been there' technologically before the Soviets, so that we can assess the dangers to our security [of a given technological development] and take whatever action is prudent and necessary."

Accentuating the critical imbalance in Soviet and US R&D levels, Dr. Foster emphasizes, is the fact "that we are torn between encroaching Soviet technological superiority and inflation. We are finding that the weapon systems that can be designed, superior as they are to those in the field, extract such a high price in acquisition that we can't afford them. If we are to maintain our security in the years ahead, we will have to do the R&D job at less cost. In the next year or two, perhaps even for longer, we will have to rather ruthlessly squeeze out all unnecessary costs in our weapons development and procurement programs.

"In taking these belt-tightening economy moves, we will have to exercise infinite care to watch that the long-lead aspects of our research and development programs, such as basic research, exploratory research, and some advanced developments, are maintained in the important, critical areas," he stresses.

He cites as an example the explosive area of laser technology with its implication for rapid advances in terms of defense systems as well as for other applications. The U.S., in spite of present budgetary restrictions, is "undertaking an aggressive effort in laser technology," he says, adding "of course we would like to do more if additional monies were available. There is no way of establishing whether the US is ahead of the USSR in laser technology or vice versa."

"We have been running number one for so long that we have become wasteful at times. Also, part of our difficulty at the moment is that we have a larger areospace industrial base than we have budgets to support it. What we have to do is to employ some of the measures [of frugality] that are being practiced by those nations that are currently number two, three, or four, in order not to become number two, three, or four ourselves. If we fail to take those measures, then surely that fate lies ahead for us, too," Dr. Foster warns.

There is considerable room to improve the US management of technology in his view. "In a business as large and as complex as that of aerospace, there is always room for improvement" he says, adding that the Department of Defense, under the aegis of Deputy Secretary of Defense David Packard has just completed a comprehensive document that "outlines the areas where the most progress can be made." These areas, in turn, will require detailed attention by the services, he points out.

The main focus is on "the creation of first-class teams—and people are all-important—to implement the programs, and to delegate to them not only clear responsibility but also corresponding authority to manage." Basically the Department of Defense directs the services to an understanding, "as complete as possible," of any given technological problem before any action is taken and secondly, to the need to concentrate on the "necessary rather than the desirable solutions," he says.

PUBLIC DISREGARD OF THE THREAT

Yet another factor that impinges on the military technology effort of the United States at this time, in Dr. Foster's view, is the historic lassitude the American people have brought to military preparedness during periods of relative peace. This is coupled with the effect of the Vietnam War on public attitudes and the fact "that the growing threats to American security and our ability to deter are not taking shape in areas where the American people can see them.

"The American people don't see the Soviet SS–9s, SS–11s, or SS–13s; they don't see the deployment of Soviet ballistic missile defense; they don't see the Soviet Polaris-type submarines off our coasts; and they don't see the seriousness of the threat facing our allies," he points out. As a result, and in spite "of the uncommon effort by Secretary Laird to release as much tangible evidence of the Soviet threat, certainly more than any of his predecessors have made available to the public," public reaction to the current threats has been impassive, he admits.

In addition, Dr. Foster detects a basic disenchantment with and rejection of technology on the part of a portion of the public, stemming from the facile belief "that the national security situation is getting worse instead of better and that this worsening is due to technology making available weapons of ever-increasing destructiveness."

From this premise, "some people conclude that the only way out is to stop military research and development. The problem is, of course, not quite that simple. Technology, in my view, is not the source of the problem. Technology can be used for good or evil, it can be used for peace or war and, in fact, the first alternative is how America is using it," Dr. Foster explains.

"I believe that we cannot maintain our national security and our freedom without more, rather than less, technology. In order to meet the necessary military capability with a minimum expenditure of our resources and money, we need technology. The only alternative is to buy more and more weapon systems that are obsolescent, which certainly is the least effective way of achieving a given military capability," he argues with considerable conviction.

Given the validity of Dr. Foster's point of view and the persuasiveness of his presentation, this reporter cannot escape the conclusion that, in time, the Congress and the public will come to share his and DoD's thinking.

THE DANGER OF A TRADE WAR

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD the text of my testimony, as ranking Republican member of the Joint Economic Committee, which I presented on Friday, July 17, before that committee on its mid-1970 economic review.

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

DANGER OF A TRADE WAR LOOMS OVER U.S. INTERNATIONAL ECONOMIC POLICY

Mr. JAVITS. Mr. Boggs and I have been asked to appear this morning to give our impressions as to the overall international economic situation. The Foreign Economic Subcommittee of the Joint Economic Committee, of which Mr. Boggs is the Chairman and I am the ranking minority member has been holding a series of hearings on various aspects of the international economic scene. These hearings will reconvene shortly after concluding the 1970 mid-year economic review to consider the multinational corporation. The purpose of our appearance here today is to outline for the members of the Committee how the international economic situation appears to us.

The international economic picture presently faces a strange and delicate paradox.

On one hand, there are grounds for optimism, which on the other, a protectionist tide seems to be sweeping the world which, if allowed to go unchecked, will bring only grief and disaster to the world in the form of an international trade war. For while some optimism in the world's financial affairs is warranted, it is so precariously balanced as to be susceptible of being swept aside easily by the angry tide of a trade war. Such a trade war could wreck the structure of international economic cooperation established since World War II and the institutions which have grown up under it. It could destroy the hope for political unity in Western Europe, erode the foundations for political cooperation with Latin America, and make the whole world vulnerable to a depression, to disorganization and to a resurgence of Communist influence in the affairs of men.

This threat overshadows the following recent optimistic developments. A major new international monetary initiative has become operative early this year and seems to be functioning well in its assigned task of facilitating international liquidity. I refer to the creation of Special Drawing Rights, and I note that the United States has received its initial allocation of $217-million in SDRs. Trade relations between surplus and deficit countries appear to be moving towards correction and adjustment reflecting the West German and Canadian revaluations and the French devaluation. Lessening inflationary pressures in the United States and our declining economy and the increased inflationary pressures facing European economies have resulted in a greater U.S. trade surplus in the first five months of this year. This surplus totals $1.13 billion through May of this year or approximately double the 1969 surplus of $638 millions in the first five months of 1969. Some Japanese moves towards the liberalization of their onerous trade restrictions in turn should have the gradual effect of reducing the internationally intolerable surplus position of Japan and alleviating the deficit position of other nations such as the United States.

The Eurodollar market has weathered well the immediate crises of the past year in which the repressive monetary policy in the United States caused massive Eurodollar borrowings by U.S. banks and corporations to meet their liquidity needs. The Eurodollar market proved itself up to the task of keeping the all-important flow of international trade and investment moving.

On the negative side, the balance of payments position of the United States remains weak. The main reason for this is that our trade surplus position is not great enough to cover our other foreign commitments which include Vietnam, foreign military and economic assistance, tourism and foreign direct investment among other items.

But again the picture is not totally dark since we are withdrawing from Vietnam and hopefully the balance of payments saving that will accrue from this troop withdrawal will not be spent in military action or military support in other Southeast Asian countries. As I mentioned, our trade surplus is improving and I look for it to continue to improve since we are farther advanced in our battle against inflation than other industrialized countries. Also, the Federal Reserve's recent wise decision to lift the interest ceilings on certain categories of CD deposits is likely to encourage dollars to stay at home since they can now earn returns comparable to those that can be earned by Eurodollars.

It is also clear that the world has been willing to bear the balance of payments deficit of the United States assuming it does not get out of hand. Dollar redemptions for U.S. gold have not been running at a high rate. Perhaps this deficit can be viewed as the service charge that the world is willing to bear for the use of the dollar as a reserve currency and the Eurodollar as the international currency.

Mr. Chairman, I make this brief survey solely to indicate that the international economic picture is far from being grim. It appears to be far healthier than does our own domestic economy. This has resulted in what can be called a transference of anxieties and scapegoatism in which many people who are afraid of losing their jobs because of the domestic showdown and many firms which are caught in a profit squeeze are blaming their very real woes on the foreigner. This is basically irrational and not borne out by the facts. Rather than to indulge in such fantasies, let us rather take the necessary steps to get this economy moving again, to pass the manpower programs needed to train and employ the unemployed, and to provide the Presidential powers and the trade adjustment assistance to help those individuals and firms genuinely hurt by imports, among other matters.

I emphasize that certain American industries have legitimate grievances in the trade area. Certain American industries are being hurt by a sudden impact of imports; and it is the duty of this Administration and the Congress to assist such industries. However, given today's general economic conditions, there are many other American firms that are being injured not by the sudden impact of imports but by the sudden impact of restrictive fiscal and monetary policies, by rampant inflation in wages, prices, by record interest rates and by a stagnation in productivity and in the vaunted American competitive spirit. For this, foreign nations are not to blame.

This irrationality, this propensity to look for the worst in one's neighbor's yard because one's own yard is undergoing temporary difficulties, this move into quasi-isolationism in an increasingly interdependent world, could result in bringing down the economic system that has served us so well over the past 25 years.

I would now like to outline four areas of specific concern:

1. An ill-advised Administration decision to support quota legislation at the behest of the textile industry, followed by tentative House Ways and Means Committee decisions on the trade bill, are threatening to reverse the liberal trade policies which this nation has followed for approximately 40 years. The result is that the world has moved a step closer to a devastating world trade war, all of this triggered by Japan's past persistence in ostrich-like, head-in-the-sand foreign economic policies.

2. An historic opportunity to re-direct and re-vitalize U.S. foreign aid.

3. The urgent need for a review of U.S. private investment abroad, the magnitude of which has stirred resentment but little understanding at home and overseas. This legislation has led to the growing support of punitive, inward-looking legislation, both in the United States and the European Common Market. This, combined with the retention of outmoded anti-trust laws by the United States, results in a policy combination which may be very harmful to not only U.S. business, but our international balance of payments position as well.

4. International monetary policy stands at the crossroads, and the present calm should be a spur to action designed to prevent future and recurring parity crises and balance of payments disequilibriums that could again threaten the smooth functioning of the international monetary system.

(The following are excerpts of the remainder of Senator JAVITS' testimony.)

TRADE POLICY

While I share Representative Byrnes concern that "political clout" should not be the principal factor which determines which industries secure or do not secure relief from rising imports, I must consider the tentative decision of the Ways and Means Committee to authorize a general restrictive new quota mechanism as unwise and potentially dangerous.

If this indeed does come to pass, the United States will face retaliation—Western Europe and Japan and perhaps other countries already have discussed the specifics of such retaliation—a chain of events that will not redound to the interest of any nation.

Those promoting protectionist legislation are not promoting in my judgment a national interest, but as is their right, of course, a sectional specific business interest.

I must also express my concern about the Ways and Means Committee's tentative decision concerning the American Selling Price (ASP). Repeal of the ASP is a firm commitment made by the Executive Branch of the United States Government. It is widely viewed abroad as the litmus test of the United States' intent as regards non-tariff barriers. The question must be asked how the Congress can even contemplate the opening of general negotiations on non-tariff barriers, if we don't live up to the one commitment we have made to eliminate American non-tariff barriers.

The one ray of light is the announcement that the United States has now agreed to multilateral talks with its main trading partners to discuss the crises in the world's textile markets and that the President's Special Trade Representative and the Under Secretary for Economic Affairs of the Department of State will represent the United States in these talks. These talks perhaps represent the last hope the industrialized nations of the world have to avert a trade war. I urge the representatives of all nations to seek a solution to the difficult problem of textiles in accord with the trade laws that have so well governed the expanding world trade that has benefited us all over the past 25 years.

FOREIGN ASSISTANCE POLICIES

There is growing international concern that foreign assistance is not a priority concern of this Administration and that the lack of Administration leadership will result in further cuts in the already low levels of our foreign assistance programs. This concern is partially attributable to the fact that the President has not yet submitted to the Congress the Report requested in my amendment to the Foreign Assistance Act of 1968.

At this time, I do not feel that this international concern about the Administration's future policies in the foreign assistance area is warranted and I have been assured by the Administration that the President's Report will be forthcoming in the very near future. Also the Overseas Private Investment Corporation, a significant new instrument designed to better promote our foreign economic policies, has already been authorized by the Congress and will come into being in the very near future.

In my view, because of the growing sense of quasi-isolation in the United States which is related to the Cambodian decision and reflected in the trade decisions now being made, it is very important that the President outline for the nation and the world, positive suggestions for a continuing fruitful and meaningful involvement with the developing world through a continuing developmentally oriented foreign assistance program. I am further convinced that Western Europe and Japan are increasingly willing to share the burdens of such a program which will primarily address itself to the growing gap between the have and have not nations. Thus, in the foreign assistance field the President and the Administration now have a rare opportunity to take positive action which over

time would significantly redound by improving the image of the United States in the world.

THE MULTINATIONAL CORPORATION

I suggest that we are lagging in our understanding of the importance of the role of the multinational corporation and the interconnection between American investment overseas and the health of our economy at home. This "lag" in understanding could result in decisions that we could live to regret.

These are not empty words since the Ways and Means Committee seriously considered language which would materially harm the operations of our American subsidiaries overseas without ascertaining the effect this legislation could have on the health of our own economy. I refer to the proposed repeal of Items 806.30 and 807.0 of the Tariff Schedules of the United States which provide that American articles which are exported for assembly and processing abroad are dutiable on their return to the United States only on the value of foreign costs and charges incurred; the American component of the produce is not presently dutiable. I have been informed that through the use of these sections in our Tariff Laws, American companies have found a way to compete with foreign manufacturers. Assembly abroad of American components may have saved and increased American jobs and afforded American companies an opportunity to hold a sizable portion of a market that will otherwise go to manufactuers by default.

To give an idea of the magnitude of our business investment overseas, during the period 1950–1968, U.S. private investment abroad grew from $19 billion to $101.9 billion and overseas private investment in the U.S. grew from $8.0 billion to $40.3 billion; annual growth rates of 10%. Servan-Schreiber forecasts that by the end of 1975 the third biggest industrial power in the world will be United States owned industry in Europe.

This indicates the extent to which the operations of the multinational corporations with their world-wide marketing and production concepts are creating an interdeveloped world economy and are outdistancing the legal framework which still is dwarfed by the rapid growth of the world economy.

INTERNATIONAL MONETARY CONSIDERATIONS

Because of the dollar's role as a reserve currency, and the fact that it is the standard of value for virtually all of the free world's currencies, the United States must assume a passive role in the exchange rate adjustment process. This is to say, we cannot devalue or revalue the dollar in order to improve our position vis-a-vis other currencies. The U.S. economy which might justify an exchange rate adjustment under other circumstances cannot be corrected by the United States through a change in the par value of the dollar.

The Republican members of this Committee, in the JEC Annual Report, stated that any improvements in the situation "must provide for more automatic and less discretionary means for exchange rate adjustment, both upward and downward, in order to harmonize international exchange rates". This is a sound policy.

The need for the growth in global reserves beyond that which could possibly be attained through conventional means is precisely the fact which lay behind the recent ratification and activation of the Special Drawing Rights facility. This Committee can rightfully take credit for helping develop a realization of this fact, and promoting the U.S. position on Special Drawing Rights; I foresee continued leadership by the Committee in this regard in the future. Therefore, I believe the Committee should consider the possible serious consequences of the failure of world reserves to keep pace with accelerating global needs.

One might ask what is the proper level of reserve creation, and what are the consequences of failure to expand world reserves.

The SDR facility marks a breakthrough in reserve creation and in theory should assure us of a means for guaranteeing the growth in world liquidity according to the needs of world trade and payments equilibrium. However, the present rate of SDR creation appears insufficient to do anything more than blunt the further deterioration in this liquidity situation. Estimated needs for additional reserves run as high as $6-billion per year, while the rate of SDR creation is running at an annual rate of slightly over $3-billion. Creation of total new reserves *including* SDR's is also running significantly lower than the need for new reserves.

Perhaps it is expecting too much of SDR's to solve the world's liquidity problems at once, but the demonstrated needs are so great that serious consideration ought to be given to wider use of SDR's when the amounts to be created are next decided upon.

In perhaps a more ominous development, our balance of payments problems now coincide with a growing realization among economists that the U.S. has little control over its balance of payments and that developments in the international monetary scene show a gradual shift away from dependence upon the dollar as a reserve.

What these facts imply is that the world's surplus countries might find it difficult in the future to tolerate continued heavy outflows of U.S. dollars.

The whole area of international capital flows is grossly unregulated, and was never treated thoroughly in the Bretton Woods Agreements. The fact that countries readily turn to a wide variety of capital controls whenever they feel slightly threatened on the international front attests to the need for greater coordination and knowledge in this important field.

Therefore, I would like to commend to this Committee a proposal by former Treasury Undersecretary Robert Roosa, that the United States call for a systematic attempt to formulate some "rules of the game" on international capital flows. This attempt would supplement work which has already been done in the OECD on the liberalization of capital movements; it would address itself to the modern conditions characterized by the increased amount of international business activity and the uncertainties regarding our payments position.

MEDIA MYTHS ON VIOLENCE

Mr. BROOKE. Mr. President, at a time when crime and civil disorders are primary concerns of every American, I believe it is most helpful for us to understand the role which the media can play in building our image of these phenomena.

A particularly useful study in this regard was recently concluded by Miss Terry Ann Knopf, of the Lemberg Center for the Study of Violence, at Brandeis University. Miss Knopf has presented some of her findings in an exceptionally "readable" article in the spring edition of the Columbia Journalism Review.

Through the use of some lively examples, the author demonstrates how misconceptions arise and how the use of "code words" can shape and often distort our understanding of an event. The article offers some suggestions for readers and the working press alike. I commend it highly to the attention of Senators and, indeed, of all Americans. I ask unanimous consent that the text be printed in the RECORD.

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

MEDIA MYTHS ON VIOLENCE

(By Terry Ann Knopf)

Several years ago a resident of a small Northern town kept insisting to a local newspaper reporter that a policeman had been shot and killed during a racial disturbance there. The reporter checked and rechecked but was unable to substantiate the story. In fact a policeman had been killed, but in another city. The man simply had heard a garbled version of the story—not an unusual occurrence in the confusion that prevails during crises.

Crisis situations increase the need for news. During most serious disturbances, news media are bombarded with calls from anxious citizens wanting information, clarification, verification of what they have heard. So important is the flow of news through established channels that its continued absence can help precipitate a crisis. In 1968 in Detroit the absence of newspapers during a protracted strike helped create a panic: there were rumors in the white community that blacks were planning to blow up freeways, kill suburban white children, and destroy public buildings; in the black community, that white vigilantes were coming into the area to attack the residents. Gun clubs sprang up in the suburbs; black leaders urged preparation of survival kits. On March 7—nearly four months after the strike began—Mayor Cavanagh had to go on TV to plead for calm.

As racial disorders have become a familiar part of the national scene the media have demonstrated a growing awareness of their responsibilities and a healthy willingness to experiment with new policies and procedures. Technical improvements also have been made. The City of Detroit, for example, has built a press room large enough for 150 people, with independent telephone lines. Operational techniques have been modernized—the Pittsburgh police, among others, have on occasion provided a helicopter for the press. And central headquarters or "press centrals" have been established to help eliminate conflicting reports. Moreover, a number of cities have adopted or revised guidelines for reporting. These guidelines—sometimes formal, sometimes informal—urge that unnecessary interpretation be minimized, rumors be eliminated, unverified statements be avoided, and superlatives and adjectives in "scare" headlines be excluded. One set of guidelines put the matter simply: "Honest and dispassionate reporting is the best reporting."

In accordance with these guidelines, newspapers have tended to move away from the "shotgun" approach—the front-page buildup, complete with splashy pictures and boxscores of the latest "riot" news. Dramatic but meaningless predictions have also largely disappeared. In May, 1967, *U.S. News & World Report* declared that Newark was "not expecting trouble," while Cleveland was voted the city "most likely to explode—again." Cleveland failed to erupt in 1967, but Newark experienced one of the most massive outbursts in our country's history. This kind of journalism is much less common today.

There is also evidence of greater sympathy and sensitivity toward blacks. How far have we come? Consider the following comment from the New York *Times* on July 23, 1919, concerning the violent disorder in Washington, D.C.:

"The majority of the negroes (sic) in Washington before the great war were well

behaved. . . . More of them admitted the superiority of the white race, and troubles between the two races were undreamed of. Now and then a negro intent on enforcing a civil rights law would force his way into a saloon or a theatre and demand to be treated the same as whites were, but if the manager objected he usually gave in without more than a protest."

These changes represent considerable improvement. But serious problems remain. Glaring instances of inaccuracy, exaggeration, distortion, misinterpretation, and bias have continued at every level—in newspapers and newsmagazines large and small, Northern and Southern, liberal and conservative.

The wire services are probably the most under-examined segment of the media, although as much as 90 per cent of the news in some newspapers on a given day may come from the wires. One error in a wire service report from one city may be repeated in hundreds of newspapers and newscasts. In York, Pa., in mid-July, 1968, for instance, incidents of rock- and bottle-throwing were reported. Toward the end of the disturbance UPI in Harrisburg asked a stringer to get something on the situation. A photographer took a picture of a motorcyclist with an ammunition belt around his waist and a rifle strapped across his back. A small object dangled from the rifle. On July 18, the picture reached the nation's press. The Washington *Post* said:

"Armed Rider—Unidentified motorcyclist drives through heart of York, Pa., Negro district, which was quiet for the first time in six days of sporadic disorders."

The Baltimore *Sun* used the same picture and a similar caption:

"Quiet, but . . . An unidentified motorcycle rider, armed with a rifle and carrying a belt of ammunition, was among those in the heart of York, Pa., Negro district last night. The area was quiet for the first time in six days."

The implication of this photograph was clear: The "armed rider" was a sniper. But since when do snipers travel openly in daylight completely armed? Also, isn't there something incongruous about photographing a sniper, presumably "on his way to work," when according to the caption the city "was quiet"? Actually the "armed rider" was a sixteen-year-old boy who happened to be fond of hunting groundhogs—a skill he had learned as a small boy from his father. On July 16, as was his custom, the young man had put on his ammo belt and strapped a rifle across his back, letting a hunting license dangle so that all would know he was hunting animals, not people. Off he went on his motorcycle headed for the woods, the fields, the groundhogs—and the place reserved for him in the nation's press.

More recently, an AP man in Dallas filed a story on a student takeover at Southern Methodist University. The Fort Worth *Star-Telegram* in its evening edition last May 2 put the story on the front page and gave it a banner headline:

"BLACKS SEIZE OFFICE OF S.M.U.'S PRESIDENT—POLICE ARE CALLED TO STAND BY

"DALLAS (AP).—Black students with some support from whites took over the office of the president of Southern Methodist University today and swore to remain until their demands are met. . . .

"Reports from the scene said from thirty to thirty-five students were in control of [President] Tate's office.

"The takeover occurred during a meeting of Tate and a campus organization, the Black League of Afro-American and African College Students."

The story had one major flaw—it wasn't true. While about thirty-five students had met with the university president, they were not "in control" of his office; nor had they "swore to remain" until their demands were met. No such "takeover" had occurred. Glen Dromgoole, a staff writer for the *Star-Telegram*, later reported what really happened. The black students had met with the president for more than five hours discussing recent demands. The talks were more friendly than hostile. (At one point hamburgers were brought in.) By the end of the meeting, agreement had been reached on most of the issues. Apparently the wire service reporter had accepted the many rumors of a student takeover.

Martin Hayden of the Detroit *News* has suggested "an almost mathematical relationship between the level of exaggeration and the distance of news transmission." Edwin Guthman of the Los Angeles *Times* maintains that the early wire service report "is at the crux of the news media's problem." However, it is more likely that instances of misreporting remain a problem at *every* media level. The Lemberg Center for the Study of Violence, in investigating twenty-five incidents in which the news media had alleged sniping, found that, along with the wire services, local and nationally known newspapers bore a heavy responsibility for imprecise, distorted, and inaccurate reporting.

While treatment of racial disorders is generally more restrained today, the news media continue to overplay the more violent or sensational aspects of a story. The central media concern during the disorder at Cornell University last April, for example, was the emergence of the blacks from the student union. A picture of the students carrying rifles and shotguns, splashed across the nation, had a distorting effect on public opinion. The New York *Times* put the picture on page 1, and *Newsweek* used it on its cover the following week. Certain facts were largely ignored: prior to the disorder a cross had been burned in front of a black women's dormitory; the students had heard radio reports that carloads of armed whites were moving toward the campus; when the students emerged from the building their guns weren't loaded. What was basically a defensive response by a group of frightened students came across in the media as a terrorist act by student guerrillas.

Aspects of the disorders are dramatic and do merit extensive coverage. But the media still tend to equate bad news with big news and to confuse the obvious with the relevant. Thus when sixty-five students at Brandeis University took over a building last year it rated a story on the front page of the New York *Times*—despite the fact that there was no violence, that classes continued, and that the university suffered only minor inconvenience. I was on campus then. My only recollection of anything unusual was that on the first day or two an attendant asked to see my identification, and for the next week and a half I noticed large numbers of reporters, press cars, cameras, and other equipment. I sometimes wondered if there weren't more reporters outside than students inside the building.

The *Times*, along with most newspapers, missed the unusual climax at Brandeis. In a war of nerves with the students, President Morris Abram showed consummate skill in handling the situation, remaining flexible on the issues, mobilizing the support of the student body and faculty, and, above all, refusing to call in police. Eleven days after the crisis had begun the students quietly left the building—a dramatic victory for the Brandeis community, a dramatic example of how to handle a university crisis in contrast to fiascoes at Columbia and San Francisco State. Yet the students' departure merely merited a *Times* story about three inches long, well off the front page.

Disparities between the headlines and news stories are another problem. Often much less occurs in the story than the headline would indicate. Last year, for example, some concerned parents in Jacksonville, Fla., removed their children from Kirby Smith Junior High School after a local radio station had broadcast an exaggerated report of a fight between black and white students. The school principal later indicated that "classes continued and there was no panic." Nevertheless the Miami *Herald* headlined its story last April 25: "Moms Mob School After Riot 'News.'" Sometimes no violence occurs in the story, dramatic headlines to the contrary, A story appearing in the Boston *Globe* last May 10 told of a peaceful rally by a small group of students at a local theological seminary. According to the *Globe*, the rally was "brief and orderly." But the headline above the story read "Newton Campus Erupts."

The use of the word "riot" presents another problem because it has no precise meaning in terms of current disorders. *Webster's* defines a "riot" as a "tumultuous disturbance of the public peace by three or more persons assembled together and acting with a common intent." The difficulty is that "riots" have become so frequent and come in so many sizes and shapes as to render the word meaningless. There is something ludicrous about lumping together as "riots" Detroit, with forty-three deaths, 7,000 arrests, and $45 million in property damage, and an incident in which three people break a few store windows. Yet this is precisely what the news media still do. The continued media use of the term contributes to an emotionally charged climate in which the public tends to view every event as an "incident," every incident as a "disturbance," and every disturbance as a "riot." Journalists would do well to drop the word from their vocabulary altogether.

No law says the media have to interpret and not simply report the news, but having assumed this responsibility they have an obligation to make reasonable judgments based on careful analysis. Unfortunately, journalistic attempts in the direction of social science research have been rather amateurish, particularly where new trends and patterns are concerned. The case of the Cleveland "shoot-out" is a good example. On July 23, 1968, an intense gun battle broke out between the police and a group of black nationalists led by Ahmed Evans. Before the disorder was over 16,400 National Guardsmen had been mobilized, nine persons had been killed, and there was property damage estimated at $2.6 million. The Cleveland *Press* on July 24, 1968, compared the violence to guerrilla activity in Vietnam:

"It didn't seem to be a Watts, or a Detroit, or a Newark, Or even a Hough of two years ago. No, this tragic night seemed to be part of a plan."

A reporter writing in the New York *Times* of July 28, 1968, stated:

"It marks perhaps the first documented case in recent history of black, armed, and organized violence against the police."

More recent reports have revealed that the "shoot-out" was something less than a planned uprising and that the situation was considerably more complicated than indicated initially. Unfortunately, following the events in Cleveland, disorders in which shots may have been fired were immediately suspected by the press of being part of a "wave." A series of errors involving a handful of cities became the basis of a myth—that the pattern of violence in 1968 had changed from spontaneous to premeditated outbreaks. Few of the nationally known newspapers and newsmagazines attempted to verify sniping reports coming out of the cities and over the wire services; few were willing to undertake independent investigations; and far too many

were overly zealous in their assertions of a new "trend" based on limited and unconfirmed evidence. Unwittingly or not, the national media had constructed a scenario on armed uprisings.

Although having more time to check and verify reports than daily newspapers, the newsmagazines were even more vocal in their assertions of a "new pattern." On September 13, 1968, *Time* took note of an "ominous trend" and declared that the violence "appears to be changing from spontaneous combustion of a mob to the premeditated shootouts of a far-out few." The story went on to indicate that "many battles" had begun with "well planned sniping at police." Nearly a year later, on June 27, 1969—long after investigation by a task force of the National Commission on the Causes and Prevention of Violence, by the Lemberg Center, and by the New York *Times* (which reversed itself on the Cleveland question) had cast serious doubt about premeditated outbreaks in Cleveland and elsewhere—*Time* still was talking about the possibilities of a "guerrilla summer" and reminding its readers of the time in Cleveland when "police were lured into an ambush." Once started, myths are difficult to extinguish.

The most recent myth created by the media involves an alleged "shift" in racial disturbances from large to small cities. Last July 25 a syndicated reporter for the News Enterprise Association (NEA) noted:

"The socially sizzling summer has begun—but unlike recent history, it seems to be the minor, not the major, cities which are sweltering."

In an article entitled "Riots, 1969 Style," *Newsweek* declared on August 11:

"The traditional riot scenario is still being played out this summer—with one major difference. This season the stage has shifted from the major population centers to such small and disparate communities as Kokomo, Ind., Santa Ana, Calif., Cairo, Ill., Middletown, Conn., and Farrell, Pa."

Last September 9 the New York *Times* captioned a picture:

"New riot pattern: Rioting in Hartford, Conn., last week . . . underscored the fact that smaller cities this summer have had more racial trouble than the big ones."

Similar stories appeared about the same time in scores of other newspapers, including the *Wall Street Journal*, the Baltimore *News American*, the Woburn, Mass., *Times*, and the Pittsburgh *Press*.

In fact, racial disorders occurring over the past few years—not just this past summer—have been concentrated in smaller cities. About 75 per cent of all outbreaks recorded in 1968 by the Lemberg Center's Civil Disorder Clearinghouse occurred outside the 100 largest cities. For the first six months of 1969 and also for the summer no appreciable change in the percentage was noted. Furthermore, many of the cities cited as prototypes of this latest "new pattern"—Hartford and Middletown, Conn., Cairo, Ill.—have had disorders in previous years. The difference is that such outbreaks were completely overshadowed by a few enormous outbreaks in large cities such as Newark and Detroit.

Discovering the origin of these and other myths would be useful—a faulty wire service report, an inept reporter, an unreliable source. But aside from the fact that such a task would be almost impossible, it would miss a central point—that the system of reporting ensures that errors of fact and interpretation may be repeated, compounded, and reformulated as myths. In recent years the various components of the media have become extremely intertwined and dependent upon one another. The wire services, the nationally known newspapers, and the newsmagazines feed one another news and information. While the system undoubtedly speeds the flow of news to the public, it has encouraged a parrot-like character in which the various media segments tend to reproduce rather than examine one another's views.

In this respect the New York *Times'* caption proclaiming a NEW PATTERN assumes greater significance. Prior to its appearance in the *Times*, I talked with Jack Rosenthal, who had been working on a story on the relatively cool summer. When the subject of a new "shift" in violence came up I indicated that such allegations were false and misleading. Rosenthal wrote a thoughtful story, dwelling on police-community relations, civic programs, and the new community spirit among blacks. His story made no mention of a "new riot pattern." Apparently the caption writer had paid more attention to what *Newsweek* and the *Wall Street Journal* were saying than to his colleague at the *Times*.

The failure of the media to tell the complete story in the case of Cornell or the right story in the case of Cleveland goes beyond a lack of initiative or an inclination to sensationalize. It also indicates a bias—one which, notwithstanding Vice President Agnew's declarations, cuts *across* political and geographical lines. The media are not more aware of this bias than is the general public aware of its own. In part, we call it a class bias in that those who comprise media staffs—reporters, editors, headline writers, etc.—are part of the vast American middle class and, as such, express its views, values, and standards.

Both the general public and the media share the same dislike of protestors; both are unable to understand violence as an expression of protest against oppressive conditions; both prefer the myth of orderly, peaceful change, extolling the virtues of private property and public decorum. People are expected to behave in a certain way: they just don't go around yelling and cursing or throwing rocks. Both will grant that it took a revolution to secure our independence and a civil war to end slavery (at least officially), but that was all long ago and somewhat different. The bias also has elements of racism in that color is never far from the surface. It is difficult to say where the class bias begins and racist bias ends. These elements are inseparable and reenforce each other, and both manifest themselves in the thinking of the public and media alike.

A growing body of research shows that racial disorders are a part of the social process. The process includes an accumulation of grievances, a series of tension-heightening incidents such as police harassment, and a precipitating event such as an arrest which crystallizes the tensions and grievances that have mounted—the "last straw" that triggers the violence. The "typical rioter" is young, better educated than the average inner-city black, and more dissatisfied. He wants a better job but feels that prospective employers will discriminate against him. He is likely to be a long-term resident of the city. (In a survey in Detroit, 90 per cent of those arrested were from Detroit, 78 per cent lived in the state, and only 1 per cent lived outside the state.) He is extremely proud of his race and is politically conscious. He is more interested in and informed about politics than blacks who are not involved in a disorder. He is also more inclined toward political activism. (In one survey, nearly 40 per cent of the participants in the disorder—as compared to only about 25 per cent of the nonparticipants—reported having been involved in civil rights activity.) Finally, he receives substantial support from the rest of his community, which does not participate but regards the violence as necessary and beneficial.

As important as the findings in these studies are, they have made virtually no impact on the vast majority of the public. Most Americans continue to believe that violence is caused by a tiny and insignificant minority, that "outside agitators" and "criminal elements" are mainly responsible for isolated outbursts that have little or no social significance. Intellectuals must share a portion of the blame for this situation. Having completed their studies, they have been notoriously reluctant to roll up their academic shirtsleeves and assume leadership in presenting their ideas to the public. There is a trace of condescension in their assumption that good ideas from above will somehow trickle down to the "masses of asses," as one academic I know calls them.

Greater responsibility for the failure to confront the public's resistance rests with the news media. They have failed to commit their power and prestige on behalf of such studies. They have failed to place the ideas before the public and push for reform in an aggressive, effective manner—settling for a splash of headlines and stories initially, and little followup. Instead the media have opted for the status quo, reflecting, sustaining, and perpetuating outworn beliefs of their predominantly white audience.

Historically the notion of plots and conspiracies has always had great currency in this country—and in other countries, too. Prior to the Civil War, Southerners frequently viewed abolitionists as "outside agitators" trying to stir up the happy slaves. Violent interracial clashes during World War I were said to have been instigated by the Bolsheviks, and the outbreak in Detroit in 1913 was attributed to an "Axis plot." The current wave of disorders has been blamed on individuals such as Stokely Carmichael and H. Rap Brown or, for those who like a more international flavor, "Communist infiltrators." In a survey of six Northern cities by the Lemberg Center, 77 per cent of all whites interviewed believed that "outside agitators" were a major contributing cause of disorders. When Los Angeles Mayor Sam Yorty recently blamed a rash of school disorders on a conspiracy of the Black Student Union, the Students for a Democratic Society, Communist sympathizers, and the National Council of Churches, he was following a long—though not very honorable—tradition.

Such allegations are usually made without a shred of evidence, except for an occasional "someone told me so." Nevertheless the media have frequently taken their cues from the public in formulating and circulating such reports. Misinterpretations of the events in Cleveland, along with assertions of a "new pattern" of premeditated violence, are blatant examples of this form of bias. But more often the bias is expressed in more subtle ways. For example, when rumors circulated that "outside agitators" were involved in a disturbance in Omaha, Neb., a news story appearing in the Arkansas *Gazette* last June 27 made reference to the rumors but also mentioned that the mayor had no evidence to support such reports. Yet, the headline above the story read "'Outsiders' Linked to Omaha Rioting."

A look at the way in which the disorders are written up reveals, tragically, that the majority of the media and the public share essentially the same view of the violence—as meaningless, purposeless, senseless, irrational. Media treatment of the disorders following the assassination of Rev. Martin Luther King, Jr., illustrates the point. The sense of loss and injury among blacks at the time of the assassination was extremely great—far greater than among whites. The unprecedented wave of disorders—approximately 200—was expressive of the anger, bitterness, resentment, frustration that black people everywhere felt.

How did the media handle the disorders? Stories in just two newspapers analyzed—the Buffalo *News* of April 9, 1968 (the day of Dr. King's funeral) and the Trenton *Times-Advertiser* one day later—are fairly

typical. No attempt is made to place the violence in a social context. The reference to the assassination of Dr. King is perfunctory, with only a passing mention of his funeral and a few shouts about his death. Value-laden words receive unusual emphasis. The participants are "marauders," not men; they "rove" instead of run; they move in "gangs," not groups; they engage in "vandalism," not simply violence.

We have all grown so used to viewing blacks as stereotyped criminals that it is difficult to picture them in any other role; hence such frequent press concoctions as "roving gangs," "roving vandals," "roving gangs of rampaging teenagers," or, for variety, "a window-smashing rampage of roving gangs of Negro youths." The New York *Times* assertion last July 1 that "roving bands of ruffians" were involved in a disturbance in Middletown, Conn., seems somewhat feeble by comparison. The effect of such treatment by the media is to pander to the public's prejudice, reenforcing stereotypes, myths, and other outmoded beliefs. The media not only frighten the public but confuse it as well.

And let us not forget the effects on the news media. The proliferation of underground newspapers, radical publications, black journals, as well as underground radio stations on FM bands held by churches and universities, indicates that the media are failing to reach certain groups, and that they still lack sensitivity, sophistication, and skepticism commensurate with their important and strategic position.

LAW AND LOYALTY

Mr. HATFIELD. Mr. President, I invite the attention of Senators to the award-winning editorial given by John Salisbury, the director of news and special projects at Portland's KXL radio station. This editorial comment, broadcast over KXL on May 1, 1969, was selected by the Freedoms Foundation at Valley Forge to receive their principal award in the editorial category last February 22.

During a time in our Nation's history when patriotism and loyalty to God and country seem to be discussed only as virtues behind closed doors and in the privacy of one's home, I wish to commend Mr. Salisbury's forthright expression of conviction in these realms. As Mr. Salisbury points out in a refreshing manner, all Americans should avoid the pitfalls of accepting polarization from either the extreme right or the extreme left. Rather, it is time that we as a nation reaffirm our loyalty and trust in the ideals, upon which this country was founded, and redouble our efforts in reestablishing those ideals in the daily affairs of our Nation and our own personal lives.

I ask unanimous consent that Mr. Salisbury's editorial be printed in the RECORD.

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

JOHN SALISBURY NEWS COMMENTARY

This is Law Day. It is also Loyalty Day.

Tune me out and turn me off, if you so desire, because I'm going to talk about law—and about loyalty.

It won't hurt much, because I've already been tuned out and turned off by the bullies, brigands and braggarts who have decided law is no longer necessary in America, and who scoff at the very concept of loyalty.

I'm tuned out and turned off by young people in their smart pants and dirty beards who believe, somehow, they've been gifted by a God they claim is dead with some kind of omniscience which gives them sole mandate to cure the world's ills and to rule it by their own laws.

I'm tuned out and turned off by the black militants who believe guns leveled at the wrongs of bigotry will win the rights of equality.

I'm tuned out and turned off by the burners of draft cards and the tramplers of flags who denounce in cowardice the names of the brave who fall in battle—the young men who didn't choose to be there but went anyway, and fought their hearts out and sometimes died believing that if their country was wrong, it went wrong trying to do right.

I'm tuned out and turned off by the far right which suspects everyone else of being disloyal—and by the new left which believes in overthrowing our government, preferring anarchy even above communism.

I'm tuned out and turned off by boys who look like girls and girls who look like ladies of the night—and by members of my generation who think long hair, sideburns and beards really open the lines of communication to their kids.

I'm tuned out and turned off by men who've lost respect for women, and women who've lost respect for themselves—and by the new sophistication which makes it permissable to tell dirty jokes in mixed company.

And I'm absolutely turned off by Polish jokes—or any others which poke unwarranted fun at race, nationality or faith.

I'm tuned out and turned off by educators who can find no way to defend their institutions except by allowing the rabble to take them over—and by professors who prefer the rabble to self-respect.

I'm tuned out and turned off by men of God doing the Devil's work because they're no longer certain where, why or how God works.

I'm tuned out and turned off by the pornographers who use liberty as a cloak for license, proclaiming their right to peddle filth as freedom of the press.

I'm tuned out and turned off by dope pushers destroying a generation of youth while proclaiming marijuana should be legalized and a trip on LSD the only way to fly.

These are some of the things which turn me off.

And what turns me on?

Whites and blacks working together to make things better for everybody.

Kids who organize decency rallies.

Students who go to school to get an education, and educators who educate.

Preachers who identify with God, and are humbled by Him.

Authors who write good books.

Clean-cut boys and pretty girls.

And people to whom law, loyalty, justice and patriotism are not dirty words—people like the great majority of Americans, young, old and middle-aged, who care and will do something about it, like tuning in and turning on to what's right with America, using it as the inspiration for overcoming what's wrong with America.

People who pledge not anarchy—but allegiance!

CAPTIVE NATIONS WEEK

Mr. HRUSKA. Mr. President, this month marks the 11th consecutive year in which we have observed Captive Nations Week, an unfortunate but necessary occasion in which we call to mind once again the plight of 100 million Europeans who suffer political imprisonment at the hands of the Soviet Union.

While we deplore their predicament, we rejoice at their perseverance, their undaunted spirit, and their determination one day to find freedom again.

It was 11 years ago that the Congress enacted a joint resolution inaugurating Captive Nations Week. The late President Eisenhower was the first Chief Executive to proclaim the week.

Since then we have seen a continuation of Communist domination of the countries of east and central Europe. We have seen a callous eradication of the spark of freedom wherever it threatened to burst into flame. We have been oppression which would have long ago subdued a less hardy people.

We know that while the Communists can stamp out the flame of revolt, the spark of freedom continues to live in the breasts of Czechs, Hungarians, Poles, Lithuanians, Latvians, Estonians, Ukrainians, Bulgarians, and Slavs. We know that they await the day when they will rise up and throw off the yoke of tyranny.

These citizens of the captive nations believe as we believe that the most precious freedom is the freedom of self-determined government. The Europeans who settled vast areas of this country, including my own State of Nebraska, cherished this freedom heartily. Their brothers and sisters in Europe have no less love for it, but unhappily are deprived of an opportunity to enjoy the benefits of freedom which we have scrupulously erected and protected in the United States.

We, therefore, observe Captive Nations Week in the hope that our demonstration of concern will hasten the day in which the peoples of these countries join the family of free nations.

None of us will be completely free, Mr. President, until the valiant people of these nations are free.

It would be good for us to stop in our daily tasks and ask ourselves if we really appreciate our inalienable rights. I fear too many of us take them for granted, a most unfortunate assumption. We might consider the pattern of our life in America if we were deprived of the rights of free speech, petition, press, or religion; if our prisons were filled with political prisoners; if few would dare to rise in criticism of their government.

Despite all these impediments to freedom, its stirrings continue to rise in the countries of east and central Europe. The brutal extermination of dreams in Poland, Hungary, and Czechoslovakia will not long deter the people from further attempts to achieve their birthright.

While the Communists rail about freedom in the United Nations, they continue to flaunt its charter proclaiming the principle of "equal rights and self-determination of peoples." At home they continue their hypocritical charade of denying individual liberties and fundamental rights, all in the name of "freedom."

It is not possible to pay a tribute too high, or describe in words too glorious, however, the spirit of the enslaved millions. Their spirit has not been broken, nor will it ever be. The spark of resistance burns fiercely and is bound to break into full-fledged flame again, somewhere, sometime. When it does, I pray,

Mr. President, that it will find support among the free world and among men of principle everywhere.

As we pay tribute once again to these valiant people, hoping that our inadequate words somehow reach across the waters and demonstrate that they are not forgotten, we reassure them they are not forgotten, that they have not been written off as a lost cause, that another day will come in which a stand may be made, and freedom may be won.

When that day comes, Mr. President, we want the people of the captive nations to know we will stand proudly by their side.

TOPSY-TURVY OIL PICTURE

Mr. TOWER. Mr. President, the Sunday, July 19, 1970, Dallas Morning News contains an article entitled "Oil's 'Topsy-Turvy' Picture Poses Federal Action Need," written by Clyde La Motte. In my opinion, the article correctly stated the present world oil situation.

The article pointed out the convergence of several important international factors which should profoundly affect our thinking about our domestic oil policies.

These factors, which are enumerated in the article, have caused a serious national shortage of some types of fuel oil and have caused an increase in the price of virtually all forms of imported oil. I ask unanimous consent that this article be printed in the RECORD.

Thus, the Nation is now "paying the fiddler" for the past "cheap imports" dance. As I have warned on numerous occasions, the Nation must not rely too heavily on cheap imported petroleum. If we should become too reliant on cheap imported oil, I warned that not only would our domestic exploration industry suffer and perhaps even become unable to supply our domestic needs, but also that we could expect long-run shortages and increased prices of this imported crude oil.

I hope that the present shortage will not be alleviated merely by increasing oil imports. This should be only a temporary measure. Rather, we need to increase the economic incentives for our domestic exploration industry to increase its efforts to explore for and develop our abundant reserves.

This will best serve the interests of our national security and at the same time work to alleviate this and future shortages of oil and natural gas.

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

OIL'S "TOPSY-TURVY" PICTURE POSES FEDERAL ACTION NEED

(By Clyde La Motte)

WASHINGTON.—A series of rapid-fire developments, including a sudden runaway in tanker rates, may have a profound impact on the oil import control program and on the federal government's handling of petroleum-related issues generally.

Changes, substantial changes, may be made in the very near future to adjust to a topsy-turvy situation.

Several factors have converged in recent months to create energy problems which are now demanding governmental attention.

One of these is the worsening situation in the Middle East which has resulted in a sharp cutback in Libyan oil production and the disruption in the flow of oil through the Tapline system to western markets.

This has caused the soaring tanker rates which have virtually nullified the value of import "tickets" held by U.S. inland refining firms.

That is, there is no advantage at this time in buying "cheap" crude oil in the Eastern Hemisphere because the cost of transporting it by tanker now results in an east coast delivery price of $4 a barrel or more.

Suddenly, domestic crude oil has become more attractive and companies are going all-out to obtain available supplies.

This competition for U.S. crude is likely to force the price of domestic oil up quickly.

Another emerging factor stems from the impact of new, tough antipollution regulations involving standards difficult for much of the domestic supply of coal and heavy fuel oils to meet.

This has sent Midwest utilities and industrial plants in particular scurrying about for the fuel they need to continue in operation.

The near-critical industrial fuel supply in the Midwest has been further tightened by action of natural gas pipelines in that area to reduce or cut off sales to those firms because of the tight gas supply.

The Oil Import Administration recently moved to ease the pinch by setting aside a "kitty" of 9.5 million barrels of residual fuel oil import "tickets" for use by Midwest utilities.

However, the utilities are having difficulty in locating overseas supplies of low-sulfur residual oil. Furthermore, with the high tanker rates, such imports would be highly costly.

One immediate possibility is the importation of crude oil from Canada to be used as a fuel by the utilities and the big industrial plants in Chicago, Detroit, Cleveland and elsewhere in the Midwest.

The crude oil could be brought in despite the ceiling applied earlier this year to imports of Canadian crude into Districts 1-4 because its use as fuel without any processing would enable it to be classified as a product rather than as crude oil. (There is no ceiling in overland imports of products.)

Indications are that this use of crude oil as fuel in the Midwest might result in an increase of shipments from Canada by as much as 200,000 barrels daily. It would be transported from Canada to U.S. Midwest markets through the existing Interprovincial-Lakehead Pipeline System, which currently has some spare capacity.

Ironically, the cost of the crude oil used as a fuel may run higher than the cost of crude for conventional use as feedstock at refineries. The reason is that residual fuel oil prices in the Midwest are already running around $4 a barrel and apparently are headed even higher.

The mounting pressure for more oil generally may well result in some temporary suspension of import controls applying to Canada and Venezuela.

Even this may not help a great deal. There is a question as to how much spare producing capacity Venezuela has available, and there is a similar question regarding transportation capacity to move any large increase of Canadian crude to U.S. markets.

Although the ceiling of shipments from Canada was specified earlier this year to be 395,000 barrels daily for the remainder of 1970, actual shipments have run nearer 600,000 barrels daily into Districts 1-4.

This has been made possible because the ceiling applies to the average for the entire allocation period. Thus, companies could be—and are—importing at a higher rate at present by "borrowing" from the level to be imported later in the year.

In any event, government officials in Washington appear to be convinced now that the country is facing an energy shortage and that vigorous steps will have to be taken to avoid critical disruptions.

Right now there is the prospect that some Midwest steel mills and other industrial plants may be forced to close down temporarily if they are unable to obtain needed fuel supplies. Such a development would put many workers out of a job and would have a big impact on the economy of the comunities involved.

Up until very recently, some government officials have held to the view that the domestic petroleum industry has been crying "wolf" concerning possible oil and gas shortages.

That no longer appears to be the case.

VOLUNTEER ARMED FORCES

Mr. HATFIELD. Mr. President, recently I introduced proposed legislation amending H.R. 17123. The amendment if adopted, would implement the recommendations of the Gates Commission effecting an all-volunteer military. At present, the amendment is cosponsored by Senators GOLDWATER, CRANSTON, SCOTT, MCGOVERN, PACKWOOD, YOUNG of Ohio, DOLE, STEVENS, HARTKE, SCHWEIKER, GOODELL, and MANSFIELD. When the amendment is called up I will offer various modifications to it which will not change the substance of the bill but will merely make it a title of the Military Procurement Authorization Act. So that there not be any confusion I would like to ask unanimous consent that the amendment (No. 765) as it will be modified be printed in the RECORD.

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

TITLE VI—VOLUNTEER ARMED FORCES

SEC. 601. The Congress hereby finds that—

(1) the Armed Forces of the United States can be materially improved and strengthened by increasing and improving the economic and educational benefits of the members thereof, by elevating the status of military personnel generally, and by developing and maintaining a system of military manpower procurement based on the free choice of the individual;

(2) involuntary service in the Armed Forces is a discriminatory tax-in-kind upon those persons required to serve because it falls upon a relatively small number of the total population;

(3) the military manpower requirements of the Nation can be adequately met through the effective administration of a voluntary system;

(4) a voluntary system should be instituted and given a fair test as soon as practicable while providing necessary safeguards in the event that unforeseen circumstances create a need for additional military manpower;

(5) the President, the Secretary of Defense, and the Secretaries of the military departments should exercise all authority available to them to promote the success of a voluntary system of meeting the military manpower needs of the Nation; and

(6) the Reserve forces should be maintained at adequate strength levels and should be better trained and equipped to meet emergency combat assignments.

CONTINUED REGISTRATION

SEC. 602. Notwithstanding the delimiting date specified in section 17(c) of the Military Selective Service Act of 1967, the President shall provide for the continued registration under such Act of all male persons in the United States between the ages of eighteen and twenty-six years in order that the involuntary induction of persons under such Act may be reinstituted without serious de-

lay in the event the President determines pursuant to section 603 of this title that such action is necessary and legislation authorizing conscription is enacted pursuant to such deterimnation.

ACTION FOR REINSTITUTING CONSCRIPTION

SEC. 603. If at any time after the termination of induction of persons into the Armed Forces under the Military Selective Service Act of 1967 the President determines that the military manpower needs of the Nation are not being adequately met through a voluntary system and that conscription is necessary for the national security, he shall promptly notify the Congress of such determination, and of the facts upon which such determination is based, and submit to the Congress such recommendations for legislation as he deems necessary and desirable to provide for the involuntary induction of persons into the Armed Forces.

CONGRESSIONAL DIRECTIVES RELATING TO THE IMPROVEMENT OF THE ARMED FORCES

SEC. 604. (a) The President, the Secretary of Defense, and the Secretaries of the military departments shall exercise the authority vested in them by law to provide for the military manpower needs of the Nation through a voluntary program of enlistments. In the exercise of such authority, the Secretaries of the military departments shall, under the direction and supervision of the Secretary of Defense, specifically provide for—

(1) the inducements necessary to take fullest advantage of career selection motivations in attracting persons to military careers;

(2) the improvement and expansion of the program for utilizing civilian personnel in lieu of military personnel for noncombatant service;

(3) the improvement and expansion of programs under which the education of specialists, such as doctors and dentists, is paid for by the Armed Forces in return for an obligated period of military service by the person receiving the educational assistance;

(4) the improvement and expansion of officer training programs, particularly programs to facilitate the qualifying and training of enlisted members who wish to become officers;

(5) the improvement and expansion of military recruiting programs;

(6) a more effective incentive program for recruiting personnel under which (A) successful recruiting personnel would be afforded the opportunity to earn extra pay or bonuses as well as accelerated promotions, and (B) quota systems would no longer be in effect; and

(7) the institution of any other appropriate actions designed to upgrade the conditions of military service and the States of military personnel generally.

(b) In implementing subsection (a)(2) of this section, relating to increased utilization of civilian personnel, the Secretary of Defense shall, as soon as practicable, (1) conduct a position-by-position analysis of all military jobs within the Department of Defense with a view to determining which jobs should be performed by military personnel and which should be performed by civilian personnel, and (2) develop accurate and current data for determining whether it is less expensive to have any such job performed by military or civilian personnel. The position-by-position analysis and the development of data required under this subsection shall be completed not later than eighteen months after the date of enactment of this title.

(c) Not later than eighteen months after the date of enactment of this Act, the Secretary of Defense shall submit to the Congress a detailed report regarding the operation of the voluntary system of meeting the military manpower needs of the Nation and for the improvement of the Armed Forces, and shall include in such report such recommendations for legislation to improve such system as he deems appropriate.

INCREASE IN PAY RATES FOR MEMBERS OF THE UNIFORMED SERVICES

SEC. 605. The Secretary of Defense shall formulate as soon as practicable after the date of enactment of this title a revised basic pay schedule for members of the uniformed services incorporating the increases in the basic pay of enlisted personnel and officers listed in the table below and such adjustments in the basic pay of other personnel as the Secretary deems necessary and appropriate to insure equitable pay differences between different grades.

	Enlisted personnel	Officer personnel
Years of service:		
1	$1,700	$1,504
2	1,544	2,031
3	804	1,142
4	727	----------
5	347	----------
6	344	----------
7	233	----------
8	344	----------
9 to 10	258	----------

SPECIAL PAY FOR PHYSICIANS, DENTISTS, AND VETERINARIANS MADE PERMANENT; INCREASE IN SPECIAL PAY FOR PHYSICIANS AND DENTISTS

SEC. 606. (a) Sections 302 and 302 of title 32, United States Code, are amended by striking out "and before July 1, 1971." each time it appears in such sections.

(b) Section 302(1) of such title is amended by deleting the comma after "1947" the second time such date appears therein.

(c) Section 302(b) of such title is amended to read as follows:

"(b) The amount of special pay to which an officer covered by subsection (a) of this section is entitled is—

"(1) $150 a month for each month of active duty if he has not completed two years of active duty in a category named in that subsection;

"(2) $200 a month for each month of active duty if he has completed two years of active duty in a category named in that subsection;

"(3) $450 a month for each month of active duty if he has completed three years of active duty in a category named in that subsection;

"(4) $600 a month for each month of active duty if he has completed four years of active duty in a category named in that subsection;

"(5) $750 a month for each month of active duty if he has completed five years of active duty in a category named in that subsection;

"(6) $900 a month for each month of active duty if he has completed six years of active duty in a category named in that subsection; or

"(7) $1,050 a month for each month of active duty if he has completed seven years of active duty in a category named in that subsection."

MORE EFFECTIVE USE OF PROFICIENCY PAY FOR ENLISTED MEMBERS

SEC. 607. (a) The Secretary of Defense shall, at the earliest practicable date, promulgate regulations under which the Armed Forces will increase the utilization of proficiency pay authorized by section 307 of title 37, United States Code, for the purpose of attracting and retaining enlisted members who are specially proficient in military skills.

(b) Section 307 of title 37, United States Code, is amended by redesignating subsection (d) as subsection (e) and inserting after subsection (c) a new subsection (d) as follows:

"(d) Proficiency pay under subsection (a)(1) or (a)(2) of this section shall be made available to enlisted members with critical skills after such members have satisfactorily completed their training in such skill. Proficiency pay under this section shall be paid to enlisted members who qualify therefor without regard to whether they are career members or not."

HOSTILE FIRE PAY INCREASE

SEC. 608. Section 310(a) of title 10, United States Code, is amended by striking out "$65" and inserting in lieu thereof "$200."

COMBAT ZONE PAY

SEC. 609. (a) Chapter 5 of title 37, United States Code, is amended by adding after section 310 a new section as follows:

"§ 310a. Special pay: duty in a combat zone

"(a) Except in time of war declared by Congress, and under regulations prescribed by the Secretary of Defense, a member of the uniformed services may be paid at the rate of $65 a month for any month in which he was entitled to basic pay and was serving in a combat zone.

"(b) A member may not be paid special pay under this section for any month for which he receives special pay under section 310 of this title, but may be paid special pay under this section in addition to any other pay and allowances to which he may be entitled.

"(c) The provisions of section 310(c) of this title relating to determination of fact under that section shall apply in the case of the determination of fact under this section.

"(d) The Secretary of Defense shall report to the Congress by March 1 of each year on the administration of this section during the preceding calendar year.

"(e) As used in this section the term 'combat zone' means any area which the President by Executive order designates as an area in which Armed Forces of the United States are engaged in combat."

(b) The table of sections at the beginning of chapter 5 of such title is amended by inserting immediately below

"310. Special pay: duty subject to hostile fire."

the following:

"310a. Special pay: duty in a combat zone.".

EXTENSION OF TIME WITHIN WHICH REENLISTMENT BONUSES MAY BE PAID

SEC. 610. Section 308(a) of title 37, United States Code, is amended by striking out "within three months" and inserting in lieu thereof "within six months".

TRAVEL AND TRANSPORTATION ALLOWANCES AND DISLOCATION ALLOWANCES FOR ENLISTED MEMBERS IN LOWER GRADES

SEC. 611. (a) Section 406(a) of title 37, United States Code, is amended by inserting ", including a member in pay grade E–4 (four years or less service), E–3, E–2, or E–1," immediately after "A member of a uniformed service".

(b) Section 407(a) of such title is amended by striking out "uniformed service—" and inserting in lieu thereof "uniformed service, including a member in pay grade E–4 (four years or less service), E–3, E–2, or E–1—".

ENLISTMENTS AND DISCHARGES

SEC. 612. (a) Section 505(c) of title 10, United States Code, is amended to read as follows:

"(c) The Secretary concerned may accept original enlistments in the Regular Army, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, (1) of male persons for the duration of their minority or for a period of two years, and (2) of female persons for a period of two years. The Secretary concerned may accept an original enlistment in the case of any person for a specified period longer than two years, but not more than four years, where the cost of special education or training to be af-

forded such person would make a shorter enlistment period impracticable."

(b) Section 505(e) of such title is amended to read as follows:

"(e) The Secretary concerned may accept reenlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, for unspecified periods and for periods commensurate with the cost of any special education or training to be received by any member, as may be prescribed in regulations of the Secretary concerned. In no case shall the Secretary concerned specify a period of more than four years of obligated service because of special education or training to be received by any member."

(c) Section 509(a) of such title is amended by striking out "Under" and inserting in lieu thereof "Subject to the provisions of section 505(e) and".

(d) The Secretary of Defense shall promptly conduct a comprehensive study to determine the term of service which should be required of enlisted members who receive various types of special education or training programs. The Secretary concerned shall, on the basis of the conclusions reached in such study, prescribe by regulation the term of service required to be performed by enlisted members who receive special education or training.

(e) Section 1169 of such title is amended to read as follows:

"§ 1169. Regular enlisted members: limitations on discharged

"Any enlisted member who has completed his original period of enlistment and who has been reenlisted for an unspecified period shall be discharged upon written request, except that—

"(1) the Secretary concerned may refuse to grant a discharge during any period of war or national emergency;

"(2) a member shall be required to fulfill a term of service commensurate with the cost of any special education or training received by him, as prescribed in regulations of the Secretary concerned;

"(3) the Secretary concerned may refuse to grant a discharge to any enlisted member who has been assigned to sea duty or duty outside the United States; or

"(4) as otherwise provided by law."

RESERVE OFFICER TRAINING CORPS SCHOLARSHIP PROGRAM INCREASE

SEC. 613. Section 2107(h) of title 10, United States Code, is amended to read as follows:

"(h) Not more than the following number of cadets and midshipmen may be in the financial assistance programs under this section at any one time:

"Army program: 10,000

"Navy program: 10,000

"Air Force program: 10,000."

GREATER UTILIZATION OF CIVILIAN MEDICAL FACILITIES AND PERSONNEL

SEC. 614. (a) The Secretary of Defense shall, as soon as practicable after the date of enactment of this Act, formulate plans for utilization, to the maximum extent practicable, of civilian medical facilities and personnel to serve the medical needs of military personnel and their dependents. In formulating such plans the Secretary shall give consideration to more extensive use of a medical insurance program for retired personnel and their dependents and for the dependents of active duty personnel.

(b) The Secretary of Defense shall submit to the Congress the plans formulated pursuant to this section not more than nine months after the date of enactment of this title together with such recommendations for legislation as may be necessary to effectuate such plans.

FORMULATION OF NEW SALARY STRUCTURE FOR THE UNIFORMED SERVICES

SEC. 615. (a) The Secretary of Defense shall formulate as soon as practicable after the date of enactment of this title a new pay structure for the uniformed services. Such pay structure shall—

(1) provide salary schedules of pay which combine basic pay rates and present allowances for quarters and subsistence;

(2) provide for cash contributions to a retirement system similar to the civil service retirement system provided for Federal civilian employees; and

(3) take into account the amount lost as the result of the termination of separate allowances for quarters and subsistence and the amount which will be contributed to a retirement system, including the loss of any tax advantage realized under current law.

The Secretary is authorized to include such other features in any new pay structure as he determines necessary or appropriate to make such pay structure fair and equitable and to attract qualified personnel to the uniformed services.

(b) The Secretary of Defense shall submit to the Congress the new pay structure formulated by him pursuant to this section not later than nine months after the date of enactment of this title.

EFFECTIVE DATE

SEC. 616. The Act shall become effective upon the date of enactment, except that sections 605, 606, 607, 608, 609 and 610 shall become effective on the first day of the first calendar month in which this title is enacted.

EXPLANATION OF WITHDRAWAL OF NOMINATION OF DR. J. RICHARD LUCAS TO BE DIRECTOR OF BUREAU OF MINES

Mr. JACKSON. Mr. President, on July 17 the President withdrew the nomination of Dr. J. Richard Lucas, whose name he had previously submitted to the Senate for its advice and consent to be Director of the Bureau of Mines in the Department of the Interior.

The nomination of Dr. Lucas was greeted with a great deal of interest by many people both in and out of Congress, some of whom opposed him and most of whom supported his nomination.

However, in order to clarify the record concerning this nomination, I ask unanimous consent to place in the RECORD at this point in my remarks a letter of July 8 from Dr. Lucas advising me that he had requested that his name be withdrawn since he did not feel he could meet the committee's requirements relating to the disposal of certain securities he held, my reply to him, and a press release issued following an executive committee meeting on this matter.

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

VIRGINIA POLYTECHNIC INSTITUTE,
Blacksburg, Va., July 8, 1970.

Senator HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: Regarding my nomination to be Director of the Bureau of Mines pending before the Senator Interior and Insular Affairs Committee, I have now been informed that it is the view of the committee that I will be required to dispose of my foreign, as well as domestic, mining securities so as to avoid any possible conflict of interest.

Initially I was advised by the Solicitor of the Interior Department, both orally and later by letter dated June 22, that I would be required to dispose of my domestic securities, but that in his view he saw no conflict of interest in my retaining my foreign securities during the period I would be serving as Director of the Bureau of Mines. He pointed out, of course, that the final decision in this matter would rest with the Senate Interior and Insular Affairs Committee.

After careful consideration I wish to state that the proposed sale of my foreign securities would represent a substantial financial hardship to myself and to my family.

Under these circumstances and in view of the Committee's decision, I have regretfully requested Mr. Harry Flemming of the White House to advise the President that my nomination be withdrawn.

During the public hearing on my nomination before the Senate Interior and Insular Affairs Committee on May 25, certain charges were made by a newspaper columnist concerning plagiarism in my doctoral thesis. In your position as Chairman of the Committee, you announced that the committee would investigate charges, which I stated at the time were completely unfounded and with not the slightest basis in fact whatever. Because of the important bearing such unfounded charges might have on my future professional and academic career, I would appreciate it very much if you as Committee Chairman, would state for the public record the results of the investigation conducted by your committee into these charges.

Your consideration of the request will be appreciated.

Sincerely yours,

J. RICHARD LUCAS.

JULY 13, 1970.

Dr. J. RICHARD LUCAS,
Department of Mining Engineering, Virginia Polytechnic Institute, Blacksburg, Va.

DEAR DR. LUCAS: Thank you for your letter of July 8 advising this Committee that you have requested the President to withdraw your nomination to be Director of the Bureau of Mines.

The Committee understands the reasons for your decision and we regret the inconvenience that this matter has caused you. We certainly understand the financial hardship the disposal of your securities would represent.

I am enclosing a copy of a press release issued today by the Committee following our meeting this afternoon.

With best wishes.

Sincerely yours,

HENRY M. JACKSON,
Chairman.

PRESS RELEASE OF SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

At an executive meeting of the Senate Committee on Interior and Insular Affairs today, Senator Henry M. Jackson, Chairman, and Senator Gordon Allott, Ranking Minority Member, announced that a letter had been received from Dr. J. Richard Lucas advising Chairman Jackson that he had requested the President to withdraw his name as nominee for the post of Director of the Bureau of Mines.

As is the custom of the Committee when considering nominations, the financial holdings of a nominee are reviewed. Despite the fact that a majority of his securities were foreign, the Committee felt that it would be wise for Dr. Lucas to divest himself of all of

his present stock holdings to avoid even the appearance of a potential conflict-of-interest. Dr. Lucas stated that he was not in a position to make such a divestiture, and the following is quoted from his letter:

"After careful consideration I wish to state that the proposed sale of my foreign securities would represent a substantial financial hardship to myself and to my family."

Senator Jackson said, "The Committee is well aware of the fact that sometimes its requirements for divestiture and adjustment of investments place a heavy financial burden upon nominees; however, we do feel these financial requirements are good public policy and in the long-run best interests of the nominee and the Nation."

At the public hearing on his nomination, the Committee had also taken note of certain newspaper reports referring to allegations of plagiarism in connection with his doctoral dissertation. The Chairman and the Ranking Republican member of the Senate Interior Committee emphasized that not only did their review of the F.B.I. report reveal there was no substance to the allegations, but also, the independent investigation of the Committee yielded further confirmation of the fact that these allegations are totally without foundation, having no basis in fact. The Committee, by unanimous action, felt that it was important that it be made abundantly clear to the public that all of its investigations have revealed nothing that reflects adversely upon the character, integrity, or professional qualifications of Dr. Lucas.

CRITICISM OF THE PRESIDENT

Mr. GOLDWATER. Mr. President, on July 14, I delivered a speech on the Senate floor relative to the problems created by the tremendous size of the Federal bureaucracy. At that time I stated that I did not believe a person who is making government his career and is blanketed under civil service has an automatic right to permanent employment. I stated further that I agreee that every individual, Federal employee or not, has the right to reach a decision on policy matters and give voice to that opinion as an individual and a U.S. citizen. As I put it in my July 14 speech:

Understand, I have no objections to any government worker expressing in the proper forum his feeling or belief about any policy. I object most strenously, however, to the practice of a government official using his position as a government employee to oppose or undermine or refuse to work for the policy of that government.

It will be recalled, Mr. President, that I raised a particular question about a mass meeting held by employees of the Department of Health, Education, and Welfare to protest the administration's policy in Cambodia.

Up until now my opposition has been to the practice of Federal employees openly criticizing the polices for which they work. Now, Mr. President, my criticism is directed also at the propriety of Federal employees making personal attacks upon the President for whom they work.

In this instance we again hear from the Department of Health, Education, and Welfare. According to last night's Washington Star, the Vietnam Moratorium Committee at the National Institute of Health in its latest publication ridicules Mr. Nixon's performance as President in a mock appraisal such as that to which HEW workers are subjected.

President Nixon's performance as Chief Executive was judged as follows:

Quality of work: His work frequently contains an unacceptable percentage of error or shows poor judgment.

Interest in work: Appears bored with his work.

Attendance and punctuality: Takes longer or more frequent breaks than most; tends to take advantage of leave privileges.

Subordination of personal interests: Puts his own interests first, frequently to the detriment of his work.

Flexibility: Very rigid and opinionated; once he gets an idea, it's almost impossible to change him.

Resourcefulness: Has considerable difficulty in dealing with anything out of the ordinary routine.

Judgment: Very erratic in his ability to reach logical conclusions.

Knowledge required by the job: Handicapped quite often in his work because of his lack of knowledge, understanding or information.

Degree of supervision required: Requires constant supervision or direction.

Initiative: Seems to aspire to nothing higher; frequently shirks responsibility.

Productivity: Tends to be a bottleneck in getting the work out.

Persistence: Frequently fails to finish work he has started.

Attempts to improve: Content to drift; generally unresponsive to efforts to help him develop.

The last part of the "performance appraisal" contains the "reviewing officer's" comments, including:

"He has had no new idea in 22 years . . . Talks in cliches . . . Progress on many national problems (e.g., hunger, poverty, racism, pollution, health, etc.) is being held up . . . Requires, but, unfortunately, does not get good supervision or direction . . .

"He has always put Richard Nixon first. His Southern Strategy means that he puts his re-election ahead of racial justice . . . His Cambodia speech was very illogical, clutching at every rationale and excuse in sight to justify his intervention . . . In particular, his having Spiro Agnew smear opponents shows that he has learned nothing in the past 22 years."

Mr. President, I presume this is all meant to be very funny. Certainly nobody could expect any group with such poor taste to be a competent judge of any kind of worker performance, let alone that of the man who holds the toughest, most important job in the entire world. This is a man who passed muster with the American voters and does not hold his job as the result of an appointment or a civil service classification.

But the ridiculing of the President certainly should raise grave questions as to how far Government employees can go in questioning the official policies of the Government and whether, as Government workers, they have the right to criticize the President personally. I am not unmindful of the fact that the whole issue involves the question of freedom of speech and expression. And there certainly is no suggestion here that these precious freedoms be obstructed for any reason whatsoever. The question here is whether this freedom of expression extends to the length of Federal employees using the prestige of their employment to gain greater circulation for their individual views.

Not being an attorney, I do not know how much leeway civil service status gives to Government employees who make it a practice to criticize in public the President and the administration for which they work.

But I can assure you that it is long past time for the Nixon administration to look into this situation. I cannot understand why the administration has not moved to censor or discipline these dissatisfied workers. How long is the White House likely to put up with this kind of insulting insubordination? I am convinced that there is some method through which these workers may be made to realize that they owe a responsibility to the people of the United States who chose the man they so freely criticized. It would be a fine thing if means could be found to rid the government of these troublemakers permanently. They have asked to be fired by their actions, and if they were working for any enterprise other than the government, they would already be out on their ears.

CHURCHES AND THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, at the hearings on the Genocide convention recently completed by a Foreign Relations Subcommittee, some of the most compelling testimony in support of the convention came from religious organizations. These are the same organizaitons that provided strong testimony in behalf of the convention 20 years ago, when the Foreign Relations Committee first opened its inquiry on this subject.

Unfortunately, Mr. President, their testimony was not heeded then. I hope it will be heeded now.

I ask unanimous consent that the testimony given by the United Methodist Church at this spring's hearings be printed in the RECORD.

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

STATEMENT BY THE UNITED METHODIST CHURCH

The churches of the United States were deeply shocked and aroused by the terrible toll in suffering and death inflicited by the Nazis upon the Jewish people of Europe and upon other racial, ethnic, national and religious groups just prior to and during World War II. These actions were highly offensive to the religious conviction that, as creatures of God, all persons are possessed of essential human rights which are inherently theirs and which no government or group has the right to violate.

Therefore, The United Methodist Church and its predecessors (The Methodist Church and The Evangelical United Brethren Church) have consistently supported the protection of human rights internationally as well as nationally. The following statements are the position of The United Methodist Church as set forth by the General Conference, the highest authoritative organ of the denomination. The General Conference of The United Methodist Church is a representative body composed of some 1,000 delegates equally divided between laymen and clergy.

"We commend the United Nations for its success in reconciling differences, promoting human rights, lifting the levels of health, education, and welfare, and advancing self-government among the nations . . .

"We urge the early ratification by all nations of the fourteen conventions on human rights developed and approved by the United Nations or its specialized agencies. . . ."

Adopted by the General Conference of The United Methodist Church, Dallas, Texas, May 9, 1968.

An earlier statement of the General Conference of one of the predecessor denominations, The Methodist Church, is even more specific:

"We urge the early ratification by all nations of the conventions on human rights developed and approved by the United Nations, including: The Genocide Convention, The Convention on the Abolition of Slavery, The Convention on the Political Rights of Women, The Convention of the Stateless Person, The Convention on the Abolition of Forced Labor."

Adopted by the General Conference of The Methodist Church, Pittsburgh, Pennsylvania, 1964.

In the light of the preceding statements, we join in urging the Senate Foreign Relations Committee and the Senate as a whole to consent to the accession of the United States of America to the Convention on the Prevention and Punishment of the Crime of Genocide.

BISHOP CHARLES F. GOLDEN,
President.
A. DUDLEY WARD,
General Secretary.
Board of Christian Social Concerns of The United Methodist Church.
BISHOP LLOYD C. WICKE,
President.
TRACEY K. JONES,
General Secretary.
The Board of Missions of The United Methodist Church.

TIME OF CRISIS AT THE SMITHSONIAN

Mr. GOLDWATER. Mr. President, yesterday I was privileged to appear before the House Subcommittee on Library and Memorials, presided over by Mr. FRANK THOMPSON. Amazing as it sounds, his subcommittee is conducting the first legislative oversight hearings which Congress has held on the Smithsonian Institution in over a century.

To my mind, this series of hearings presents a fine opportunity for Congress and the American public to learn more about the Smithsonian and thereby to be in a better position to judge whether it is living up to its obligations to the American taxpayer.

Not many people realize how large the Smithsonian has grown. Few are aware that Congress now appropriates over $40 million each year to finance the Institution's operations. Even fewer people know that the Smithsonian has more than 3,400 employees on its staff, most of whom are paid from Federal funds.

It is the strength of the House hearings that all these facts can be brought into the open. The committee is allowing the inquiry to be made across the board, into every aspect of the Smithsonian's activities, both Federal and private; and I want to congratulate the committee members for the thorough and honorable way the meetings are being conducted.

Yesterday I sought to aid the committee by raising several questions concerning the Smithsonian. In general, my questions were: What is the Smithsonian doing with its approximately 3,400 employees? Where have the increases in positions and appropriations gone? And, have any units at the Institution been overlooked during the term of the current Smithsonian management—a period when the Smithsonian's Federal budget has doubled and the number of permanent employees authorized by Congress has risen by more than 700 positions?

Mr. President, my study of these questions indicates that the Smithsonian has slipped off course a few degrees in its list of priorities. The evidence squarely points to the concluson that both the National Air and Space Museum and the National Museum of Natural History are seriously undermanned and underfunded.

It was my purpose yesterday to call this situation to the attention of the committee in the belief that public exposure of these problems will lead to some constructive steps being taken to solve them.

In order that the large audience that reads the RECORD may be familiar with this subject, I ask unanimous consent that my testimony and related documents be printed in the RECORD.

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

TIME OF CRISIS FOR NATIONAL AIR AND SPACE MUSEUM

Mr. Chairman and Members of the Subcommittee:

Please allow me to say at the outset that I think the Committee is doing a significant public service by holding the present series of hearings. By allowing the true character of the Smithsonian to be discussed and examined openly at this forum, in a reasonable and decent way, you and your colleagues are contributing to the advancement of public knowledge about the Smithsonian, as well as providing the opportunity to identify areas where the Institution might better fulfill its national responsibilities.

For indeed it has a heavy debt to the American taxpayer. The direct Federal monies which Congress will appropriate for the Smithsonian's operations, for the 1971 fiscal year, is over $40 million. This includes an increase of $7.6 million for salaries and expenses alone—a rise of 25% in one year.

Since 1964 when the current Smithsonian Secretary took office, the total Federal budget for the Institution has doubled. The number of permanent employees authorized by Congress has jumped from 1348 to 2077—a growth of more than 700 positions in 6 years. What is more, the number of part-time employees has gone up from 18 to 240. On top of this, the Smithsonian employs over 1100 people who are paid from private funds.

The question is, what is the Smithsonian doing with its approximately 3400 employees? Where have the increases in positions and appropriations gone? Have any units of the Institution been overlooked during this period of amazing growth?

Mr. Chairman, the facts must be faced. The Smithsonian has seriously neglected two of its major components. Both the National Air and Space Museum and the National Museum of Natural History are the victims of a shocking lack of attention by the Smithsonian's Top Brass.

This is not a conclusion that I could have reached as late as a few weeks ago. But recently my aides held a meeting with Doctor Ripley's top assistants. The discussions at this conference revealed that the Smithsonian management has little comprehension of the pressing needs of the nation's Flight Museum or the Natural History Museum.

They simply do not understand that each of these museums is going through a time of crisis. Neither the funding nor the personnel of either museum is anywhere near where it should be for these important branches to live up to the role which the American public and their respective professional fields demand of them. In fact, as far as personnel is concerned, these museums are going downhill.

Mr. Chairman, these charges can be documented. First, I will discuss the National Air and Space Museum.

The cogent facts are as follows:

1. The National Air and Space Museum receives an extremely meager share of the Smithsonian's Federal Budget—about 1.7%.

2. The professional and support departments of the Flight Museum are seriously undermanned. It has only 31 people on board.

3. The Museum attracts at least one-third of the visitors to the Smithsonian Park. In fact, an in-house survey by the Smithsonian reveals that nine out of every ten visitors interviewed at the Mall had been to see the Air and Space Museum—a shocking contrast with the miniscule share of funds and employees which the Museum receives.

4. The Museum has no Director. It has had no Director for nearly a year, even though it has been 24 months since the last Director gave notice of his planned retirement.

5. For many years, the Air and Space Museum was not considered to be one of the Institution's science and technology components. Rather it was put into the arts and humanities wing of the Institution.

6. It can be proven that in 1969 the Smithsonian management threatened the Flight Museum and its exhibits with expulsion from the Mall. The Assistant Secretary for History and Art proposed to "get rid of the tin shed" and "get the missiles out of our view."

7. Most Flight Museum exhibits are badly housed, and deteriorating rapidly. The building labeled "National Air and Space Museum" is actually a World War I "temporary" hanger erected in 1917. The other building used for Air and Space exhibits is 90 years old.

8. The program for construction of a permanent Air and Space building is at dead center. In the words of Paul Johnston, the last Director of the museum, the project "may never get off the ground."

Mr. Chairman, I would like to review these facts and to document each of them.

There is no question that the Air and Space Museum is given less than a 2% slice of the Smithsonian's Federal budget. According to end-of-the-year figures, the Museum's budget was cut by the Smithsonian to under $500,000 for the 1970 fiscal year. This is all that the Museum received out of $28.1 million which Congress appropriated for Smithsonian salaries and expenses.

In terms of the Smithsonian's employment picture, the Flight Museum's share is even smaller.

At the April hearings, Under-Secretary Bradley stated that the actual number of permanent employees on the Federal payroll was 1889. At this time the number of employees at the National Air and Space Museum was 30, counting curators, administrators, secretaries, and the support team at Silver Hill. This amounts to 1.6% of the overall Smithsonian staff.

Mr. Chairman, the Smithsonian claims that the Flight Museum had the equivalent of 39 positions filled in 1970 because the Office of Exhibits performed work on some air and space projects. But this completely overlooks the fact that the Office of Exhibits has its own appropriations. This work has been justified before Congress as a separate item in the Smithsonian's budget.

When Congress appropriated money for 41 positions at the Flight Museum, it did not think it was paying for the salaries of peo-

ple in the Office of Exhibits. To turn around now and claim that the Museum had the equivalent of 39 employees muddies the waters. The next thing I know the Institution will be charging janitorial help and guard services against the Museum as well.

Mr. Chairman, the employment picture looks incredible when it is viewed in comparison with the responsibilities of the Museum.

The Historical Research Center of the Museum, which supports the curatorial and exhibits staff by documenting the authenticity of artifact acquisitions, by answering 6000 public inquiries annually, and by running a reference library, has 3 employees. In 1967 it had 5.

The Preservation and Restoration Division at Silver Hill, which handles the assemblage and retrieval of aircraft and astronautical specimens, the maintenance of Museum collections, and the inventory and cataloging of these collections, had 15 employees several years ago. It was down to 14 early this year.

The Curators' professional staff has decreased 50% in the Aero Section—from 4 employees to 2.

And, on it goes. While the Museum could easily justify the need for 50 or more positions at present, the actual number of hands on board is less now than it was in 1966.

If the Smithsonian management intends more than lip service when it calls for the Flight Museum to be the "nation's center for exhibition, education, and research in the history and principles of air and space flight" and the home of the "world's greatest collection of objects related to flight," then I believe the management should release to the Museum the positions that Congress has authorized.

Turning to the visitor statistics, the Smithsonian Information Office reports that 12.4 million visitors came to see the Smithsonian Park in calendar year 1969 and that at least 4.1 million of these persons went through Air and Space Museum exhibits.

Unfortunately, this word does not seem to have gotten through to the Secretariat. At page 894 of the recent House appropriation hearings, Doctor Ripley spoke of only 2 million visitors a year seeing "our air and space displays."

But in truth, there were more than 4 million visitors to these displays in 1969. Approximately 2.3 million persons came to see the exhibits at the Arts and Industries building, and another 1.8 million visitors went through the Air and Space building.

The most striking evidence of the popularity of the Air and Space Museum is found in a "Visitor Survey" conducted by the Smithsonian itself. I can disclose today that the Smithsonian collected over 700 questionnaires from visitors to the Museum of Natural History and the Museum of History and Technology during the winter of 1968. No interviews were taken at the Air and Space Museum.

And yet this survey turned up the following finding:

"In responding to the question on points of interest in Washington, 87.2% had been to the Air and Space Building as compared to 54.4% who had visited the Museum of History and Technology, and 47.1% who had visited the Museum of Natural History."

Here we have a study that was openly biased in favor of visitors to the two museums where persons were being interviewed. Even so, almost 9 out of every 10 persons questioned said they had been to the Air and Space displays. In other words, the Flight Museum had drawn more visitors than either of the two museums where the questions were asked.

All in all, I think the Air and Space Museum has played a remarkable role in drawing visitors to the Smithsonian Park. It does not have a puppet show or other unrelated attraction to bring in an audience, but it is demonstrating a unique capacity to hold public interest on its own merits. The fact that Britain's royal visitors, Prince Charles and Princess Anne, chose to tour the Air and Space collections during their first visit to the Smithsonian is further proof of the remarkable popularity of these exhibits.

Mr. Chairman, one fact that disturbs me greatly is that the Flight Museum does not have a full-time Director. Nor has the Smithsonian ever said what requirements have been set for the position.

The last Director, S. Paul Johnston, was a distinguished fore-sighted individual. A graduate of MIT, he had held a number of prominent positions both in industry and Government as an aeronautical engineer and advisor before joining the Flight Museum team.

Anticipating his retirement, he furnished the Secretary with notice of his planned retirement thirteen months in advance of his target date. By letter dated July 30, 1968, Mr. Johnston informed Doctor Ripley of his decision to retire "as of September 1, 1969."

Uppermost in Mr. Johnston's mind was his wish to pave the way for a successful transition for his successor. His letter specifically asked "that a successor be brought aboard as my Deputy not later than May 1, 1969, to allow for at least four months of overlap."

And yet, as of today the Museum is still without a Director. This fact alone can be interpreted as a lack of interest by the Smithsonian in its Air and Space Museum.

Another fact that offers a clue as to the stature of the Flight Museum is that until a few months ago it reported to the Assistant Secretary for History and Art.

How in the world flight ever got mixed up with the "arts" at the Institution is beyond me. Aeronautics and astronautics derive from, and incorporate, several of the sciences including: mathematics, physics, fuel chemistry, metallurgy, physiology, psychology, biology, astronomy, astrophysics, geology, and geophysics.

The Air and Space Museum should have been put in the Smithsonian's science and technology wing from the start. It is to the credit of the present acting Director that he at last succeeded in having the Museum transferred to the Science branch of the Institution.

There is one more incident that causes me grave concern about the attitudes of the Smithsonian toward the Air Space Museum. The management has denied this to my staff, but I can document the fact that the Assistant Secretary for History and Art wanted to expel the Flight Museum and its exhibits from the Mall. This proposal was made in a memorandum sent by the Assistant Secretary to Doctor Ripley on March 20, 1969.

Please remember that this is the officer who then held the power of supervision over the Flight Museum. His plan expressly called for "using the middle of the Pension Office Building as the next temporary location for Air and Space exhibits, in place of the tin shed, the driveway, and the A & I building."

The idea was to send the Museum to the dilapidated Pension Building where it would be separated from the Mall. Once away, it may never have come back.

Another indication of the rank of the Air and Space Museum within the Smithsonian is the condition of its public exhibits. These displays have not been brought up to modern Smithsonian standards as applied to its other components.

On January 3, 1968, an official report was submitted to Doctor Ripley, which reads: "All NASM exhibits are badly housed, and deteriorating rapidly under heavy visitor wear and tear."

On July 30, 1968, Doctor Ripley was given the following Museum report:

"Most present exhibit areas are a hodgepodge of hardware with little rational relationship, are largely out-of-date and are so shop-worn that they constitute a public embarrassment to the Smithsonian."

Things finally got so bad that the Smithsonian broke the problem at the 1970 fiscal year hearings. The justification sheets of the Institution, dated March 14, 1969, warn that: "The Smithsonian's air and space exhibits have not received a major refurbishing since 1958. They are outdated and shabby and a source of disappointment to many of a million visitors interested in air and space exploration."

Mr. Chairman, there are some positive steps now being taken by the Smithsonian to revitalize these exhibits and I will be watching closely to see that they continue.

The next matter is the most difficult problem confronting the Museum. It is not one that can be solved overnight by a change in priorities, as I believe the others can be.

This is the problem of getting funds for the construction of a permanent building to house the Air and Space Museum.

The problem boils down to money. If Congreses had allowed the project to get started in 1966, when it authorized construction of the building, the total cost would have been in the neighborhood of $40 million. This compares favorably with the $34 million which Congress allowed ten years earlier for construction of the Museum of History and Technology.

But Congress did not permit the building to go forward. The reason for deferring the project is found on page 4 of the report by the Senate Committee on Rules and Administration. The language reads as follows: "The Committee expressly recommends . . . that appropriations should not be requested pursuant to H.R. 6125 unless and until there is a substantial reduction in our military expenditures in Vietnam."

That is it. That is the only legislative holdup on the project. It was written in June of 1966, before the first manned lunar landing.

Now that this landmark in the history of mankind has occurred and public excitement about space achievements has catapulted, I believe that there are new and persuasive reasons for moving ahead with the new facility.

In particular, I believe the time is at hand when the American people want to have a decent home for the national Museum where their country's exciting story in air and space can be told.

America's accomplishments in the field of aerospace are monumental. The true value of the inspirational feeling which the story of these achievements can give is beyond any dollar estimate.

Who can place a value on the meaning of the Wright Brothers flight at Kitty Hawk? Who can say the true worth of preserving for future Americans the opportunity to behold the actual aircraft in which Lindberg crossed the Atlantic or the Apollo 11 Spacecraft in which man reached the Moon?

Is the display of our accomplishments and future in air and space worth $40 million? Or $60 million in inflation-swollen dollars?

Mr. Chairman, I believe it is. I believe the American people will agree with me. And, I am hopeful that friends of the Flight Museum can get this story across to Congress.

After all, there is no connection between events in Vietnam and the construction of the Hirshhorn Museum. There was no tie to Vietnam holding up the $2.6 million which Congress appropriated to refurbish the Smithsonian's administrative quarters to look as they did in 1855.

No one proposed a relationship between Vietnam and the $2.4 million which Congress is appropriating for renovation of the Rendick Gallery. No one is suggesting that we

wait until the Vietnam conflict settles down before Congress authorizes $6 million that the Smithsonian management is seeking to build two Bicentennial Pavilions.

In short, it is my contention that the Flight Museum should not be singled out from all other Smithsonian projects and told that its new building must be deferred until Vietnam expenditures ease off.

Furthermore, it is my belief that since Congress imposed this restriction, it is Congress who should bear the moral obligation to provide the additional funds that are required because of the delay. This is important because I believe strongly that the new facility should be constructed exactly as it was planned.

It is a beautiful design. It has been approved by the necessary planning and art commissions. And, architects generally believe it would be a valuable asset to the Nation's Capitol.

But if the building were to be redesigned, all the questions of its size, its relationship to other structures on the Mall, and, perhaps even its very location at the Smithsonian Park, would be reopened. The critics of technological museums would be given a fresh opportunity to tie the project down in a web of new hearings and proceedings. This is why I disagree with the Smithsonian management and the Regents on this important matter.

What I am proposing will not be easy. It will require the participation of the aerospace industry. It will require encouraging Congress to recognize that $60 million is not too large an investment for our Government to make in preserving the heritage of our people in the mainstream of aviation, rocketry, and space history.

But I am convinced that this is a cause that is right. It is a cause that deserves a fight to be made for it. It is a cause that I believe will prevail once Congress is shown how reasonable and worthwhile it is.

Above all else, it is a cause that will require the most energetic, whole-hearted efforts that the Smithsonian itself is capable of mustering. The Smithsonian must convince the American people and Congress that the Flight Museum enjoys a top-priority status within its organization.

Mr. Chairman, at this point I wish to clarify my purpose. It is not to criticize the development of new Smithsonian activities. It is not to say that the Institution should not broaden its interests in the fields of arts, humanities, and public awareness.

The art field is one in which I am deeply committed. For example, I enthusiastically support the National Foundation on the Arts and Humanities. In fact, this year I spoke out three times on the Senate Floor to endorse the extension of the Foundation's life and to urge substantial increases in the funds appropriated to it.

My interest in art dates back as far as I can remember. The Kachina Doll Collection which Rink Kibbey and I gave to the Heard Museum in Phoenix is only one instance of my personal participation in the arts.

My true aim today is limited to inquiring whether the Smithsonian's list of priorities has slipped off course. I ask whether the same level of attention should be given to the National Air and Space Museum that the Institution gives to so many other of its projects?

This question may also be asked in behalf of the National Museum of Natural History. For the evidence is all too clear that this museum, as well, is suffering from a decline in support.

The principal facts are these:

1. The present Director of the Museum of Natural History claims that "Our museum has its back up against the wall." In fact, he warns that "our survival is at stake."

2. The Smithsonian Council, which is a grass-roots body of advisors appointed by Doctor Ripley, has informed the Secretary in writing that "the Council is deeply concerned with the present trend relating to systematic biology as it affects the Museum of Natural History and strongly urges the allocation of additional resources to the Museum to promote this field."

3. The Council of the Senate of Scientists, which represents the professional staff at the Museum of Natural History, has confronted Doctor Ripley with sharp complaints about the decline of support to that museum.

4. The Smithsonian has severely restricted the services provided to the Museum by the Smithsonian's Buildings Management Department. This unit provides indispensable help, such as moving equipment, installing shelves, or dividing an office or work area.

5. The scientific staff of the Museum of Natural History has fallen below the level it was at three years ago.

6. The number of laboratory technicians available to assist the Museum's research scientists has also declined since the 1967 fiscal year forcing individual scientists to lose a heavy part of their time doing manuscript typing, slide preparations, and other work that should be done for them by a support staff.

7. The Institution's Foreign Currency Program request for first priority research projects of the Museum of Natural History is down by 53% from last year—from $336,000 to $220,000.

8. The Museum's research departments are being deprived of several hundreds of thousands of dollars a year in overhead monies which are brought into the Institution through research grants and contracts performed by the Museum's scientific staff, but are spooned off for the benefit of some other Smithsonian components.

9. The Smithsonian's Press Office is unable to provide adequate support help to researchers in natural history because editors who are paid from Federal funds are directed to spend much of their time working on books sold by the Smithsonian to make money for its private funds.

10. The condition of exhibit animals on display at the Natural History building is deplorable.

Mr. Chairman, I would like to offer the following evidence in support of my remarks:

First and foremost, I am impressed with the strong plea that has been made on behalf of the Museum of Natural History by its present Director, Doctor Richard Cowan.

Doctor Cowan was the one shining star at a meeting that my staff held with representatives of the Smithsonian. The fervor with which he promoted the cause of his museum, and his willingness to bare its problems in front of top officials of the Institution, showed me how very important it is to have a strong force at the head of the Smithsonian's museums.

He made no bones about it. As I have mentioned, he announced to all those assembled that the Museum of Natural History "has its back up against the wall."

Mr. Chairman, with a director who is willing to push for the cause of his museum and fight for his men inside the upper echelons of the Smithsonian the way Doctor Cowan does, I do not think it will be long before the Museum of Natural History sees some improvements in its picture. His leadership points up better than anything else the need for a strong director to head the National Air and Space Museum as well.

Mr. Chairman, there is little to add to the recommendation which the Smithsonian Council has made except to say that its action demonstrates a growing sense of concern by the Council. Indeed this may have been the first time they have ever adopted any resolutions.

The fact that the Council felt it had to urge the Secretary to allocate additional resources to the Museum of Natural History is by itself a good reason for Congress to examine the situation.

As Paul Oehser points out in his new book, *The Smithsonian Institution:* "Nearly all the professional staff of the Museum of Natural History engage in systematic research in one form or another."

Thus, increased support for the field of systematic biology, as urged by the Council, would pretty well overlap into every department of the Museum.

Mr. Chairman, with your consent, I will offer a copy of the Council's report for your files with the request that it appear in the record.

Next, I would like to send to the desk a copy of the letter which the Council of the Senate of Scientists presented to Doctor Ripley on May 15th. I also ask that it may be printed in the record.

Mr. Chairman, you will see that the grass-roots scientists are extremely concerned about the trend of events at the Museum.

The scientists mention many of the specific conditions which cause their distress. These include "sharp reductions in services and supplies provided by other Smithsonian units such as the Supply Division and the Library, the continued attrition of supporting personnel, and the failure of our operating budgets to keep pace with overall inflation."

They add: "We respectfully submit that growth in staff has not been taking place within the National Museum of Natural History during the past three years. We therefore see no reason why the already minimal budgetary allowances for collection care should be endangered because of the phenomenal growth in personnel we have witnessed in other Smithsonian offices and bureaus during the same three years. It is unfortunate enough that we have lost many staff positions to other parts of the Smithsonian in this way over the years, but it could be catastrophic to allow the funds allocated for collection maintenance to be cannibalized in the same fashion."

Mr. Chairman, these criticisms can be substantiated.

As to the drop in support services, we can examine the situation at the Buildings Management Department, which provides craftsmens' services, such as carpenters, electricians, and movers. To understand the problems here, I suggest that the Committee ask the Smithsonian to discuss a reported $1.5 million budget overrun in that Department, meaning that this amount of BMD resources went out unbudgeted for certain projects. If this report is accurate, the money had to be taken out of the hide of other projects for which the money had been planned.

As to the decline in positions at the Museum, I would like to quote from the hearings on Smithsonian funds for the 1967 fiscal year. At page 163, Doctor Ripley states: "We have about 111 scientists working in natural history. We have about 90 technicians. All the surveys made by scientific organizations throughout the Government and in the Nation say at the very minimum two technical aides should be assigned to each scientist."

And yet, as of today the number of scientists has dropped to 103. The number of technicians has fallen to 87.

Doctor Ripley has admitted this decline. On page 757 of the April hearings by the House Appropriations Committee, Doctor Ripley's statement reads: "[S]cientific research and curatorial activities in some museums may not be faring as well now as they were in 1968. A good example would be the National Museum of Natural History."

The drop in Foreign Currency research funds is easy to document. My figures are calculated from the Smithsonian's own list

of research projects which are identified at pages 954 through 976 of the recent House hearings on Smithsonian funds.

Another interesting question that the Committee may wish to explore is what happens to the overhead monies that flow into the Smithsonian as a result of research grants and contracts awarded to scientists at the Museum of Natural History.

According to a recent GAO report, the total amount of money derived by the Smithsonian from research grants and contracts runs in excess of $11 million. The question is, where does the overhead portion of these funds go? Is any sizable amount plowed back into the departments and Museum whose reputation attracts the grants and contracts in the first place and whose labors accomplish the assigned research?

Serious doubt has been raised from many different quarters as to whether these overhead monies—which amount to hundreds of thousands of dollars annually in the case of natural history—are used for the support of the Natural History Museum or are transferred into other projects more popular with the Smithsonian management. I think it would be helpful to the morale of the Museum's staff if the Committee could discover the true answer to this question.

Mr. Chairman, the next problem may be one which can best be examined by the Comptroller General. This is the issue of when it is proper to use Federally-appropriated funds to support programs that are intended to make money for the Smithsonian's private funds.

The situation is this. All the editors at the Smithsonian Press are on the Federal rolls. Yet the same people are required to divert a portion of their time to working on books that are for sale by the private side of the Smithsonian. These books are intended to generate revenues for the private funds of the Institution. But there is a serious question whether it is proper for the Smithsonian to use Federal funds to finance its own revenue-producing activities.

The thing that makes this situation curious is that lines had been carefully drawn between Federal editors and private editors under the previous administration.

When Doctor Carmichael was Secretary and Paul Oehser was in charge of the Smithsonian publications arm the editors were clearly identified as being either private or Federal. However, the publications office has been reorganized by the present Secretary and there are no more privately-funded editors left at the office.

Mr. Chairman, the final problem which I hope the Committee will examine relates to the condition of exhibits at the Museum's Hall of Mammals. Many collectors have asked me to protest about the sad shape that these displays are in.

We should remember that a great many of these specimens have been donated to the Smithsonian together with the money to mount them. Also, I believe several of these animals were acquired from Teddy Roosevelt's African safari.

With this important historical tie, and with the knowledge that the exhibits represent the visible side of the Smithsonian to many visitors, I feel this matter is worthy of being reviewed by the Committee.

Again, the answer may lie in a shortage of personnel. As a result of another reorganization done by the current management, I am informed that there is no longer any taxidermic unit attached to Natural History. There used to be one, but it was first moved out of the Museum and then abolished.

Mr. Chairman, I want to close my remarks on a positive note because of my high admiration for the Smithsonian. It is an important force for public awareness, enjoyment and service. It is a great and honored institution, whose reputation opens doors world-wide.

My purpose is not to condemn the Institution or its management. I am merely asking that a fresh look be given to its operations to see if it has steered off course a few degrees. If Congress or the Smithsonian finds that there is some truth in the questions I have raised, then I am confident that responsible and fair men will be ready to take whatever steps are needed to restore a balance to the Smithsonian's list of priorities.

In keeping with this spirit, I would like to offer for printing in the committee's record the full text of two letters which I have received from Dr. Ripley relative to this subject.

REPORT BY SMITHSONIAN COUNCIL, MEETING OF APRIL 25–27, 1970

Resolution One: That the Council continue its examinations of the pattern of objectives and the inter-relations of programs of the Smithsonian so as to advise the principal officers of the Institution and to foster the development of a critical dialogue regarding basic policies in scholarship, education, and national service.

Resolution Two: That the Council should have a Chairman selected from its membership and a secretary chosen from the staff of the Institution.

Resolution Three: In view of the present need to protect and appreciate the diversity of the environment the Council is deeply concerned with the present trend relating to systematic biology as it affects the Museum of Natural History and strongly urges the allocation of additional resources to the Museum to promote this field.

Questions which exemplify the interest and concern of the Council are the following:

1. May the Council receive information on a regular basis about trends in resource allocation and also an analytic digest of the recently concluded visitor survey?

2. Might the Council be brought into a defined relationship with other Smithsonian advisory boards and also the Board of Regents?

3. How does the Smithsonian coordinate its museum activities (in art, for example and with regard to acquisitions especially) with other Washington museums?

4. What shall be the prerogatives and responsibilities of curators regarding exhibits? How can maximum participation be achieved in advance planning of exhibits?

5. How may the Institution guarantee that the objectives announced when new projects are established are not later frustrated through lack of support?

6. How can basic concepts of science (molecular biology, differing cosmologies, puzzling astrophysical objects, continental drift) be communicated to museum visitors?

7. How may the Institution improve communication among its principal officers and professional staff members?

Members of the Council again expressed their appreciaton to the staff of the Belmont Conference Center and to the members of the Smithsonian staff who participated in discussions at this meeting.

Submitted by:

PHILIP C. RITTERBUSH,
Acting Secretary to the Council.

COUNCIL OF THE SENATE OF SCIENTISTS, NATIONAL MUSEUM OF NATURAL HISTORY, MAY 15, 1970

Mr. S. DILLON RIPLEY,
Secretary, Smithsonian Institution,
Washington, D.C.

DEAR MR. RIPLEY: The Council of the Senate of Scientists, National Museum of Natural History, is distressed by the recent announcement that the deficit in Smithsonian funding would be made from reductions in the operating budgets of the various bureaus, with a considerable amount representing the share of the National Museum of Natural History.

Those members of the professional staff at the divisional and departmental levels, charged with the immediate, day to day maintenance and care of the national collections of natural history and anthropological specimens, have felt, perhaps more strongly than any other employee of the Smithsonian, the effects of increased stringency in budget allocations for equipment and supplies, sharp reductions in services and supplies provided by other Smithsonian units such as the Supply Division and the Library, the continued attrition of supporting personnel, and the failure of our operating budgets to keep pace with overall inflation. We feel strongly that our budgetary allocations are currently at an absolute minimum and, therefore, must not be reduced further. The collections are too important a part of our national and scientific heritage, and scientific research and publication are too important a part of the Smithsonian's mission, for us to stand by and witness their derogation in favor of other activities more highly emphasized by the Smithsonian administrators.

We respectfully submit that growth in staff has not been taking place within the National Museum of Natural History during the past three years. We therefore see no reason why the already minimal budgetary allowances for collection care should be endangered because of the phenomenal growth in personnel we have witnessed in other Smithsonian offices and bureaus during the same three years. It is unfortunate enough that we have lost many staff positions to other parts of the Smithsonian in this way over the funds allocated for collection maintenance to be cannibalized in the same fashion. We strongly recommend that deficiencies because of over-staffing in recent years be remedied by reduction of staff in those same areas which have shown extraordinary growth during that time.

LETTERS RECEIVED FROM
DR. S. DILLON RIPLEY
SMITHSONIAN INSTITUTION,
Washington, D.C., June 5, 1970.

HON. BARRY M. GOLDWATER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GOLDWATER: I have read your long statement about the Smithsonian, and in particular about the National Air and Space Museum, with very great interest. I regret that I did not have an opportunity to discuss with you your concerns before you delivered your speech. I would have been able to tell you of our continuing efforts in seeking to move forward on this front, and of some of the concrete steps we have taken.

The ultimate construction of a suitable building to house the Nation's air and space collections will be the successful culmination of 24 years of Congressional encouragement and legislative action in the interest of air and space science and history.

Starting with the Act of August 12, 1946, the Congress established the National Air Museum as a part of the Smithsonian Institution. The Congress included provisions for selecting a site for a National Air Museum building to be located in the Nation's Capital. By the Act of September 6, 1958, the Congress designated a site for a building to be on the Mall from Fourth Street to Seventh Street, Independence Avenue to Jefferson Drive. Planning appropriations in the amount of $511,000 and $1,364,000 have been made available to the Smithsonian by the Congress for the fiscal years 1964 and 1965, respectively. One of my first official acts as Secretary was to testify before the Congressional Committees in support of the planning appropriation for the fiscal year 1965.

I recall with pleasure that at the time of my letter of May 25, 1964, on S. 2602, 88th Congress, addressed to Senator Pell, the Chairman of the Subcommittee on the Smithsonian Institution, it appeared that the building might soon be approved for construction. It was so recommended but the bill was not passed by the House after it had been approved by the Senate.

The Congress subsequently enacted legislation approved on July 19, 1966, authorizing the construction of the National Air and Space Museum.

In connection with this authorization, P.L. 89–509, the Senate Committee on Rules and Administration in its report to the Senate stated:

"In reporting favorably on H.R. 6125, the Committee on Rules and Administration noted with satisfaction the letter of May 13, 1966, from Secretary Ripley, giving assurances that funds would not be requested in this session of Congress pursuant to the authorization in H.R. 6125. The committee expressly recommends that funding for the National Air and Space Museum should be deferred even further, if need be, and that appropriations should not be requested pursuant to H.R. 6125 unless and until there is a substantial reduction in our military expenditures in Vietnam."

Rather than assume the responsibility for interpreting the wording, "substantial reductions in military expenditures in Vietnam," the Smithsonian Institution continued to seek appropriations for the Air and Space Museum. Funds for construction were then requested in the fiscal year 1966 and fiscal year 1967 budget submissions to the Bureau of the Budget in the amount of $40,045,000 and $40,331,000 respectively, as estimated by the General Services Administration. Both requests were deleted by the Administration prior to submittal of the budget to the Congress. During preparation of the fiscal year 1968 budget, it was decided that an incremental request for construction funds for the foundation and underground parking garage might be more acceptable, following the precedent used by the Public Buildings Service of the General Services Administration to start the FBI Building and the new Labor Department Building. Funds in the amount of $9,500,000 were therefore requested for this purpose in both the fiscal year 1968 and fiscal year 1969 budget submittals to the Bureau of the Budget and each time the item was deleted and not submitted to the Congress.

With the passage of time and unusually sharp increases in construction costs, the GSA was requested to update the construction cost estimate. In January 1968 we were advised by GSA that the building would now cost nearly $56,000,000 and in the next few years would increase to $65 million, if the then planned planetarium were added to the project. This substantial increase in cost led to consideration of reducing the cost by reducing the size of the building and even completely redesigning if necessary.

The Chancellor of the Smithsonian Institution then wrote to the President on November 19, 1969, to inform him of the resolution approved by the Board of Regents on November 5, 1969, as follows:

"Voted that the Board of Regents of the Smithsonian Institution recognizes the intense interest of the American people in the national air and space programs and in the historic flight of Apollo 11 to the Moon and return. The Regents recognize that by Public Law 89–509 the Nation's Air and Space Museum is authorized to be constructed on the Mall on a site designated by Act of Congress. The Regents further recognize that because of substantial increases in construction costs, the building as now designed should be scaled down from its present level of $65 million to a cost level not to exceed $40 million. The Regents, therefore, most respectfully and most urgently request that the President include in his budget for the fiscal year 1971 an amount of $2 million to finance the necessary redesign of this great educational and exhibition center for our air and space exploration."

The Assistant to the President for Domestic Affairs responded to the Chancellor's letter on December 10, 1969, and stated that funds for redesign had not been included in the 1971 budget by the Bureau of the Budget because of budgetary constraints, but that it would be included in a list of appealed items to be presented to the President during his review.

After a discussion of these efforts with me, Regent William A. M. Burden wrote to the President, urging that redesign funds be inserted as an amendment to the Presidential Budget. He stated that his concern "arises from our intense desire to complete the National Air and Space Museum within the years of your incumbency as President. In order to complete such an historic structure in time for 1976 at the earliest, it will be necessary to commence planning for a rescaling downwards in cost of the present approved structure. The nation can save perhaps more than $20 million in completed costs by spending $2 million for replanning now."

"Mindful of the vital need which the Administration faces in cutting costs, it seems to us that this planning item, which could be inserted as an amendment to the Presidential Budget, would be viewed as a prudent investment for the future."

In the interim, the architect has been authorized to prepare a feasibility study to show in outline form the maximum size and arrangement for a building estimated to cost $40 million. This study will be completed in June 1970.

The Smithsonian was subsequently advised that the Senate had requested in 1966 that appropriations for this purpose not be sought "unless and until there is a substantial redirection in our military expenditures in Vietnam." While the military effort in Vietnam is certainly redirected, we were advised, unfortunately the military expenditure level has not lessened appreciably. We were further advised that the President has directed very drastic cuts in all budgets for FY 1971 and that there is no possibility of reinstating this request under the circumstances.

In our submission of the fiscal year 1972 budget to the Bureau of the Budget, we will again request an appropriation of $2,000,000 for planning. We believe that the investment of redesign costs will result in a substantial decrease in ultimate construction costs and thereby increase the prospect of starting construction at the earliest possible date. We consider that an appropriation for redesign would not be in conflict with the previously stated position of the Senate Committee on Rules and Administration. We base this statement on the fact that the reference to the then pending legislation, H.R. 6125, was related to an authorization for construction of the building. Planning had been authorized earlier by the Act of September 6, 1958. Accordingly, I am writing to the Chairman of the Senate Committee on Rules and Administration, asking his concurrence in this interpretation and for his support of our proposed request for planning funds.

In order to provide additional exhibition space for the National Air and Space Museum, pending the construction of a proper museum building for this purpose, a substantial part of the Arts and Industries Building has been assigned to the Air and Space Museum. The exhibitions in this area are of great interest to our visiting public and serve admirably to complement the exhibitions in the adjoining Air and Space Museum hangar.

A number of potential candidates for the position of Director of the National Air and Space Museum have been interviewed. The search continues and we have called upon several of the Regents to assist in suggesting names and in evaluating applicants. The recent appointment of Mr. James E. Webb as a member of the Board of Regents by the Act of May 18, 1970, will provide another Regent with a strong interest in the Air and Space Museum and in the selection of a Director.

In the meantime, Mr. Frank A. Taylor, the senior museum director in the Institution, is serving as Acting Director.

In regard to the proposed Museum of Man, let me say that it was my hope that we could re-establish the Institution's primacy in the field of anthropology that prevailed from the late nineteenth century through the 1930's. I undertook, therefore, to consolidate the Bureau of American Ethnology and the Department of Anthropology to form an intellectual critical mass. In late 1968, sufficient progress had been made in evolving our anthropological programs to warrant the conversion of the transitional Office of Anthropology to the Center for the Study of Man. The Center reinforces and supports the more traditional, collection-based, scholarly activities that go on in the Department of Anthropology with an infusion of scholarship by distinguished ethnologists, social biologists and the like from outside the Smithsonian, including scholars from abroad.

A National Museum of Man would further strengthen the Smithsonian's contributions in the broad area of anthropology, a field that is rapidly undergoing a fundamental change both in the attitudes of its practitioners and in their sightings of new scholarly objectives.

Concerning the personnel of the National Museum of Natural History, I should say that when I came to the Smithsonian I was concerned with our inability to compete with other institutions for highly qualified scientists because of salary levels. Now we have succeeded in attracting a number of highly competent, indeed distinguished scientists to the professional staff in the National Museum of Natural History.

In 1965 we were able to convince both the Bureau of the Budget and the Congress of the merit of providing the Smithsonian with a direct appropriation for research. The appropriation was designed to offset the decline in support that we had been receiving from the National Science Foundation. Since that time, Congress has continued to appropriate funds for scientific research, but unfortunately the level of support has remained static. Nonetheless, the largest percentage of funds from that appropriation has been awarded to scientists in the National Museum of Natural History. In addition, our scientists have been the principal beneficiaries of funds brought into the Institution through our Office of Environmental Sciences, including the units in ecology and oceanography. Also, they have benefited from the Institution's Foreign Currency Program. Finally, there has been the support for research and curation that I have been able to provide from the Institution's limited private resources.

With gratitude, I recall that the Congress provided $18.636,000 for the addition of 512,000 square feet of laboratory space to the National Museum of Natural History. These additions, completed in 1963–65, provided a major expansion in the facilities for scientific research in this museum.

I am most grateful for your interest in the National Air and Space Museum and I would indeed welcome an opportunity to discuss with you the development of a new museum at the earliest possible time.

With all good wishes.

Sincerely yours,

S. DILLON RIPLEY,
Secretary.

(P.S.—A copy of my letter of October 10, 1969, to Senator Jordan on this subject is enclosed.)

IDENTICAL LETTER TO HON. CLAIBORNE PELL, CHAIRMAN, SUBCOMMITTEE ON THE SMITHSONIAN INSTITUTION, COMMITTEE ON RULES AND ADMINISTRATION

OCTOBER 10, 1969.

Hon. B. EVERETT JORDAN,
Chairman, Committee on Rules and Administration, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Widespread public interest in our Air and Space program has been further enhanced by the historic flight of Apollo 11 to the Moon and its return to Earth.

It appears to be appropriate therefore to recall that Public Law 89–509 which was favorably reported by the Senate Committee on Rules and Administration on June 28, 1966, authorizes construction of the National Air and Space Museum. Funds for construction have not been appropriated. In its report to the Senate, the Committee included the following provision:

"In reporting favorably on H.R. 6125, the Committee on Rules and Administration noted with satisfaction the letter of May 13, 1966, from Secretary Ripley, giving assurances that funds would not be requested in this session of Congress pursuant to the authorization in H.R. 6125. The committee expressly recommends that funding for the National Air and Space Museum should be deferred even further, if need be, and that appropriations should not be requested pursuant to H.R. 6125 unless and until there is a substantial reduction in our military expenditures in Vietnam."

Current actions to reduce the scale of military operations by the United States in Vietnam now being reported in the press, together with evidence of the strong public interest in the air and space program, lead me to ask for your further consideration of the possibility of initiating construction of the National Air and Space Museum in the fiscal year 1971 or 1972.

The President's deferment of certain Federal construction in the fiscal year 1970 is recognized as a present barrier to Federal construction in general. Nevetheless, the message from the Bureau of the Budget on this subject does not at this time project the deferment beyond the fiscal year 1970.

Construction when started will require four or more years, so that the budgetary effect of the estimated cost of about $50 million will be spread over a time span of five years. The development could be achieved also through successive physical and funding stages, thereby avoiding budgetary peaking. Under this plan of development, there would be undertaken first the substructure, largely occupied by a garage, which could be utilized for public parking as soon as completed, on a fee basis. As a second stage, the central bay of the super structure of the building could be erected and utilized by the public as a major exhibition and educational hall for air and space achievements. As a third stage, the end bays of the superstructure could be undertaken to complete the building as now designed.

Another possibility would be a total redesign to produce plans for a different building of smaller proportions costing less than $40 million.

We are convinced that this great exhibition and educational center will be visited by more than five million of our citizens each year. When constructed, it will serve admirably to record for our people, especially the young, the history of the air and space age as it is being made.

With all best wishes.

Sincerely yours,

S. DILLON RIPLEY,
Secretary.

(P.S.—The visitation to the specimen of Moon Rock now in our old exhibition building amply confirms the vast public awareness and excitement of our space accomplishments.)

SMITHSONIAN INSTITUTION,
Washington, D.C., July 16, 1970.

Hon. BARRY GOLDWATER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GOLDWATER: Thank you for your letter of June 17, 1970, to which I would like to respond in the same spirit of constructive and helpful criticism you have presented.

I, too, am deeply interested and committed to the goal of achieving a balanced program for the Smithsonian.

I have been concerned since joining the Smithsonian with the need to strike a balance by reasserting the Institution's leadership in a number of fields of scholarship and public service in which I believe we have strong historical responsibilities and potential for the future. I believe that in the long term we will be able to achieve the level of recognition and support from both the private and public sectors for our research and curatorial activities that are so badly needed and so well deserved. It has been difficult to win essential budget increases for our fundamental scientific research. It is this fact, I believe, that led the Smithsonian Council to formulate a supporting resolution that was touched on in your letter; we welcome this resolution.

At the same time that we have been trying earnestly to make progress in the sciences, as well as in history and art, the Congress during the last decade has enacted some 20 pieces of major legislation which place additional responsibilities on us. For all of these we are grateful and intend to strive ever harder to support.

In addition to supporting the National Museum of Natural History and the National Air and Space Museum, we have had to stretch our resources to help alleviate some of the very serious problems confronting other scientific units of the Smithsonian, including the Smithsonian Tropical Research Institute, the Smithsonian Radiation Biology Laboratory, and the Smithsonian Astrophysical Observatory. In fact, the portion of available funds applied to our scientific programs is very substantially greater than the amounts made available for programs in history and art.

In any event, I heartily concur in your estimation that the Museum of Natural History needs a sizeable increase in the number of professional and technical aides and for associated expenses.

With regard to the Institution's relationship with the National Science Foundation, let me state clearly that the Smithsonian did not initiate any plan to discontinue the National Science Foundation's grant support for the scientists in the National Museum of Natural History or any other unit of the Institution. On the contrary, this action was initiated in the National Science Foundation, with the consent of the Bureau of the Budget, as a direct consequence of NSF's interpretation of the Independent Offices Appropriation Act for the Fiscal Year 1964. I am enclosing copies of several letters and memoranda to document this fact, including a copy of a personal letter that I sent to a representative of the National Science Foundation while I was still the Director of the Peabody Museum at Yale. That letter was but the first of many efforts on my part to reestablish a full financial relationship between the National Science Foundation and the Smithsonian Institution. In all fairness to the NSF, I need to point out that the Institution has been the recipient of substantial sums annually from the Foundation, despite the restrictive interpretation that has persisted in regard to individual research projects. Currently, we are preparing several additional, carefully conceived programs for consideration by NSF.

Concerning employment at the National Air and Space Museum, I offer the following table and explanation:

POSITIONS

Fiscal year	Allowed by Congress	Apportioned by the Smithsonian	Service provided by Office of Exhibits (equivalent to man-years)	End of the year employment (exclusive of summer tempos)
1968	41	41	----------	45 including 6 on private roll.
1969	42	42	8	34 including 5 on private roll.[1]
1970	41	[2] 33	8½	31.[3]

[1] On July 1, 1968 (start of fiscal year 1969) the National Air and Space Museum (NASM) had a staff (exclusive of temporary summer employees) of 39 fulltime Federal employees and 6 private roll employees. The private roll employees were engaged on the program to select, assemble, and circulate historical spacecraft and related NASA materiel. This was supported by a grant from NASA.

The staff included 10 persons engaged on the design, production, and maintenance of exhibits. During fiscal year 1969, it was decided to transfer the NASM exhibits personnel to the Smithsonian Office of Exhibits (OE) with the understanding that the OE would perform exhibits work for NASM in volume equivalent to or greater than the capability of the section transferred. It was also agreed that in fiscal year 1970 the OE would assume the payment of the salaries of these employees out of the OE budget. The salaries and benefits funds remaining in the NASM as the result of this transfer would be used to convert the private roll employees of the space program to Federal employment at the planned termination of the NASA's support of the program in 1969.

The transfer of the NASM exhibits personnel was made in the interest of efficiency. The immediate supervision of the OE supervisory personnel and the closer scheduling of the services of the central OE shops and supporting units are estimated to have resulted in more work produced. A museum education specialist in NASM was also transferred to the Office of Academic Programs with the understanding that he would work on educational projects of the NASM. At the end of fiscal year 1969, the employment of the NASM was down 11 positions from the start of the year as the result of these transfers.

[2] The apportionment of positions to the NASM by the Smithsonian at the start of fiscal year 1970 was 33 positions which included 28 former Federal positions and 5 new positions funded from savings to the NASM from salaries and benefits formerly paid the transferred exhibits workers.

During fiscal year 1970, the personnel of the Office of Exhibits worked on 12 exhibition projects of the National Air and Space Museum including the continuing replacement of units in the Air and Space Building, counted as 1 project. These projects absorbed 8½ man-years of effort and cost $112,000. It should be mentioned that 2 men on the payroll of the Office of Exhibits are now assigned full time to the maintenance of NASM exhibits which are the best maintained exhibits in the Mall museums.

[3] Through most of fiscal year 1970, the NASM had 31 employees at work and 2 vacancies (the Director and the Director's Administrative Officer). However, as shown, the exhibits work performed at no cost to the NASM means that in 1970 the NASM had the equivalent of 39 positions filled and 2 vacancies.

I fully expect that a new director of the National Air and Space Museum will be selected in the near future. He should begin immediately to plan research and educational programs which can be placed high on the Institution's list of priorities and for which we plan to request appropriations beginning with fiscal year 1972.

Your interest is most welcome and we hope sincerely that you will help us in our efforts to provide adequate support for both the National Air and Space Museum and other scientific bureaus of the Institution.

Sincerely yours,

S. DILLON RIPLEY,
Secretary.

DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970—CONFERENCE REPORT

The PRESIDING OFFICER. (Mr ALLEN). The hour of 1 o'clock having arrived, the Chair now lays before the Senate the pending business which the clerk will state.

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

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

RECESS

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess subject to the call of the Chair, with the understanding that the recess not extend beyond 2 p.m.

The motion was agreed to; and (at 1:08 p.m.) the Senate took a recess subject to the call of the Chair.

At 1:34 p.m., the Senate reassembled, when called to order by the Presiding Officer (Mr. ALLEN).

DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970—CONFERENCE REPORT

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. EAGLETON. Mr. President, no one doubts that there is a crime problem in the District of Columbia.

No one doubts that there is a serious breakdown of the criminal justice system in the District of Columbia.

And no one doubts that it will take legislative action to improve this situation in the District of Columbia.

But the question that responsible public officials must ask is this: Is the District crime conference bill a sound, effective, appropriate, constitutional response to this situation?

As a former prosecutor, an attorney, a member of the Senate District Committee, and a member of the crime conference committee, I emphatically believe that it is not.

I am not seeking to place the blame for this bill on anyone's shoulders. This conference report is the product of a great deal of time and effort. Much of the report is essential to improving the crime situation in this city—and these provisions have been preserved in the District crime substitute bill.

It is nonetheless a bad piece of legislation. Some provisions of the conference report add chaos to confusion, run counter to modern penological theory and smack of repression.

I find somewhat extraordinary the rationale that the "overwhelming bulk" of the bill is noncontroversial—as though the shorter, troublesome portion of the bill will somehow affect District residents less.

Many of the objectionable features of the conference report have become familiar to my colleagues. Preventive detention, juvenile provisions, and mandatory minimum sentences have been debated at length the past several days.

I find still another aspect of the conference report—not so well publicized—which makes it impossible for me to give it my support: the funding provisions.

The conference report provides a one-time Federal payment of $5 million to help defray the costs of the bill. That means that in fiscal year 1971, $3.9 million will be used to pay the costs of the initial phase of the reorganization of the judicial system. The remainder—$1.1 million—is to be used for the treatment of narcotics addicts.

Lest this appear to be a generous authorization, let's examine it a bit more closely.

In 4 years, when the final phase of the court reorganization has been completed and the new judicial system is fully operative, the District of Columbia government will have an annual cost of $8 million for debt service, operating expenses, and the like—costs directly resulting from the court reorganization.

The costs to the city will be $8 million every year for over 30 years. This bill provides only $5 million—and that sum for only 1 year.

Let me emphasize that this is an authorization measure, not an appropriations bill. If we were to provide a reasonable authorization, the Appropriations Committee could—and no doubt would—appropriate below the authorized level in the years preceding full operation of the new court system.

We are asked to approve a permanent reorganization plan. Why then should we stop short of a permanent authorization of sufficient size to pay for it?

Let me turn now to the second critical area for funding in the much publicized fight against crime.

There is no longer any dispute about the intimate connection between drug addiction and crime. That individuals addicted to hard drugs will—indeed, must—steal to support their habits is a truism. Acting on this premise, the Senate passed a major Drug Abuse Control Act last January as part of the President's crime program. But we have yet to face head on the difficult question of treatment and rehabilitation.

The District of Columbia has approximately 10,000 addicts. One local judge has estimated, conservatively, that these 10,000 addicts steal $300 million in money and merchandise each year to support habits averaging $47 per day.

It costs the people about $5,000 to keep an addict in jail for a year—where he receives little or no treatment for his addiction. By contrast, it costs only $2,000 per year to provide him with treatment on an outpatient basis. Consider these facts for a moment: It costs less than half as much to treat a man as to jail him—and the chance that the addict inmate will return to a life of crime upon release is nearly certain.

In recent hearings before the Senate District Committee, Mayor Washington testified that the city will need $20 million to treat each of its 10,000 addicts. If indeed we are dedicating ourselves to eradicating crime in the District, surely this is a primary and essential commitment.

Once again, I remind you that this is an authorization bill, not an appropriations measure. Dr. Robert DuPont, head of the District's Narcotics Treatment Agency, has testified that his Agency's capacity for treatment will be 5,000 to 7,000 addicts by July 1971. I believe that the $10 to $14 million needed to treat these addicts should be appropriated for this program in this fiscal year.

But let us look ahead to the actual needs of this city—to the 10,000 addicted residents—and authorize the funds necessary to eliminate addiction as a cause of social disorganization and crime in the District of Columbia.

To tout any bill as the key to crime control in the District is hypocrisy unless the funds to carry out the court reorganization plan and to deal effectively with drug addiction are provided. The conference report on the District crime bill simply does not meet this requirement.

This failure is yet another reason for rejecting the conference report—and supporting the substitute bill. The substitute measure offers an opportunity to enact the major portion of the conference report without accepting the unwise features. In addition, it provides the fiscal authorization essential to making inroads into the crime problem in this city.

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

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

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, in which it requested the concurrence of the Senate:

H.R. 2043. An act for the relief of Keum Ja Franks;

H.R. 5655. An act for the relief of Low Yin (also known as Low Ying);

H.R. 10150. An act for the relief of certain individuals employed by the Department of the Air Force at Kelly Air Force Base, Tex.;

H.R. 12400. An act for the relief of Tae Pung Hills;

H.R. 13895. An act for the relief of Mrs. Maria Eloisa Pardo Hall; and

H.R. 15478. An act for the relief of Mrs. Fernande M. Allen.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 3889) to amend section 14(b) of the Federal Reserve Act, as amended, to extend for 1 year the authority of Federal Reserve banks to purchase U.S. obligations directly from the Treasury, and it was signed by the President pro tempore.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred to the Committee on the Judiciary:

H.R. 2043. An act for the relief of Keum Ja Franks;

H.R. 5655. An act for the relief of Low Yin (also known as Low Ying);

H.R. 10150. An act for the relief of certain individuals employed by the Department of the Air Force at Kelly Air Force Base, Tex.;

H.R. 12400. An act for the relief of Tae Pung Hills;

H.R. 13895. An act for the relief of Mrs. Maria Eloisa Pardo Hall; and

H.R. 15478. An act for the relief of Mrs. Fernande M. Allen.

RECESS

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess subject to the call of the Chair, with the understanding that the recess not extend beyond 2:30 p.m. today.

The motion was agreed to; and (at 1:47 p.m.) the Senate took a recess subject to the call of the Chair.

At 2:21 p.m., the Senate reassembled, when called to order by the Presiding Officer (Mr. FANNIN).

DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970—CONFERENCE REPORT

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. HOLLAND. Mr. President, I understand the business that is ready for transaction is germane to the pending business; am I correct?

Mr. HART. The pending business, I believe, is the consideration of the conference report.

Mr. HOLLAND. Does the Senator intend to speak on that matter?

Mr. HART. Yes, I do.

Mr. HOLLAND. The only reason I raise the question is that the acting majority leader was called from the Chamber temporarily and he asked me to be sure that the rule of germaneness was safeguarded, which I have done.

I thank the Senator.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. HART. Mr. President, I begin by calling to the attention of Senators a telegram that I believe was dispatched to each of us today. The telegram is signed by Roy Wilkens, on behalf of the Leadership Conference on Civil Rights, which is a coalition of 125 national civil rights, labor, religious and civic groups. The telegram was sent to each of us urging rejection of the conference report on the District of Columbia crime bill. The text of the telegram is as follows:

Leadership Conference on Civil Rights urges you vote against Conference Report on the D.C. Crime Bill which exceed all bounds of fairness and constitutionality.

Mr. President, several weeks ago, I voiced my concerns about the House-passed District of Columbia crime bill, then pending in conference along with the Senate's proposals. I stressed my opposition, particularly to the provision dealing with preventive detention, no-knock entry, juveniles, mandatory sentences, and wiretapping.

Now we have the conference report. It is readily apparent that the able chairman of the District Committee and the other Senate conferees have labored long and arduously on behalf of their colleagues. They have obtained a large number of deletions or modifications in the objectionable House provision.

If this were an ordinary program authorization or appropriation bill, Mr. President, all of us would acknowledge that such a conference requires compromise and accommodation. But this is not such a bill. Its provisions endanger the most basic precepts of our constitutional system and implement regressive policies of criminal justice.

Despite repeated claims of a Senate victory, the provisions of the report are still fundamentally unacceptable.

This Senate does not sit to "accept half a loaf" when constitutional guarantees of our individual liberties are at stake. Such moments call for conviction, not compromise.

Mr. President, the present debate should be placed in perspective. Let us remember what is not at issue in the vote on the conference report.

It is not a test of our commitment to the fight on crime. That commitment will be tested far more accurately in a few weeks, when we debate and vote on the nature and extent of Federal assistance to Washington and other cities under the Safe Streets Act of 1968—and when we consider legislation for funding narcotic addiction treatment and rehabilitation centers.

Nor is the vote on the report a test of our willingness to achieve court reform for the District.

No one seriously suggests that those of us opposed to the conference report are any less vigorously committed to the desperate need for such reform. It is not we who are seeking to hold the vital reorganization and expansion of the judicial system hostage to controversial and offensive experiments in criminal law.

Several of my colleagues and I have sponsored S. 4080 as a substitute court reform bill. It includes essentially all of the provisions on court reorganization and the bail agency included in the conference report. It has also been introduced by us as amendment No. 777 to H.R. 914, a House-passed private bill now before the Senate.

Further, we have introduced a strong, but constitutional, series of criminal and juvenile law provisions for the District, S. 4081—which has also been introduced as amendment No. 776 to H.R. 914. Our bill includes those provisions from the conference report which we can, in good conscience, support. It deletes those elements which even the pressing need for court reform cannot justify: First, preventive detention; second, no-knock searches; third, wiretapping; fourth, mandatory minimum sentences; and, fifth, certain undesirable juvenile procedure provisions.

PREVENTIVE DETENTION

Mr. President, no provision of this bill has caused more alarm among those vigilant against erosion of our liberties than has the administration's proposal for preventive detention, which is essentially preserved in the conference report.

By now, the Senate is well aware of the basic issues at stake. Those opposed to such imprisonment for crimes not committed have already reviewed its basic defects:

The grave constitutional questions regarding right to bail; the presumption of innocence until proven guilty; and other elements of due process;

The lack of empirical evidence to justify such a drastic departure from our traditions of criminal justice; and

The inevitable burden of double trials on the already strained judicial system, aggravating the very problem addressed.

I urge my colleagues, before they vote, to reflect once more upon these issues. This Senate has met the challenge of exercising the Nation's conscience before in this session. It must do so again.

At this time, Mr. President, I wish to call particular attention to two specific dangers of the conference report's proposal for preventive detention, which perhaps have not received adequate scrutiny: the possibility of perpetual detention and the scope of detention on the basis of past conduct.

PERPETUAL DETENTION

Proponents of the report have claimed that it limits detention of an accused to 60 days, and that, if he has not then been tried, he would be released pursuant to section 1321, governing conditional release. I submit that the plain language of the conference bill permits the prosecution to seek successive, prolonged periods of detention, and that this loophole sharply reduces the supposed safeguards of the report.

Section 1322, dealing with preventive detention, does state that if the accused has not been tried after 60 days, he shall be treated in accordance with section 1321 which deals with conditions of release. But that is the beginning of the problem, not the answer. The prisoner is still detained at this point. Section 1321 permits his release only if a condition or combination of conditions will ensure the safety of members of the community—the statute speaks of those "conditions of release, if any."

If the court finds that no conditions provide such assurance, and the accused falls within one of several categories, then section 1322 comes into play again,

and the court can entertain a new prosecution motion for another 2-month detention. There is not one word in the statute preventing this, or otherwise suggesting that the accused shall, in fact, always be released after 60 days.

Further, even if the accused is conditionally released under section 1321, the prosecution can seek ex parte to commence another detention hearing under section 1322(c)(2), whenever it subsequently appears appropriate.

Mr. President, I ask unanimous consent that sections 1321 and 1322 of the report be printed in the RECORD at this point.

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

"SUBCHAPTER II—RELEASE AND PRETRIAL DETENTION

"§ 23–1321. RELEASE IN NONCAPITAL CASES PRIOR TO TRIAL

"(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required or the safety of any other person or the community. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or the safety of any other person or the community, or, if no single condition gives that assurance, any combination of the following conditions:

"(1) Place the person in the custody of a designated person or organization agreeing to supervise him.

"(2) Place restrictions on the travel, association, or place of abode of the person during the period of release.

"(3) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release.

"(4) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

"(5) Impose any other condition, including a condition requiring that the person return to custody after specified hours of release for employment or other limited purposes.

No financial condition may be imposed to assure the safety of any other person or the community.

"(b) In determining which conditions of release, if any, will reasonably assure the appearance of a person as required or the safety of any other person or the community, the judicial officer shall, on the basis of available information, take into account such matters as the nature and circumstances of the offense charged, the weight of the evidence against such person, his family ties, employment, financial resources, character and mental conditions, past conduct, length of residence in the community, record of convictions, and any record of appearance at court proceedings, flight to avoid prosecution, or failure to appear at court proceedings.

"(c) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release, shall advise him that a warrant for his arrest will be issued immediately upon any such violation, and shall warn such person of the penalties provided in section 23–1328.

"(d) A person for whom conditions of release are imposed and who, after twenty-four hours from the time of the release hearing, continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions received by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer may review such conditions.

"(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release, except that if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

"(f) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

"(g) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

"(h) The following shall be applicable to any person detained pursuant to this subchapter:

"(1) The person shall be confined, to the extent practicable, in facilities separate from convicted persons awaiting or serving sentences or being held in custody pending appeal.

"(2) The person shall be afforded reasonable opportunity for private consultation with counsel and, for good cause shown, shall be released upon order of the judicial officer in the custody of the United States marshal or other appropriate person for limited periods of time to prepare defenses or for other proper reasons.

"§ 23–1322. Detention prior to trial

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

"(1) a person charged with a dangerous crime, as defined in section 23–1331(3), 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, as defined in section 23–1331(4), if (i) the person had 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.

"(b) No person described in subsection (a) of this section shall be ordered detained unless the judicial officer—

"(1) holds a pretrial detention hearing in accordance with the provisions of subsection (c) of this section;

"(2) finds—

"(A) that there is clear and convincing evidence that the person is a person described in paragraph (1), (2), or (3) of subsection (a) of this section;

"(B) that—

"(i) in the case of a person described only in paragraph (1) of subsection (a), 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), or

"(ii) in the case of a person described in paragraph (2) or (3) of such subsection, based on the factors set out in section 23–1321 (b),

there is no condition or combination of conditions of release which will reasonably assure the safety of any other person or the community; and

"(C) that, except with respect to a person described in paragraph (3) of subsection (a) of this section, on the basis of information presented for proffer or otherwise to the judicial officer there is a substantial probability that the person committed the offense for which he is presently before the judicial officer; and

"(3) issues an order of detention accompanied by written findings of fact and the reasons for its entry.

"(c) The following procedures shall apply to pretrial detention hearings held pursuant to this section:

"(1) Whenever the person is before a judicial officer, the hearing may be initiated on oral motion of the United States attorney.

"(2) Whenever the person has been released pursuant to section 23–1321 and it subsequently appears that such person may be subject to pretrial detention, the United States attorney may initiate a pretrial detention hearing by ex parte written motion. Upon such motion the judicial officer may issue a warrant for the arrest of the person and if such person is outside the District of Columbia, he shall be brought before a judicial officer in the district where he is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section.

"(3) The pretrial detention hearing shall be held immediately upon the person being brought before the judicial officer for such hearing unless the person or the United States attorney moves for a continuance. A continuance granted on motion of the person shall not exceed five calendar days, unless there are extenuating circumstances. A continuance on motion of the United States attorney shall be granted upon good cause shown and shall not exceed three calendar days. The person may be detained pending the hearing.

"(4) The person shall be entitled to representation by counsel and shall be entitled to present information by proffer or otherwise, to testify, and to present witnesses in his own behalf.

"(5) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules

pertaining to the admissibility of evidence in a court of law.

"(6) Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but such testimony shall be admissible in proceedings under sections 23–1327, 23–1328, and 23–1329, in perjury proceedings, and for the purposes of impeachment in any subsequent proceedings.

"(7) Appeals from orders of detention may be taken pursuant to section 23–1324.

"(d) The following shall be applicable to persons detained pursuant to this section:

"(1) The case of such person shall be placed on an expedited calendar and, consistent with the sound administration of justice, his trial shall be given priority.

"(2) Such person shall be treated in accordance with section 23–1321—

"(A) upon the expiration of sixty calendar days, unless the trial is in progress or the trial has been delayed at the request of the person other than by the filing of timely motions (excluding motions for continuances); or

"(B) whenever a judicial officer finds that a subsequent event has eliminated the basis for such detention.

"(3) The person shall be deemed detained pursuant to section 23–1325 if he is convicted.

"(e) The judicial officer may detain for a period not to exceed five calendar days a person who comes before him for a bail determination charged with any offense, if it appears that such person is presently on probation, parole, or mandatory release pending completion of sentence for any offense under State or Federal law and that such person may flee or pose a danger to any other person or the community if released. During the five-day period, the United States attorney or the Corporation Counsel for the District of Columbia shall notify the appropriate State or Federal probation or parole officials. If such official fail or decline to take the person into custody during such period, the person shall be treated in accordance with section 23–1321, unless he is subject to detention under this section. If the person is subsequently convicted of the offense charged, he shall receive credit toward service of sentence for the time he was detained pursuant to this subsection.

Mr. HART. Mr. President, in either case, whether a request for additional detention is made prior to release, or subsequent to release, how likely is it that a judge—who has already held the accused subject to detention—will find that during 60 days' detention he has somehow become less dangerous to the community? The answer is all to evident.

The Senate conferees sought to restrict the House proposal that those charged with——

Mr. TYDINGS. Mr. President, will the Senator yield at that point?

Mr. HART. I yield.

Mr. TYDINGS. Does the Senator wish to imply by his remarks that if the trial does not go forward within 60 days, the individual is not conditionally released?

Mr. HART. Yes; that he may not be; that he may be further detained.

Mr. TYDINGS. If the Senator will read page 194 of the conference report, he will see the clear language which I have brought out in the debate time and time again, which says that:

The following shall be applicable to persons detained pursuant to this section.

Going down to paragraph (A): "upon the expiration of 60 calendar days, unless the trial is in progress or the trial has been delayed at the request of the person other than by the filing of timely motions," such person shall be treated in accordance with section 23–1321.

Section 23–1321 is the release section under the subchapter II, "Release and Pretrial Detention." Section 23–1321 is "Release in Noncapital Cases Prior to Trial." This was brought out clearly by Mr. Kleindienst, Deputy Attorney General, before the Senate Judiciary Subcommittee. It was spelled out as clearly as possible that section 23–1321, the object of the reference, is the section on pretrial release, not detention. Section 23–1322 is on detention.

I have brought it out here time and time again in the debate. I do not know how much clearer it can be made.

Mr. HART. Section 1321, as I have suggested, is the beginning of the problem, but it does not contain the answer. The prisoner is in detention; is that right?

Mr. TYDINGS. Section 1321 contains the provisions for conditional release. The whole subchapter II is related to release and pretrial detention; 1321 relates to the conditions of pretrial release, as where the issue of dangerousness is brought before the court and the court determines if a pretrial conditional release will protect the community—a release, say, in which the person has to report back to jail every evening, or a release subject to the custody of the bail agent, or a release subject to custody of a priest or a lawyer. All that 1321, of itself, relates to is release.

We do not get to detention until we get to section 23–1322, which is the section having to do with detention.

That is the reason why we specify that, at the end of 60 days, a detained person shall be treated in accordance with section 23–1321, the release provisions. If we meant detention, we would have said in accordance with section 23–1322, the pretrial detention-provision, or 23–1321 and 23–1322.

Mr. HART. Section 1321 permits his release only if a condition or combination of conditions will insure the safety of the community.

In determining which conditions of release, if any, will reasonably assure the appearance—I refer to section 23–1321 (b)—down in subsection (h), which is on page 192, it states:

The following shall be applicable to any person detained pursuant to this subchapter.

Which is part of 1321.

Mr. TYDINGS. I do not know how much clearer we can make it.

Mr. HART. The words I just read are part of this section.

Mr. TYDINGS. I know, but the words the Senator has just read are only part of the overall subsection, the overall section, which relates to the conditions of release.

Mr. HART. If any.

Mr. TYDINGS. Relating to actual pretrial detention, one has to go to section 23–1322. When it comes to these cross-references, one has to take the section as a whole. Release in noncapital cases prior to trial—that is what section 23–1321 is about. That is the first half of subchapter II. Subchapter II is release, on the one hand, and pretrial detention on the other.

Mr. HART. If the court finds that no conditions provide the assurance that is required, what in the statute prevents one from going to the next section? Why is the language so conditional in the release section the Senator emphasizes?

Mr. TYDINGS. Because on page 194 we specify that in the event that the trial does not come on in 60 days, he shall be treated in accordance with the provisions of the release section—not in accordance with the provisions of subchapter II which relate to release and pretrial detention as well. This was spelled in the legislative history before the Senate subcommittee by the Deputy Attorney General. It has been spelled here on the floor time and time again.

I do not see how it is possible to think that the reference to section 23–1321 in the provision on page 194 really means 1321 and 1322 together.

Mr. HART. The Senator from Michigan has just explained how his reasoning gives him that understanding, but let us go on. Even if a person is conditionally released under 1321, the district attorney can seek, ex parte, under 1322(c), detention whenever it appears appropriate. Is not that what the language says?

Mr. TYDINGS. That would be contrary to the direct language on page 194.

Mr. HART. That does not have anything to do with the language on page 194; it has to do with the language on page 193:

The following procedures shall apply to pretrial detention hearings held pursuant to this section:

* * * * *

(2) Whenever the person has been released pursuant to section 23–1321 and it subsequently appears that such person may be subject to pretrial detention, the United States attorney may initiate a pretrial detention hearing.

Mr. TYDINGS. The language the Senator is talking about refers to a person released initially. The language he is talking about does not apply after a person has been held following a pretrial detention proceeding under section 1322, and where the trial has not gone on in 60 days.

Mr. HART. I am reading from the language:

Whenever the person has been released pursuant to section 23–1321 and it subsequently appears.

Mr. TYDINGS. I know. The language the Senator is talking about applies if a person is initially released under 1321. After he has been held for 60 days, if, for some reason or another, the trial has not come about, he is absolutely subject to release under 1321. The Senator is reading about where there has been no pretrial detention under 1322.

Mr. HART. Why does it not say so?

Mr. TYDINGS. It does say so.

Mr. HART. Where?

Mr. TYDINGS. Right here.

Mr. HART. Cite me the page and line.

Mr. TYDINGS. Page 194, subsection (d):

The following shall be applicable to persons detained pursuant to this section.

I do not know how it can be made clearer.

Mr. HART. I hope the court will read the Senator from Maryland and not the statute.

Mr. TYDINGS. All I urge is that they read the statute, page 194.

Mr. HART. Mr. President, I have cited and asked to have included in the RECORD sections 1321 and 1322. I ask additionally now that section 1322(c) be printed in the RECORD.

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

"(c) The following procedures shall apply to pretrial detention hearings held pursuant to this section:

"(1) Whenever the person is before a judicial officer, the hearing may be initiated on oral motion of the United States attorney.

"(2) Whenever the person has been released pursuant to section 23–1321 and it subsequently appears that such person may be subject to pretrial detention, the United States attorney may initiate a pretrial detention hearing by ex parte written motion. Upon such motion the judicial officer may issue a warrant for the arrest of the person and if such person is outside the District of Columbia, he shall be brought before a judicial officer in the district where he is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section.

"(3) The pretrial detention hearing shall be held immediately upon the person being brought before the judicial officer for such hearing unless the person or the United States attorney moves for a continuance. A continuance granted on motion of the person shall not exceed five calendar days, unless there are extenuating circumstances. A continuance on motion of the United States attorney shall be granted upon good cause shown and shall not exceed three calendar days. The person may be detained pending the hearing.

"(4) The person shall be entitled to representation by counsel and shall be entitled to present information by proffer or otherwise, to testify, and to present witnesses in his own behalf.

"(5) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

"(6) Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but such testimony shall be admissible in proceedings under sections 23–1327, 23–1328, and 23–1329, in perjury proceedings, and for the purposes of impeachment in any subsequent proceedings.

"(7) Appeals from orders of detention may be taken pursuant to section 23–1324.

DETENTION BASED ON "PAST CONDUCT"

Mr. HART. The Senate conferees sought to restrict the House proposal that those charged with "dangerous crimes" be detained solely on the basis of the instant charge. Nonetheless, the final conference report still offers the prosecution a field day for obtaining detention of such defendants on the basis of derogatory information short of any criminal record.

The statement of the Senate managers observes that the court must find a "prior pattern of dangerous behavior." But what does this mean? The report itself permits detention if the court finds danger to the community on the basis of "such persons' pattern of behavior consisting of past and present conduct, and on other factors set out in section 23–1321(b)."

Section 1321(b), in turn, lists many factors, including past convictions, and "any record of appearance at court proceedings," and also lists separately "character" and "past conduct." What do "character" and "past conduct" include, in this context, Mr. President?

During the House debate preceding its acceptance of the conference report, Representative HOGAN, for the express purpose of establishing legislative history, gave the "solid position of the House conferees"—unchallenged—on this provision. He said:

It is important to understand just what this new provision requires. It does not require a prior conviction or even arrest for a felony or misdemeanor on the part of the defendant. As explained in the House report, past conduct need not consist of prior involvement with the law.

Mr. HOGAN goes on to sum up the "restricted scope" of this provision as follows:

Through testimony and other reliable sources of information, a judicial officer may be informed of conduct on the part of the defendant which while dangerous to the community never resulted in his arrest or conviction.

Shall we, then, permit a man to be imprisoned before trial on the basis of hearsay information about his character, his companions, or, perhaps, his political activism, which a court finds "dangerous" to the community? No wonder the statement of the Senate managers was constrained to suggest that the "serious constitutional questions raised by any legislatively sactioned pretrial detention" on such grounds "should be fully aired in the decision to adopt the conference report."

The statement goes on to say that the conferees were not convinced that a "narrowly limited and fully protected" scheme of detention was unconstitutional. Mr. President, even assuming that incarceration for crimes never committed could ever pass constitutional muster, this is not my idea of a narrowly restricted, carefully safeguarded system of preventive detention.

It is, rather, a wide open, extremely dangerous departure from the most fundamental principles of our criminal system. It should not be accepted by this body, no matter what the rationale, excuse, or pressure put forth on its behalf.

STATUTORY DETENTION AS AN ALTERNATIVE TO MANIPULATION OF MONEY BAIL

Proponents of preventive detention who are sensitive to these fundamental vices have ultimately been forced to defend it on the ground that the present bail system is just as bad. They argue that detention based on danger to the community is already accomplished through manipulation of high money bail—in clear violation of the Bail Reform Act.

The first answer to this contention is simply that the conference report would supplement, not replace the present improper practices.

Mr. TYDINGS. Mr. President, will the Senator yield at that point?

Mr. HART. I yield.

Mr. TYDINGS. The Senator realizes that the Bail Reform Act pertains only to Federal courts, does he not?

Mr. HART. Yes, I do.

Mr. TYDINGS. The Senator realizes further, that in some States, for example, the State of New York, any person charged with a felony can be held under pretrial detention, with no statutory hearings and no pretrial procedures whatsoever?

Mr. HART. I learned that a few days ago here, when the Senator from Maryland and the Senator from New York had an exchange on it.

Mr. TYDINGS. The Senator is aware that a great many States have pretrial detention, with none of the safeguards we have here, for any person charged with a felony?

Mr. HART. If one State or 48 States do it, it is unfortunate.

Mr. TYDINGS. Is the Senator aware that the First Congress of the United States, which drafted the Constitution, lifted word for word from the British bill of rights that excessive bail provision, and the very first bail law provided that persons charged with very serious crimes—all capital crimes, and in those days capital crimes covered a very broad spectrum—need not be released on bail or need not be released prior to trial?

Mr. HART. Capital offenses have always been nonbailable.

Mr. TYDINGS. And the Senator is aware that capital crimes once included everything from armed robbery to burglary to rape to counterfeiting?

Mr. HART. I accept the Senator's statement. Despite some precatory language, there is no reason to believe that bail manipulation—which has gone on in clear disregard of congressional intent and common law limitation on the use of bail—will be seriously inhibited in the case of those who are not detainable under this statute. Nor, for that matter, is there any reason why courts would not be even more likely to attempt such manipulation for persons against whom formal detention had been unsuccessfully sought.

On a more fundamental level, I reject the suggestion that when an act of Congress is flouted, and constitutional rights denied in the bargain—that we must knuckle under, codify these violations and say, in effect, "okay, let us at least make it official and clean it up a bit."

The answer, rather, must be to pose more explicit standards to aid reviewing courts which can check improper use of bail, and, at the same time provide other alternatives to the problem, including speedy trial legislation and expanded supervisory release.

CONCLUSION

Mr. President, these defects, and others which my colleagues have detailed in the conference report cannot be swept aside by efforts to "make legislative history" on the floor of this Chamber. We cannot change the plain language of the report—

even apart from competing "history" laid down in the House—to read as the Senate conferees would have preferred it to read.

Beyond this, the whole concept of preventive detention of the kind proposed in this report is so antiethical to our basic traditions, that no legislative history or specific statutory language would make it acceptable.

The Senate Judiciary Committee has only recently completed the kind of thorough hearings which preventive detention demands, before we are asked to approve it. The administration and the proponents of preventive detention in the House gave it a fast shuffle in the District bill reported by the other body. The full Senate has not yet had a chance to study and debate fully the results of the hearings before its Judiciary Committee.

On such a critical issue, Mr. President, the Members of this body should be able to work their will free from the pressures for court reform which have been used to ram preventive detention through Congress.

Once more, the Nation is watching our action. As I warned several weeks ago, "it is easy to conclude, through frustration or fear, that we must adopt whatever anticrime proposals are offered—and the sooner the better. Attempts to encroach upon the Bill of Rights always invoke the claim of necessity and criminals on the fringe of society may seem less worthy of the Constitution's protection. Yet the peril of each of us lies in the precedent of eroding the rights of any of us."

Mr. President, I urge my colleagues to reject the conference report and to vote for the substitute District of Columbia crime bills which are now ready to be acted upon.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial entitled "District of Columbia Crime Bill Assaults Freedom and Intelligence," published in the Detroit Free Press of Sunday, July 19, 1970, which comments unfavorably on the bill now pending before the Senate.

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

AS WE SEE IT DISTRICT OF COLUMBIA CRIME BILL ASSAULTS FREEDOM AND INTELLIGENCE

The administration's bill to combat crime in the District of Columbia is so chilling in its implications that it is incredible that it has advanced so close to passage. Though it is an unvarnished assault on basic American freedoms, it has passed the House and is moving toward approval in the Senate.

The bill includes (1) a provision that permits an accused person to be jailed for up to 60 days before his trial if his record shows in the opinion of a judge, that he would be a crime risk during the pretrial period; (2) a broadening of the wiretapping practices of government; and (3) an extension of the authority of policemen to enter a house without knocking or identifying themselves.

Sen. Sam Ervin, a North Carolina Democrat and a conservative, has had the forensic last word on the bill: "This . . . is as full of unconstitutional, unjust and unwise provisions as a mangy hound dog is full of fleas . . . a garbage pail of some of the most repressive, nearsighted, intolerant, unfair and vindictive legislation that the Senate has ever been presented . . . an affront to constitutional principles and to the intelligence of the people of the United States."

Never mind the splendid hyperboles. Sen. Ervin makes his point. The bill ought to make any thoughtful American even more purple with rage than the acts of violence and crime that have made members of Congress so willing to restrict our liberties. This, indeed, is a bill to shout down from the house tops.

Are we so frightened of crime that we are willing to sacrifice the sanctity of our home to a policeman's suspicions? Do we really care so little for the privacy of conversations that we are willing to see the tapping of telephones extended? Do we really mean to give a judge the right to slap a man with a previous criminal record into jail without trial if he is considered "dangerous?"

These are questions that must be asked, and they are not academic for any of us. No American can afford to assume that such laws will be used only against clearly definable "criminal types" and not against him. Who is dangerous and who is not? Will a conservative Washington homeowner, for instance, be classed as dangerous and therefore subject to the kinds of police activities being authorized for the district? Will someone who wears his hair long?

We had always felt that the idea of the sanctity of the home would protect Americans from inordinate invasions of privacy. From colonial days we have resisted the nosy intrusions of government into our lives. We have looked on with horror at the reality and later the movie depictions of the invasions by the state into homes in Nazi Germany.

Yet here is the Congress of the United States, urged on by the attorney general and the President, about to pass a bill that is straight out of 1930 Germany. True, it only affects the crime-ridden District of Columbia. But the pattern is spreading.

Somehow it must be stopped, in Congress or in the courts. Surely we cannot approach our 200th anniversary—celebrating Mr. Jefferson and his conferees and the freedom they proclaimed—in such a spirit of repression. It is too much.

Mr. HRUSKA. Mr. President, during the past few days those of us who have listened to the debate on the District of Columbia crime bill have heard numerous charges leveled against the bill by its opponents. Others have answered some of these points. The Senator from Maryland (Mr. TYDINGS) made an excellent defense of the bill yesterday in a speech on the Senate floor. Today I would like to discuss three charges made against the bill which warrant special interest: First, that the no-knock provision in the bill is a departure from well-established practice in this country; second, that section 23–111 of the conference bill is unconstitutional in that it denies a right to a jury trial by permitting the court to make a factual determination as to whether a person has been convicted of a prior offense; and, third, that preventive detention is a recent development, designed especially to cope with the crime problem in the District of Columbia.

First. With regard to the question of no-knock, I ask unanimous consent to have printed in the RECORD a chart which shows that some 30 States in the country, either by statute or by court decision, permit some form of no-knock entry. This indicates to me that no-knock is rather the rule than the exception.

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

APPENDIX.—STATES REQUIRING ANNOUNCEMENT OF AUTHORITY AND PURPOSE BEFORE FORCED ENTRY TO EXECUTE SEARCH WARRANTS OR ARRESTS (WITH OR WITHOUT A WARRANT)*

State	Search warrant	Arrests (with or without warrant)
Alabama	Notice required (Code of Ala. 15.108)	Notice required (Code of Ala. 15.153, 15.155).
Alaska	No-knock permitted (Alaska Stat. 12.35.040)	Notice required (Alaska Stat. 12.25.100).
Arizona	Notice required (State v. Mendoza—454 P.2d 140 (1968) allows "no-knock" for destruction exception) (Ariz. Rev. Stat. 13–1446(B)).	Notice required (Ariz. Rev. Stat. 13–1411).
Arkansas	No statute, common law applies	Notice required (Ark. Stat. 43–414).
California	Notice required [1] (Calif. Penal Code, sec. 1531)	Notice required [1] (Calif. Penal Code, sec. 844).
Colorado	No statute, common law applies	No statute, common law applies.
Connecticut	No statute, common law applies (State v. Marino, 152 Conn. 85, 203 A. 2d 305 (1964) allows no-knock for destruction exception to common law announcement rule).	Do.
Delaware	No statute, common law applies (Dyton v. State, 250 A.2d 383 (1969), allows no-knock for destruction exception to common law announcement rule).	Do.
District of Columbia	Notice required (D.C. Code Ann. 25–129(g) (liquor) D.C. Code Ann. 33–414(g) (narcotics) 18 U.S.C. 3109. But an annotation to sec. 23–301, par. 6 states that for search or arrest that the police can break in after an announcement of identity and purpose. There are no exceptions. "Breaking and entering premises without an announcement is clearly illegal and an improper entry renders a subsequent search invalid.")	No provision, common law applies.
Florida	Notice required (Fla. Stat. 933.09) (Benefield v. State, 160 So. 2d 706 (1964) allows no-knock for destruction exception).	Notice required (Fla. Stat. 901.19).
Georgia	Notice required (Code of Ga. Ann. 27–308). The arrest provision states that the police may use force to break into a building and does not require any announcements prior to the breaking. The new search statute does require an announcement before breaking.	No-knock permitted only with warrant (Code of Ga Ann. 27–205).
Hawaii	No-knock permitted if door to house is open. Notice required if door is closed. (Hawaii Rev. Stat., title 37, sec. 708.37)	Notice required (Hawaii Rev. Stat. title 37, sec. 703.11).
Idaho	Notice required (Idaho Code 19–4409)	Notice required (Idaho Code 19–611).
Illinois	No-knock permitted (Ill. Ann. Stat., title 38, sec. 108–8). The arrest statute states that no notice or announcement required for arrest but People v. Barbee, 35 Ill. 2d 407, 220 N.E. 2d 401 (1966) requires announcement before arrest. The search warrant section concludes that notice is not necessary if constitutional standards (of reasonableness) are met. People v. Harfield, 94 Ill. App. 2d 421, 237 N.E. 2d 193 (1968). People v. Macias, 39 Ill. 2d 208, 234, N.E. 2d 783 (1968) allows no-knock for destruction exception.	No-knock permitted (Ill. Ann. Stat. title 38 ,sec. 107–5(d)).

Footnotes at end of table.

APPENDIX.—STATES REQUIRING ANNOUNCEMENT OF AUTHORITY AND PURPOSE BEFORE FORCED ENTRY TO EXECUTE SEARCH WARRANTS OR ARRESTS (WITH OR WITHOUT A WARRANT)*—Continued

State	Search warrant	Arrests (with or without warrant)
Indiana	No statute, common law applies Hadley v. State, 238 N.E. 2d 888, 906 (1968), allows no-knock for destruction exception to the common law rule of announcement.	Notice required (Ind. Ann. Stat. 9-1009).
Iowa	Notice required (Iowa Code Ann. 755.9)	Notice required (Iowa Code Ann. 751.9).
Kansas	No statute, common law applies	Notice required (Kansas Stat. Ann. 62-1819).
Kentucky	do	Notice required (Ky. Rev. Stat. 70.077 and 70.073).
Louisiana	No-knock permitted (La. Code of Crim. Pro. title V(Art. 164)) the new statute on arrests without warrants is broader now and not limited only to felonies.	Notice required (La. Code of Crim. Procedure title V (Art. 224)).
Maine	No statute, common law applies [2]	No statute, common law applies.[2]
Maryland	do [3]	Do.[3]
Massachusetts	No statute, common law applies (Commonwealth v. Rossetti, 211 N.E. 658, 665 (1965) court referred to no-knock for destruction exception to the common-law rule of announcement in dictum).	No statute, common law applies.
Michigan	Notice required (Mich. Stat. Ann. 28-1259 (6)) the search provision had not be included previously	Notice required (Mich. Stat. Ann. 28.880).
Minnesota	No statute, common law applies (State v. Parker, 283 Minn. 127 166 N.W. 2d 347 (1969))	Notice required (Minn. Stat. Ann. 639.33 and 639.34).
Missouri	No-knock permitted (Vernon's Ann. Mo. Stat. 542.390)	Notice required (Vernon's Ann. Mo. Stat. 544.200).
Mississippi	No statute, common law applies	Notice required (Miss. Code of 1942, 2472).
Montana	No-knock permitted [4] (Rev. Code of Montana 1947 (95-809))	Notice required [4] (Rev. Code of Montana 1947 (94-6011)).
Nebraska	No-knock permitted [5] (Rev. Stat. of Neb. 29-411)	No-knock permitted [5] (Rev. Stat. of Neb. 29-411).
Nevada	Notice required (Nev. Rev. Stat. 179.090)	Notice required (Nev. Rev. Stat. 171.138).
New Hampshire	No statute, Common Law applies	No statute, common law applies.
New Jersey	do [4]	Do.[6]
New Mexico	No statute, common law applies	No statute, common law applies.
New York	No knock permitted. (The officer may break open an outer or inner door or window of a building, or any part of the building, or anything therein, to execute the warrant, (a) if, after notice of his authority and purpose, he be refused admittance, or (b) without notice of his authority and purpose, if the judge, justice, or magistrate issuing the warrant has inserted a direction therein that the officer executing it shall not be required to give such notice. The judge, justice, or magistrate may so direct only upon proof under oath, to his satisfaction, that the property sought may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice were to be given. As amended L. 1964, c. 55, eff. July 1, 1964.) (N.Y. Code Crim. Procedure, sec. 799.)	Notice required (N.Y. Code of Crim. Procedure, sec 175—arrest with warrant—and sec. 178—arrest without warrant).
North Carolina	No statute, common law applies	Notice required (Rev. Stat. of N.C. 15.44).
North Dakota	No-knock permitted if judge so provides (N.D. Code 29-29.1-01)	Notice required (N.D. Code 29-06-14).
Ohio	Notice required U.S. v. Blank, 251 F. Supp. 166 (1966) and State v. Johnson, 10 Ohio Misc. 278, 240 N.E. 2d 574 (1968) allow no-knock for destruction exception). (Ohio Rev. Code Ann. 2935.12).	Notice required (Ohio Rev. Code Ann. 2935.12).
Oklahoma	Notice required (Okla. Stat. Ann. Title 22, Sec. 1228)	Notice required (Okla. Stat. Ann. title 22 sec. 194 (arrest with warrant) sec. 197 (arrest without warrant).
Oregon	Notice required (State v. Cortman, 466 P. 2d 681, 683 (1968) allows no-knock for destruction exception; cites People v. Maddox (Calif.)) (Oreg. Rev. Stat. 141.110).	Notice required (Oreg. Rev. Stat. 133.290 arrest with warrant) 133.320 (arrest without warranty)).
Pennsylvania	No statute, common law applies (Manduchi v. Tracy, 350 F.2d 658 (1965) cert. denied, 382 U.S. 943 allowed no-knock for destruction exception to common law rule of announcement).	No statute, common law applies.
Rhode Island	No statute, common law applies (State v. Johnson, 230 A.2d 831, allows no-knock for destruction exception to common-law rule of announcement.)	Do.
South Carolina	No-knock permitted (S.C. Code Sec. 17-257)	Notice required (S.C. Code Sec. 53-192).
South Dakota	Notice required (S.D. Comp. Laws. Ann. 1967, Sec. 23-15-14) [7]	Notice required (S.D. Comp. Laws Ann., 1967, Sec. 23-22-19).
Tennessee	Notice required (Tenn. Code. Ann. 40.509)	Notice required (Tenn. Code Ann. 40.807).
Texas	No-knock permitted (Vernon's Tex. Stat. Ann. Code of Crim. Proc., art. 18.18)	Notice required (Vernon's Tex. Stat. Ann. Code of Crim. Proc. Art. 15.25).
Utah	No-knock permitted 1967 Amendment to search warrant provisions reads: "Officer may break door or window to execute warrant—Authority. The officer may break open any outer or inner door or window of a house, or any part of a house or anything therein, to execute the warrant: (1) if, after notice of his authority and purpose, he is refused admittance; or (2) 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 properly sought is a narcotic, illegal drug, or other similar substance which may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or any other may result, if such notice were to be given." Also see State v. Louden, 15 Utah 2d 64, 387 p. 2d 240 (1963).) (Utah Code Ann. 1953, 77-54-9).	Notice required (Utah Code Ann. 1953, 77113-12).
Vermont	No-knock permitted (Vermont Stat. Ann. 24.302)	No-knock permitted (Vermont Stat. Ann. 24.302).
Virginia	No statute—common law applies	No statute, Common law applies.
Washington	do [8]	Notice required [7] (Rev. Code of Wash. Ann. 10.31.040).
West Virginia	No-knock permitted for structures other than a "dwelling" (W. Va. Code 62.1A-5)	No statute, Common law applies.
Wisconsin	No statute. Common law applies	Do.
Wyoming	Notice required	Notice required for arrest with warrant (Wy. Stat. Ann. 7-165) No statute for arrest without warrant—Common law applies.

[1] People v. Maddox, 204 P. 2d 6 (1956) allow no-knock; people v. Gostelo, 432 P. 2d 706 (1967) for destruction; People v. Rosales. 437 P. 2d 489 (1968) exception.

[2] State v. Martello, 252 A. 2d 316 (1969) allows no-knock as an exception to the common-law rule of announcement "An officer * * * is bound, on demand to make known his authority, but his omission to do so can do no more than deprive "him" of the protection which the law throws around its ministers, when in the rightful discharge of their duty."

[3] Henson v. State, 236 Md. 513, 204 A. 2d 516 (1969) and Waugh v. State, 3 Md. App. 379, 230 A. 2d 596. Both cases allow destruction exception to the common law rule of announcement.

[4] The general arrest statute and the search statute give the right to break in without the requirement of notice. The arrest with or without warrant statutes require notice unless notice would jeopardize the arrest.

[5] "Warrants: execution; powers of officer; direction for executing, in executing a warrant for the arrest of a person charged with an offense, or a search warrant, or when authorized to make an arrest for a felony without a warrant, the officer may break open any outer or inner door or window of a dwelling house or other building, if, after notice of his office and purpose, he is refused admittance;" or without giving notice of his authority and purpose, if the judge or magistrate issuing a search warrant has inserted a direction therein that the officer executing it shall not be required to give" such notice, but the political subdivision from which such officer is elected or appointed shall be liable for all damages to the property in gaining admission. The judge or magistrate may so direct only upon proof under oath, to his satisfaction that the "property sought may be easily or quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such" notice be given; but this section is not intended to authorize any officer executing a search warrant to enter any house or building not described in the warrant.)

[6] State v. Juliano, 97 N.J. Super. 25, 234 A. 2d 236 (1967) allows No-knock for destruction exception to common law rule of announcement.

[7] South Dakota recently enacted authority for no-knock warrants.

[8] State v. Young, 76 W. D. 2d 212, 455 p. 2d 595 (1969) allows No-knock for destruction exception.

*From an article to be published in the St. John's Law Review.

Note.—The citations listed in the above appendix are illustrative only and in no way are to be considered as all inclusive.

Mr. HRUSKA. My own State of Nebraska is one that permits limited forms of "no knock." Section 29-411 of the Revised Statutes of Nebraska says:

In executing a warrant for the arrest of a person charged with an offense, or a search warrant, or when authorized to make an arrest for a felony without a warrant, the officer may break open an outer or an inner door or window of a dwelling house or other building, if, after notice of his office and purpose, he is refused admittance; or without giving notice of his authority and purpose, if the judge or magistrate issuing a search warrant has inserted a direction therein that the officer executing it shall not be required to give such notice, but the political subdivision from which such officer is elected or appointed shall be liable for all damages to the property in gaining admission.

Those who decry "no knock" for the District of Columbia go against the practice in a majority of the States of this Nation as well as against the ruling of the Supreme Court of the United States in *Ker* v. *the State of California*, 374 U.S. 23 (1963), which has already been discussed at length by both the proponents and the opponents of this bill. Not only do the States and the courts approve "no knock," but so does the Senate. Three times since December 1969 this body, the U.S. Senate, has approved of "no knock" warrants. It seems to this Senator to be time to stop the argument concerning "no knock" and to move on to other matters.

Second. Last Friday the Senator from North Carolina (Mr. ERVIN) stated that section 23-111 of the conference bill violates section 1 of article III of the Constitution by permitting the court, rather than the jury, to make a determination concerning whether a person has been convicted of a prior offense. This determination, under the terms of the provision, would be made only after a finding of guilt by a jury and would be used only for the purpose of setting the proper sentence.

The practice which section 23-111 would codify is currently the practice in

the District of Columbia. Today, in this jurisdiction, after a jury has ruled on the question of guilt or innocence, it is the court which examines documentation submitted to prove that the defendant has previously been convicted of an offense. The very recent case of United States against Marshall in three separate sections of the majority and minority opinions recognizes that such is the practice in the District of Columbia at the present time. I ask unanimous consent that excerpts from the opinion and concurring opinion in this case by the U.S. Court of Appeals for the District of Columbia Circuit be printed in the RECORD with the relevant portions italicized.

This case indicates to this Senator that the constitutional objection raised against this provision of the conference bill is without substance; but rather that similar practices are engaged in daily by the courts with the approval of the appellate reviewers of these actions.

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

[United States Court of Appeals for the District of Columbia Circuit, No. 22,485]

UNITED STATES OF AMERICA *v.* ERNEST M. MARSHALL, APPELLANT

(Appeal from the United States District Court for the District of Columbia, on reconsideration en banc)

Decided June 30, 1970

II

A question arises as to the sentence. The crime of carrying a pistol without a license, of which appellant was convicted, is punishable under the terms of 22 D.C. Code § 3204 in the manner prescribed by Section 22–3215. This calls for a fine of $1,000 or imprisonment for not more than one year, or both, unless the defendant has been convicted of the same offense in this jurisdiction or of a felony in any jurisdiction. In such a case the sentencing court has the discretion to impose a sentence of not more than ten years, although the increased term of imprisonment is only authorized and not required. Under these provisions appellant was sentenced as a second offender for a term of imprisonment from two to six years.

The contention is that proof of a prior conviction was not adduced properly. To decide this question the court sua sponte has considered the case en banc.

In *Jackson* v. *United States*, 95 U.S. App. D.C. 328, 221 F. 2d 883 (1955), where, as in the present case, the sentence was imposed under Section 3204, but without proof of the previous conviction in the presence of the accused, we vacated the sentence and remanded for resentence for not more than one year, "unless the Government introduces evidence in Jackson's presence *which convinces the court that*, when he committed the offenses of which he was convicted, he had theretofore been convicted of a similar violation or of a felony."

Jackson, supra, 95 U.S. App. D.C. at 330–31, 221 F.2d at 885. We find no significant distinction between this case and *Jackson*, and we think the position there adopted is sound. The indictment, which we assume was served on Jackson as required by law, recited a prior conviction. His counsel stipulated to the court, though out of Jackson's presence, that the accused had previously been convicted of a felony, and also waived proof of the conviction should the jury find him guilty of the charge on trial.

In the course of its opinion the court stated that the stipulation of counsel was not a substitute for actual proof of a fact which so drastically increases the maximum imprisonment. Such proof which so largely shapes the sentence should be introduced in the defendant's presence, just as the sentence itself must be pronounced in his presence." 95 U.S. App. D.C. at 330, 221 F.2d at 885.

This was the position of the court notwithstanding, as the court pointed out, ". . . Jackson does not expressly attack the sentence as being in excess of that authorized by law, and although he did not move in the District Court that it be corrected, as he might have done under 28 U.S.C. § 2255, the matter of the legality of the sentence may nevertheless be determined on this appeal." 95 U.S. App. D.C. at 330, 221 F.2d at 885.

What occurred in the present case was that the then United States Attorney filed with the Clerk a document called an "Information of Prior Conviction." There is a notation on the Clerk's docket of service of this paper. The document recites that Marshall had previously been convicted twice of carrying a dangerous weapon. During the sentencing proceedings, however, there was no mention of this information or of the fact of prior conviction, and there was no proof of such a conviction in the presence of the defendant.

We are persuaded to adhere to the procedure adopted in *Jackson*. In addition to the reasons there expressed there is another. When the proof is introduced in the presence of the defendant meaningful opportunity is afforded, which might otherwise be unavailable, to enable the accused in the exercise of his right of allocution to advance any reasons he might have why the court should not enlarge the sentence because of his past record.

Rule 32(a), Fed. R. Crim. P., presently provides in part:

"Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment."

In *Green* v. *United States*, 365 U.S. 301, 304 (1961), it is pointed out that the legal provenance of this Rule was the common-law right of allocution. The Court there interpreted Rule 32(a) as it then existed to require the trial court to enable the defendant—not only his counsel—the opportunity to address the court. The result of this ruling, reaffirmed in *Hill* v. *United States*, 368 U.S. 424 (1962), was that by the 1966 amendments, this requirement was made a part of the Rule. Section 3204 permits but does not require the sentence of a recidivist to be enlarged. A discretion resides in the sentencing judge whether to enlarge the sentence at all or, if enlarged, to what extent within the great range between a one and ten year term. The judge accordingly should consider, inter alia, the circumstances of the prior offense as well as other aspects of the defendant's life. Particularly when a prior offense may permit the sentence to be enlarged tenfold, it is difficult to see how the sentencing can proceed with a meaningful allocution without anything being said concerning the prior offense, as here occurred. Proof in the defendant's presence of the prior conviction, with knowledge thus brought home to him in the courtroom of its possible significance in determining his sentence, alerts him to the opportunity at sentencing of addressing the judge directly with respect to the prior conviction. Even when the fact of conviction is not disputable he may adduce whatever he deems appropriate for the judge to consider in connection with it. As the Supreme Court stated in *Green, supra*, 365 U.S. at 304:

"The most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself."

We do not deem it essential, in adhering to the procedure adopted in *Jackson*, to determine whether or not it is required by due process of law. *See Oyler* v. *Boles*, 368 U.S. 448, 452 (1962), and *United States ex rel. Collins* v. *Claudy*, 204 F. 2d 624 (3d Cir. 1953).

The judgment of conviction is affirmed. The sentence is vacated and the case is remanded for resentence for no more than one year unless the United States introduces evidence in Marshall's presence *which convinces the court that* when he committed the offenses of which he was convicted he had theretofore been convicted of a similar violation or of a felony.

It is so ordered.

MACKINNON, *Circuit Judge*, concurring in part and dissenting in part: I concur in the affirmance of the conviction and with Part I of the majority opinion but I am unable to concur in the vacation of the sentence and the remand for resentencing as ordered by Part II of the opinion. To do so, in my opinion, would be a completely useless ceremony.

Rule 52(a) of the Federal Rules of Criminal Procedure provides:

"Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."

In my opinion no substantial right of appellant has been affected. He has never claimed that he is not the same person as the Ernest M. Marshall convicted of the two offenses described in the Information and he makes no showing or claim of any kind that on remand he would be able to introduce any fact that might in any way serve as a basis to compel any alteration in his sentence. Under such circumstances the remand appears as an "idle ceremony" and contrary to the rule announced by our decision in *Kendrick* v. *United States*, 99 U.S. App. D.C. 173, 176, 238 F. 2d 34, 37 (1956), which was written by Judge Miller. I would accordingly affirm the trial court's judgment.

In doing so it should be pointed out that the better practice, which would be prescribed for all future cases, would be for the issue of identity to be satisfied by affirmative admission, stipulation or proof entered on the record in open court in the presence of the defendant prior to sentencing. If the United States Attorney did not take the initiative in this respect the trial judge should determine in an appropriate manner that the defendant is the same person as the one previously convicted. If the defendant denies the prior conviction, or stands mute, *the Government should prove the prior offense to the court by* evidence adduced in the presence of the accused.

Then, having disposed of this case so far as the record before this court justifies, it should be pointed out to appellant that if he believes he has any justifiable basis to question the validity of his sentence (which is not apparent to us on this record) he may do so by motion before the trial court under 28 U.S.C. § 2255. For this purpose his present counsel would be directed to continue to represent him. Upon such motion, if the evidence shows that appellant is in fact the same Ernest M. Marshall who was previously convicted, the trial court may dismiss the motion; if, however, the evidence does not prove that he is the same person as the one previously convicted under the same name, the trial court should then vacate its prior sentence and resentence appellant properly.

In my view the majority opinion mistakenly asserts that this case is controlled by *Jackson* v. *United States*, 95 U.S. App.D.C. 328, 221 F.2d 883 (1955), and not by *Kendrick* v. *United States, supra*.

In this case, Marshall was sentenced by the court on the basis of an "Information of Prior Conviction" filed and served by the Government on September 11, 1968 some 23 days prior to the imposition of sentence on October 4, 1968. The Information stated that appellant had twice before been convicted

of carrying a concealed weapon in violation D.C. Code § 22-3204 (1967). At the time of sentencing counsel for Marshall indicated knowledge of the probation report, termed it "a complete and comprehensive probation report" and recognized its serious implications by observing, "I think the most we can ask is that Your Honor be as lenient as possible under the circumstances." Marshall also personally addressed the court at the time of his sentencing, indicated full knowledge of the probation report and pointed out that ". . . the probation officer hasn't ascertained that I had a probation report written up in Maryland." Thus, since both Marshall and his counsel by their comments indicate they had knowledge of the contents of the probation report, they most certainly had full knowledge that the court had been advised of the two prior convictions. Neither indicated surprise at the sentence of two to six years. After sentence was imposed, it was apparent that Marshall's counsel was not inhibited by the court's action as he immediately requested the court to set appeal bond. So there does not seem to be any more reason to vacate Marshall's sentence than there did the sentence that was involved in Judge Miller's opinion in *Kendrick*.

In *Kendrick* v. *United States, supra,* 99 U.S.App.D.C. at 176, 238 F.2d at 37, the defendant was convicted under the D.C. Code of (1) assault with a deadly weapon and (2) carrying a dangerous weapon. He was sentenced respectively to consecutive sentences of 3 to 9 years and 2 to 8 years. The assault count did not allege that Kendrick had been previously convicted of a similar offense and no such fact was proved on the trial of the case, but after conviction and before sentencing the Government filed an Information alleging two prior convictions of assault with a dangerous weapon. Prior to sentencing no proof was introduced of these convictions or that the Kendrick named therein was identical with the defendant in the proceeding before the court.

On appeal, Kendrick contended that under *Jackson* v. *United States, supra,* he could not be sentenced to imprisonment in excess of one year unless the Government in his presence proves the prior crimes and his identity. However, Judge Miller, who had written the opinion in *Jackson,* also wrote the opinion in *Kendrick* and held that such procedure was not necessary. He pointed out that Kendrick on cross examination during the trial had admitted the two prior offenses, that the same trial judge had presided during one of the prior convictions, that the defendant had not been denied his right of allocution and that there was no showing that Kendrick denied that he had been previously convicted as stated in the Information. Under such circumstances, Judge Miller's opinion concluded, "[T]he production of evidence after verdict and before sentence to show these previous convictions would have been an idle formality." 99 U.S. App. D.C. at 176, 238 F. 2d at 37.

This holding is applicable here and the fact that Kendrick had been previously tried before the same judge on one prior conviction and had admitted both convictions on cross examination does not distinguish it from this case because neither circumstance in *Kendrick* occurred in the context of informing the defendant that such prior convictions were to be used against him to increase his punishment for the instant offense. If certainty that Kendrick had committed the prior offense was the essential feature to the decision in the case that dictated affirmance, then *Jackson* (written by the same judge) would not have been reversed because there was no substantial doubt that Jackson committed the prior stated offenses to which his counsel stipulated and which Jackson at no time denied. The principal fact that distinguishes *Kendrick* (and this case) from *Jackson* is that in *Kendrick* (and *Marshall*) there *was filed and served* an Information prior to sentencing setting forth the prior convictions the Government intended to rely upon to support the enhanced sentence and in *Jackson* no such Information was served or filed. Thus Kendrick (and Marshall) was placed on notice that the court could in its discretion impose an enhanced sentence and this was not done in *Jackson*.

In *Jackson* v. *United States, supra,* appellant's grounds for reversal were twofold: (1) that he was entitled to a jury trial on the issue of the prior conviction and (2) that his trial counsel had improperly represented him to his prejudice by stipulating without his knowledge or consent to the prior conviction. Appellant raised both of these points *affirmatively* on his appeal. On the first point the court held he was not entitled to a jury trial. On the second point that his attorney had improperly represented him *and* because of the absence of any proof of the prior offense, the court placed Jackson in the position he occupied prior to the sentencing by remanding the case for resentencing. Since he had new counsel on the appeal, resentencing thus wiped out the prejudice he claimed had arisen by the improper stipulation of his prior counsel. Thus *Jackson* sought primarily to correct an alleged improper representation by counsel and is plainly distinguishable from *Marshall* on that ground and on the ground previously pointed out that Jackson was never served prior to sentencing with any Information alleging any prior conviction. Also, the premise of the majority opinion that affirmance of *Marshall* would overrule *Jackson* is completely undercut by the fact that the record in *Jackson* indicates that the sentencing on remand was handled in the same manner as in this case. Marshall here makes no claim of improper representation by this trial counsel nor does he claim he was not previously convicted. This latter fact was not considered controlling in *Jackson,* which rather turned on the point that the proof of this point was improperly waived by counsel without appellant's knowledge or consent. *Jackson* v. *United States, supra,* 95 U.S. App. D.C. at 330, 221 F.2d at 885.

Two cases in the Seventh Circuit are also in point on the issue here. *United States* v. *Scales,* 249 F. 2d 368 (7th Cir. 1957) involved a sentence on a narcotics conviction to an enhanced punishment as a second offender under the recidivist provisions of the Boggs Act. Following the conviction the United States Attorney filed an Information in open court setting forth a prior conviction of the defendant on a narcotics violation. As a second offender aggravated penalties were provided for by 21 U.S.C. § 174 (now 26 U.S.C. § 7237(a)). The defendant and his attorney were present in court when the Information was filed but the trial judge addressed no inquiries to the defendant or his attorney and instead immediately proceeded to impose a sentence of seven years' imprisonment which exceeded by two years the maximum punishment provided for a first offense. At no time during the hearing did the defendant or his attorney make any statement relative to the Information or any denial that the defendant was the same person as the one previously convicted. However, following sentencing defendant's counsel requested the court to consider a reduction of sentence on the grounds that defendant was physically handicapped and that there was no evidence he had sold narcotics.

At the time Scales was sentenced the Boggs Act prescribed the sentencing procedure to be followed before the enhanced penalties could be adjudged. Such required the court to be advised by the United States Attorney whether the conviction is the offender's first or a subsequent offense, and in the event it were not a first offense the United States Attorney was required to file an Information setting forth the prior convictions. The statute then specifically required that:

"The offender shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. 26 U.S.C. § 7237 (68A State. 860)."

If he denied the identity a trial was required. Following his sentence Scales moved under 28 U.S.C. § 2255 to vacate his sentence on the ground that the above quoted portion of the statute required the court to directly question him on the subject in a manner similar to that on formal arraignment and that since he and his attorney stood mute their silence must be resolved in his favor.

The situation is thus a stronger one than is presented here by Marshall since the statute specifically requires that the defendant have an "opportunity in open court" to refute his alleged identity. There is no similar statute applicable to Marshall's situation. In denying Scales' attack on his sentence, the court's decision stated:

"The court had no obligation to proceed further or more formally unless and until the identity of appellant as the man previously convicted was denied.

"The record also shows that appellant and his counsel were fully aware of what was transpiring in court since counsel immediately asked for a reduction of the sentence *on other grounds.* Appellant had an obligation to inform the court that the allegations of his prior conviction were untrue if he expected to rely upon this for reduction of the sentence at any time. *He had no right to remain silent and later claim that the court should have required him to speak out.*" (Emphasis added). *United States* v. *Scales, supra,* 249 F.2d at 370.

The decision is substantially on all fours with Marshall's case.

In *United States* v. *Kapsalis,* 214 F.2d 677, 685 (7th Cir. 1954), the same court had previously pointed out that the 1951 amendments to the narcotics statutes (the Boggs Act) had simplified the procedure in showing prior convictions of prior offenders by removing the statutory requirements of more formal requirements.

These two cases are also authority for the fact that more formal procedures are not required in the absence of statute.

On this appeal, Marshall contends that the sentence in excess of one year is invalid because the prosecution failed to present any *evidence* that he had a prior felony conviction for robbery.

It is settled law in the District of Columbia that the offense proscribed by D.C. Code § 22-3204 is carrying an unlicensed pistol, and the fact of prior conviction is not an element of the offense, but merely serves to enlarge the penalty and therefore is a matter with which the jury is not concerned. *Jackson* v. *United States, supra.* The existence of the previous conviction in such circumstances is a fact that goes only to punishment. *McDonald* v. *Massachusetts,* 180 U.S. 311 (1901).

Sentencing under such statute to meet the required standard of fairness must be preceded by notice to the defendant of the prior conviction upon which the court may rely in imposing the enlarged sentence and be followed by an opportunity to be heard. Marshall and his counsel had both such notice and opportunity. The notice was contained in the Information duly served on defendant's counsel and the opportunity to be heard was afforded both parties at the time of the allocution immediately prior to sentencing. In the absence of statute, due process with respect to sentencing under this recidivist statute does not demand more. *Compare* sentencing procedures under the Boggs Act, 26 U.S.C. § 7237(c) (2), before and after the 1951 amendments, ch. 666, 65 Stat. 767; *United States* v. *Kapsalis, supra.*

We recognize that the determination of a prior conviction as a basis for an enlarged

penalty is distinct from the determination of guilt of the substantive offense. *United States* v. *Claudy*, 204 F. 2d 624 (3d Cir. 1953); *Moore* v. *Missouri*, 159 U.S. 673 (1895); *McDonald* v. *Massachusetts*, *supra*. This is a proceeding that falls in between the requirements for a full scale criminal trial and a sentencing upon the basis of information contained in a probation report without disclosing any of the information to the one convicted. *See Williams* v. *New York*, 337 U.S. 241 (1949). If, at the time of sentencing under the District of Columbia statute here involved, a convicted defendant denies that he is the same person who committed a prior crime, the Government has the burden of proving such fact. Marshall could have had such proof adduced in his presence if he had denied at any time prior to sentencing that he was the Marshall who had been previously convicted of the robbery offense described in the Information. Furthermore, Marshall and his counsel had an obligation to inform the court when they were before the court for sentencing that the allegations of his prior conviction were denied by him if he expected to rely upon this for reduction of the sentence. They had no right to remain silent, refuse the opportunity afforded them to bring such matter to the court's attention and later claim the court should have required them to speak out. *United States* v. *Scales*, *supra*.

There has never been a denial by either Marshall or his past or present attorney that the Information of Prior Conviction was served prior to sentencing and that they were thus advised of the aggravated sentence that Marshall was facing. Nor was there any intimation by either Ernest M. Marshall or his counsel that the Ernest M. Marshall who was before the court for sentencing was not the Ernest M. Marshall with the two prior convictions described in the Information. Having failed to deny the prior conviction when he and his counsel had the opportunity to do so, the court was entitled to rely upon the Information of Prior Conviction filed with the court and of which appellant had notice by proven service upon his counsel.

For the foregoing reasons it is submitted that the case should be affirmed on the authority of *Kendrick* v. *United States supra; and see United States* v. *Scales*, *supra*, and *United States* v. *Kapsalis*, *supra*. Actually, it seems incredulous that any person would contend that any substantial right of Marshall was infringed at his sentencing when an Information of Prior Conviction had been duly served well in advance of sentencing and was not contested then *or now* by Marshall or his attorney, when Marshall had filed with the court a detailed written statement concerning his conviction and never denied the prior convictions and when both Marshall and his counsel indicated by their remarks at the time of sentencing in open court that they had knowledge of the contents of the probation report which was required to include the prior convictions. To remand a case under such circumstances seems entirely useless.

I am authorized to say that Circuit Judge McGowan concurs in this opinion.

Mr. HRUSKA. Mr. President, there may be some Members of the Senate and, surely, a substantial part of the public who believe that pretrial detention, whatever its merits, is a recent development designed to cope with special crime problems in the District of Columbia.

On two counts, this impression is incorrect. While it is certainly true that the incidence of serious crime in the District has given impetus to recent legislation, pretrial detention is not new, and crime on bail is clearly historic.

From the enactment of the Federal Judiciary Act of 1789, bail has been discretionary in capital cases. Many capital defendants have been detained before trial. One reason for this was that defendants charged with capital offenses had a strong motivation to flee, inasmuch as the alternative to flight could well be death. However, it is also true that capital offenses were generally serious offenses, involving personal injury and violence. Charles Ares, dean of the University of Arizona College of Law, has remarked that:

> No doubt part of the justification for this historic practice [of denying bail to capital defendants] is the fear of further harm to other persons.

In the 1790's, most serious offenses were capital offenses. For example, in addition to murder, capital punishment was imposed for rape, arson, burglary, and robbery in the States of Connecticut, Delaware, Massachusetts, New Hampshire, New York, and Rhole Island. Kidnaping has long been a capital offense. Pretrial detention of persons charged with these offenses is clearly not foreign to American experience. Rape and kidnaping are still capital offenses in many States. Although capital punishment has gradually disappeared, the seriousness of these offenses has not changed.

There is substantial evidence that dangerousness was a frequent consideration in denying bail for capital offenses. Some state constitutions permit the denial of bail for specific offenses regardless of whether they are capital or noncapital. For example, the Constitution of Maine provides in article I, section 10, that:

> No person before conviction shall be bailable for any of the crimes which now are, or have been denominated capital offenses since the adoption of the Constitution, when the proof is evident or the presumption great, whatever the punishment of the crimes may be.

Life imprisonment offenses are not bailable in some States. The Constitution of Rhode Island provides in article I, section 9, that:

> All persons imprisoned ought to be bailed by sufficient surety, unless for offenses punishable by death or by imprisonment for life, when the proof of guilt is evident or the presumption great.

An equivalent provision appears in the model State constitution, in the Constitution of Florida, and in the constitution that was proposed for the State of Oregon. The new Oregon Constitution was rejected by voters on other grounds.

Bail has been discretionary in New York from colonial times. The New York Code of Criminal Procedure provides in section 553 that:

> If the charge be for any offense other than as specified in section five hundred and fifty-two he may be admitted to bail, before conviction, as follows:
>
> 1. As a matter of right, in cases of misdemeanor, violation and traffic infraction;
>
> 2. As a matter of discretion, in all felony cases; the court may revoke bail at any time where such bail is discretionary with the court.

This statute has been upheld on numerous occasions. See *United States ex rel. Covington* v. *Coparo*, 297 F. Supp. 203 (S.D.N.Y. 1969).

The American Law Institute included a provision for discretionary bail in serious felonies in section 70 of its Code of Criminal Procedure—Official Draft, June 15, 1930. The official reporters for the code were Profs. Edwin R. Keedy and William E. Mikell of the University of Pennsylvania Law School. Advisers included Henry W. Stimson of New York, Floyd E. Thompson of Chicago, Prof. Justin Miller of the University of Southern California Law School, and Prof. John B. Waite, of the University of Michigan Law School.

Professor Waite wrote an article in the American Bar Association Journal discussing the bail provisions of the code. Waite, Code of Criminal Procedure: The Problem of Bail, 15 ABA J. 71 (1929). The relevant text appeared as follows:

> JUDICIAL DISCRETION
>
> The first and fundamental problem is whether courts should be allowed any discretion in respect to release on bail and, if any, of what nature and to what extent.
>
> What discretion judges had at common law does not clearly appear. So early as Edward I a statute forbade judges to release on bail persons charged with certain offenses.[1]
>
> On the other hand, the latter part of this statute, the Habeas Corpus Act[2] and possibly the common law seem to have deprived the courts of any power of discretion to refuse release in case of bailable offenses.[3]
>
> However, under the present English law, courts have practically complete discretionary power as to whether or not they will release an offender on bail.[4] "In exercising their discretion with regard to bail the justices have to consider the nature of the offense, the strength of the evidence, the character or behavior of the accused, and the seriousness of the punishment which may be awarded if the accused is found guilty."[5]
>
> In this country the matter of judicial discretion in respect to releasing on bail is covered by constitutional provision in all but a few states.[6] These provisions are affirmative of the right to bail, rather than restrictive of it, and in general provide that accused persons *must* be released on bail in any and every case, unless the offense charged is treason, murder, or other capital offense. Even in such excepted cases the courts can not refuse to release unless the proof of guilt is evident or the presumption great.
>
> In those states not having such constitutional provisions, a varying amount of discretion is left with the courts. Thus, in New York release on bail is a matter of discretion in all but cases of misdemeanor before conviction.
>
> The framers of the Code had excellent precedent, therefore, for either policy. In England and such states as New York, Maryland and Georgia the judges have a large measure of discretion. In other states they have no discretion. Which policy of the law is the better?
>
> "A man was arrested in Detroit on the charge of picking pockets; he secured release on bail and while the first case was pending he was arrested four additional times for picking pockets and secured bail each time."[7] There have been other equally scandalous instances of continued release of men whose freedom was obviously dangerous to the public.[8] But under laws, such as that of Michigan, *compelling* judges to release, regardless of the circumstances, the courts could not refuse. They can not even protect the public by making the amount of bail required so high as to be prohibitive. The law prohibits setting the amount at more than enough reasonably to assure the presence of the accused. If an accused shows no sign of

Footnotes at end of article.

"jumping" previous bail there is no legal excuse for raising the amount. The court must release him a third or a fourth time.

On the other hand, no particular evil appears to have developed in those jurisdictions where courts are permitted to refuse release when circumstances warrant refusal.

The Code is drawn therefore to permit judges a reasonable extent of discretion.

Section 66 prohibits release of anyone charged with a capital offense if the proof is evident or the presumption great. This is simply the accepted rule, though there are differences of phrasing in the various states. "Capital offense," for instance, might properly be changed to "treason or murder" in states where capital punishment does not exist. A notation in the Code itself calls attention to the propriety of certain changes. Where the proof is not evident or the presumption not great the accused "may" be released on bail in the discretion of a judge of the court having jurisdiction of the offense.

As to offenses less than capital, section 70 reads:

"Any person in custody for the commission of an offense not capital [9] shall, before conviction, be entitled as of right to be admitted to bail, except:

"(a) When he is in custody for the commission of murder, treason, arson, robbery, burglary, rape, kidnapping, or any offense against the person likely to result in death committed under such circumstances that if death should result the offense would be murder.

"(b) When he has been previously convicted of any of the offenses enumerated in clause (a), and such conviction has not been reversed.

"(c) When he was, at the time he was taken into custody, at large on bail charged with any of the offenses enumerated in clause (a).

"(d) When he has been previously released on bail for any of the offenses enumerated in clause (a), and there has been a breach of the undertaking.

"In all cases excepted under this section admission to bail shall be a matter of discretion." [10]

It will be observed that even this investiture of the judges with discretion to release on bail in certain cases would not prevent the Detroit situation referred to above, because pocket-picking is not mentioned as one of the crimes excepted from the general rule that release on bail is a matter of right. It would, however, enable the courts to avoid a similar situation in case of any of the crimes mentioned in the exception. The pick-pocket situation would, however, be *partly* remedied by section 89 which declares that, among other things, "if a person applies for admission to bail who within two years last prior to such application has been, to the knowledge of the person taking bail, convicted of a felony, the undertaking shall contain a condition that such person will not commit any felony during the period of his release on bail."

FOOTNOTES

[1] 3 Edw. I, c. 15, 1275. "And forasmuch as sheriffs and others which have taken and kept in prison persons detected of felony, and incontinent have let out by replevin such as were not replevisable, and have kept in prison such as were replevisable, because they would gain of the one party, and grieve the other; and forasmuch as before this time it was not determined which persons were replevisable, and which not—(certain persons are declared not to be replevisable, and others)—shall from henceforth be let out by sufficient surety, whereof the sheriff will be answerable, and that without giving ought of their goods. . . ." But as to the right of certain courts to release on bail for *any* offense, see 4 Blackstone's Commentaries 299.

[2] 31 Chas. II, c. 2.

[3] 4 Black. Com. *298.

[4] Stat. 11 and 12 Vict. c. 42, sec. XXIII: "Where any person shall appear or be brought before a Justice of the Peace charged with any Felony—(or with certain misdemeanors)—such Justice of the Peace may, in his Discretion, admit such Person to Bail, upon his procuring and producing such Surety or Sureties as in the Opinion of such Justice will be sufficient—" See also 9 Halsbury, Laws of Eng'd., p. 324.

[5] 9 Halsbury, Laws of Eng'd., p. 324.

[6] Such statements as these are made upon the authority of the annotation of the Code, to which readers of this article are referred for specific citation. The annotation contains an admirably complete collocation of constitution and statute references on all phases of this subject.

[7] Sutherland, Criminology, p. 213.

[8] Sec. 11 Jr. of Crim. L., 386, 393.

[9] Section 67 provides that in capital cases where the proof is not evident, etc., the courts "may" release on bail, in their discretion.

[10] An annotation suggests changes in phraseology, appropriate to particular constitutions.

The Code recognizes that even such limited judicial discretion would be unconstitutional in most states and if such constitutions are not changed, offers a substitute, section as follows: "All persons in custody for the commission of an offense not capital shall, before conviction, be entitled, as of right, to be admitted to bail." For citation of the various state constitutions, see the Code, p. 263.

Quite apart from the historic practice of detaining defendants through high money bond, the material cited above demonstrates that proposals to effect pretrial detention are not only widespread but of some vintage.

Moreover, crime on bail has long been a problem. Witness the following paragraph reported in the Journal of the American Institute of Criminal Law and Criminology in 1920:

The case of Frank Rio and his associates is typical. On May 28, 1918, two indictments for larceny were returned against him, his bail fixed at $3,000.00, but on July 2 was reduced to $2,000.00 which he obtained. After being in court 8 times the case was stricken off call on November 5, 1918. Apparently satisfied with this treatment he tried his hand at burglary and on May 7, 1919, was indicted on 3 counts for that. The grand jury having in mind that his former case was not disposed of when he was alleged to have committed the burglaries, went to some length and instructed the State's Attorney to fight any reduction in his bail which was fixed at $25,000.00 on each charge or a total of $75,000.00. Notwithstanding this expressed desire to keep him in custody, the bail was reduced to $10,000.00 in each case and Rio was again free to pursue his profession. On May 28, 1919, he added another indictment to his list—this time for robbery with bail fixed at $5,000.00. This bail he furnished. On July 9, 1919, he was again indicted on one count for burglary and one for larceny with bail fixed at $6,500.00. These cases were running concurrently until he dropped the robbery charge on a verdict of not guilty on October 22, 1919. Thus encouraged he took another chance and on November 14, 1919, was again indicted for burglary and bail fixed at $3,500.00. On March 9, 1920, he was found not guilty of the burglary charge of July 9. The other 7 cases are still awaiting disposition. Had bail been made difficult in the first instance he would not have been free to commit the crimes following and the many continuances granted on motion of his attorney would not have been so desirable had he been living in jail.

In my judgment, the pretrial detention provision in the District of Columbia crime bill is the culmination of many years of study and development. Recent experience has revealed that it is particularly needed in this city at this time.

Mr. JAVITS. Mr. President, I have not addressed myself, except in a very preliminary way, to the District of Columbia crime bill, the conference report of which is before the Senate, because I wished to give myself adequate opportunity to study the bill very carefully as it emerged from the conference. I have now done that.

I have decided to note "no" on the conference report, and I say to the Senate that it is a very close decision and that I am influenced by the following facts.

One, the fact that I do not consider that if we turn down this conference report, that is the end of the matter. I believe that others may controvert it, but it is my profound conviction that within a very short period of time we will get court reorganization, expansion of the bail agency, the public defender system, and certain other administrative and criminal law changes which are, I believe, essential tools in the fight against crime in the District—even if this conference report is rejected. We will find the way to do it.

Two, this is by no means an open and shut case. It is a question of balance as to whether the concern on issues of civil liberties and constitutional law preponderate over the fundamental thrust of a bill designed to deal with a very grave public emergency in the District of Columbia. I have decided the issue on the ground that civil liberties and constitutional rights dictate that my vote should be against it; but I can understand perfectly that the judgment is a qualitative one and is by no means open and shut.

With those statements preliminarily, I should like to submit for the RECORD—and I ask unanimous consent that it be printed in the RECORD—a letter written by the district attorney of Queens County, the second most populous county in New York City, whose name is Thomas J. Mackell, to Senator ERVIN, stating the grounds of his opposition to the preventive detention provisions in the bill.

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

DISTRICT ATTORNEY OF
QUEENS COUNTY,
Jamaica, N.Y., July 20, 1970.

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights of U.S. Senate Committee on the Judiciary, Old Senate Office Building, Washington, D.C.

DEAR SENATOR ERVIN: I write this letter in opposition to the Preventive Detention Provision in the pending crime bill for the District of Columbia.

Grounds of my opposition are three-fold.

(1) There is a presumption of innocence for all defendants prior to conviction and this is an essential ingredient of due process of law in the administration of American criminal justice. No one can sanely question the revocation of bail and remand to prison

of any defendant who is arrested for any crime committeed while on bail.

(2) Determination of likelihood of danger to society or self is made to depend on virtually identical criteria as those specified for control necessary to secure court attendance. Thus a defendant who is likely to attend court when required is also a defendant who is not likely to be a danger to society, or himself, under the criteria specified by statute. The converse is also the case: the defendant not likely to attend court when required is also a defendant likely to be a danger to society or himself. The "preventive detention" provision is in effect a repetition, restatement and duplication of the factor of necessary control to secure court attendance. The provision adds nothing but rhetoric to the proposed law of bail in this State.

(3) There are no known standards commanding general acceptability under which it is possible to separate all defendants arrested for felonies (there were 63,566 such defendants in New York City in 1968) into two groups: Those likely to be dangerous to society and those not so likely. Many violent crimes—and particularly murder—are committed by first offenders.

I would suggest three measures to prevent the commission of crime by persons awaiting trial, and at the same time preserve the presumption of innocence prior to conviction.

(a) All cases denied bail while awaiting trial must be disposed of within 60 days, unless a showing of extraordinary circumstances can be made to the court. Such defendants should be permitted release for reasonable periods in the custody of their lawyers for the sole purpose of preparing their defense.

(b) A mandatory additional penalty should be imposed for crimes committed while awaiting trial and released on bail. This would obviate the anticipation of concurrent sentences for such crimes to be served along with the sentence for the original charge. No defendant once arrested and released on bail ought to be permitted to entertain any notion that he has a "free pass" to commit additional crimes prior to disposition of the original charge with no additional measure of punishment in prospect.

(c) A speedy disposition of a criminal case in any State or Federal court is now mandated by the Federal Constitution (*Klopfer* v. *North Carolina*, 386 U.S. 213 (dec. March 13, 1967)).

The major problem in the administration of criminal justice is its non-administration. This happens because of postponement, delay and adjournment, time and again, and still again. The huge investment of community resources; in court, correction, police, probation and prosecution is based upon the faith that subjecting actual offenders to some sort of compulsory treatment will deter would-be offenders. In this manner, prosecution should prevent crime in the long run. The first article of this faith is that there be some relationship in time that is within reason between the arrest of an alleged offender and the disposition of his case. When the arrest-disposition gap becomes an arrest-disposition interval of tiresome months and years, deterrence of potential offenders is nullified. Prevention of crime ceases to be an outcome of prosecution. Crime rates continue to spiral, even though assistant district attorneys appear in courtrooms every day.

It is my experience that cases that are not disposed of within 90 days after arrest are cases that will have unsatisfactory dispositions from the point of view of the People of this State. This is so because over 90 percent of all felony indictments are disposed of by plea of guilty. After three months, a defendant released on bail—even the defendant with a long record captured *in flagrante delicto*—by a curious process of self-hypnosis and suggestion is convinced beyond a reasonable doubt that he is as pure as the driven snow and has never committed the slightest infraction in his entire life. The defendant whose case has aged more than 90 days is not likely to accept a plea of guilty. More delay is occasioned by the necessity of selection of a jury and trial.

The goal of 90 day disposition for all bail cases would go a long way toward preventing post arrest crimes by persons on bail. The current major obstacle to attaining this goal is judicially authorized adjournments.

Very truly yours,

THOMAS J. MACKELL,
District Attorney, Queens County.

Mr. JAVITS. I also ask unanimous consent to have printed in the RECORD a telegram to the same effect from the Committee on Federal Legislation, of the Association of the Bar of the City of New York, by its chairman, Sheldon H. Elsen, also objecting to the bill, especially the preventive detention provisions.

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

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,
NEW YORK, N.Y.,
July 20, 1970.

Senator JACOB K. JAVITS,
Senate Office Building,
Washington, D.C.:

We strongly urge defeat of D.C. Crime Bill in present form particularly preventive detention provisions and commend your efforts in opposition.

SHELDON H. ELSEN,
Chairman, Committee on Federal Legislation.

Mr. JAVITS. Mr. President, I believe that Senators will be interested in the views of these very informed and very distinguished New York lawyers and a public official, in the case of District Attorney Mackell, on this very important question.

Briefly, the things that trouble me about the bill as we have it in the conference report are, as follows:

PREVENTIVE DETENTION

The House bill provided that a person may be detained prior to trial when a judicial officer determines, after a hearing, by clear and convincing evidence, that no condition or combinations of conditions of release will assure the safety of any other person or the community.

Persons subject to the provisions must either be first, charged with a dangerous crime; second, charged with a crime of violence if the crime was allegedly committed while the person was on bail or other release from another crime of violence or was convicted of such a crime within the last 10 years; third, any offense if threats to jurors or witnesses are involved; or fourth, a narcotics addict charged with a crime of violence.

At the hearing, representation by counsel is afforded and there is a right to testify, present evidence, examine and cross examine witnesses. However, the traditional rules of evidence would not apply and testimony given by the defendant could be used for impeachment purposes in any subsequent proceeding.

Persons detained under the bill's provisions, to the extent possible, are to be given an expedited trial. After the expiration of 60 days, the person must be treated in accordance with the provisions of the Bail Reform Act. In certain cases, this would result in the further detention of an individual.

The conference bill modifies the House bill slightly to try and expedite trials of those detained and to eliminate certain minor crimes from the list of dangerous crimes for which preventive detention is provided. However, the conference proposals are not significantly different from the House bill.

The preventive detention proposals raise serious constitutional questions in the areas of due process and the right to bail in noncapital cases. The issue of the constitutional right to bail under the eighth amendment has not been fully resolved by the Supreme Court, although the Court has recognized the traditional importance of bail.

However, serious fifth amendment questions of due process are raised whatever may be the resolution of the eighth amendment question. The proof required at the detention hearing will not be based on objectively reviewable evidence but rather on evidence which can be assembled quickly and which can be speculative since the rules of evidence do not apply. The finding will be a productive one based on that evidence. Preventive detention should not be based on this type of evidence and finding.

Another drawback to the preventive detention proposals is that the courts will undoubtedly become even more congested, with the additional hearings required and attempts to get 60 day trials for all who are detained. The conferees have called for expedited trials and the addition of 25 prosecutors to the U.S. Attorney's office but if trials were to be dramatically expedited as is clearly necessary preventive detention becomes unnecessary. In fact, the conference bill provides for only 17 new judges for the new superior court when the Senate bill called for 23 new judges.

Furthermore, based on the study commissioned by the Department of Justice, preventive detention is not justified. The study shows that 17 percent of all persons charged with a felony and released before trial are rearrested, but only 7 percent are rearrested for a second felony; and only 5 percent of those charged with a violent or dangerous crime under the new standards of the preventive detention provisions were rearrested for a second violent or dangerous crime. It should also be pointed out that these figures deal only with arrests and not convictions.

A final drawback to the preventive detention proposals was pointed out by Charles V. Bennett, former Director of the U.S. Bureau of Prisons who stated that confining people to prisons and jails would only add to the crime problem because of the deplorable conditions that exist, affecting the future behavior of all who are committed.

One possible alternative would be some type of civil commitment with the use of a petit jury. This type of system is used in New York for commitment of the mentally ill, and perhaps it might

dispense with the grave problems of due process and of the eighth amendment with respect to the right to bail, which trouble so many of us in connection with this particular type of relief—preventive detention. However, the New York commitment law has recently been challenged and its legality is in question.

NO KNOCK SEARCHES

The conference bill contains a no-knock provision which authorizes breaking and and entering into premises by law enforcement officers or persons aiding those officers without any prior notice to the occupant with a warrant, or without a warrant if the officer or other person has probable cause to believe that first, the notice would be a useless gesture, second, the notice would likely result in the evidence being destroyed or concealed, or third, the notice would likely endanger the life of the officer or would likely enable the party to escape.

The claim has been made that the case of *Ker* v. *California*, 374 U.S. 23 (1963) justifies the provisions contained in the bill. That case was a 5 to 4 decision which upheld the authority of California police to enter an apartment with a key and without knocking for the purpose of making an arrest. The California statute called for announcement and knocking by police officers but the California courts held that the police conduct came within judicial exceptions which had been superimposed upon the statute.

The majority opinion in the Supreme Court held that the officer's method of entry to make an arrest, which was sanctioned by California case law, was not unreasonable under the fourth and 14th amendments. The opinion was based on the common law exceptions to the notice requirement where exigent circumstances are present, which exception was recognized by the California courts.

The dissent examined the deep historical basis for the rule protecting individuals against unannounced police entries. As early as *Semayne's Case*, 77 Eng. Rep. 194, in 1603 it was recognized that the sheriff should signify his presence and request that the door be opened before breaking in. The courts in the United States have also recognized the fact that a police officer must notify the occupants of a dwelling before he can break down the door. See, for example, *Accarino* v. *U.S.*, 179 F. 2d 456 (D.C. Cir. 1949).

The dissent did recognize that there could be certain exceptions where a prior warning would not be necessary and these were: First, where the persons inside already know of the officers authority and purpose; second, where the officers are justified in the belief that persons inside are in imminent danger of harm; or, third, where persons within are made aware of the presence of the officers and are engaged in activity which justifies the belief that there is an attempt to escape or destroy evidence. The dissent goes on to state that the above exceptions should be confined to those situations where there is a showing that those within were or had been made aware of the presence of the police officers.

I do not believe the Ker case, which was decided by a narrow 5-to-4 margin should serve as a precedent for new wide authority to enter homes without any advance notice. In the first place, the case concerned a situation where an arrest was to be made after observation over a period of time. There was also a search incident to the arrest. Second, the Supreme Court indicated that fourth amendment questions should be decided on a case-by-case basis as the situation arose, which argues against drawing loose rules for the police to follow when breaking into homes to make searches or arrests. Finally, the exceptions to the general rule of announcement before breaking ought to be narrowly construed and should not be codified in language such as "is likely to" which will encourage the police to break in many more cases than at the present time.

The "useless gesture" provision appearing in the Conference report is based on the case of *Miller* v. *U.S.*, 357 U.S. 301 (1958) which held that an entry without a previous announcement was in violation of the law of the District of Columbia and declared the arrest unlawful. The Supreme Court did say that in certain cases, the facts known to the officers would justify them in being virtually certain that the person within knew their purpose so that an announcement would be a useless gesture. However, the officers in the Miller case were found not to have met the test.

It seems apparent that the use of the words "virtually certain" by the Supreme Court meant to restrict the scope of the "useless gesture" doctrine. The conference bill dispenses with an announcement if the officer had probable cause to believe that it would be a "useless gesture" but says nothing about virtual certainty. This seems to go beyond the doctrine referred to in the Miller case.

In view of the long tradition of safety and privacy in one's home from unannounced break-ins on the part of law enforcement officers, it seems ill advised to codify rules for not announcing the presence of police officers which will inevitably be construed quite loosely by the officers on the scene. I believe the better solution would be for the law to remain as it is with those exceptions which have been recognized at law.

WIRETAPPING

The conference bill contains provisions to allow wiretapping and other interception of communication after permission is obtained from a judge. Judicial authority can be sought for any number of offenses such as arson, blackmail, burglary, destruction of property in excess of $200, obstruction of justice, receiving stolen property in excess of $100 and other specified offenses. In "emergency situations," or when an authorization to wiretap is not broad enough, the tap can be conducted by the officer, on his own, with approval sought after the fact. While some protections have been added to the conference bill to protect doctors, lawyers, and clergymen, the provisions would expand considerably the present wiretap authority which has heretofore been used primarily in national security and in organized crime cases. Under the bill, wiretaps can be used in a variety of offenses which are not generally planned in advance and do not lend themselves to detection by the use of such taps. I believe that this is an unwarranted invasion of privacy which will not materially aid in reducing crime.

MANDATORY SENTENCES

The conference bill provides that upon a first conviction of a crime of violence while armed with a pistol or other firearm or imitation thereof, the offender may be sentenced to a term up to life imprisonment. After the first conviction, the bill provides that the offender, upon a subsequent conviction shall be sentenced to a minimum of 5 years and a maximum of three times the minimum sentence normally imposed for the offense, up to life imprisonment. In cases where the maximum is life imprisonment, the minimum sentence may not exceed 15 years.

I believe that it is most unwise to remove discretion in sentencing from judges and to preclude consideration of the individual's background in sentencing. There is no evidence that longer sentences deter crime. In fact, the evidence seems to be that prison inevitably keeps individuals locked into a life of crime. For these reasons the mandatory sentence provisions are most unwise and should not have been in the bill.

JUVENILE PROCEEDINGS

The conference bill proposes that any child 16 or over who is charged with murder, forcible rape, armed robbery, first degree burglary or assault with intent to commit one of these offenses be treated as adult and taken out of the jurisdiction of the juvenile court. There is no reference made to the past record of the child or to the strength of the evidence against the child. The bill also provides for a waiver to criminal court of juveniles 15 years or older who are alleged to have committed what would be a felony if committed by an adult. In order to avoid waiver, it must be shown that there are reasonable prospects for rehabilitation and this places a heavy burden of proof on the child, even though the bill purports to do otherwise. Once waived to the criminal court, the juvennile court loses jurisdiction over the child for all future delinquent acts of any kind unless the case results in no determination of guilt in the criminal court.

In light of the Supreme Court decision in the case of in re Winship, the standard of proof to determine guilt in juvenile cases was changed to require proof beyond a reasonable doubt. However, in hearings to determine whether a child is in need of supervision, the standard of proof is reduced to a preponderance of the evidence. I believe that the same standards of proof should be used in all proceedings relating to the disposition of a juvenile case.

The juvenile provisions of the conference bill also are unsatisfactory in the areas of eliminating the right to demand a jury trial, making unclear the time when the right to counsel attaches, elimination of the provision requiring dismissal of petition when time limitations as to the hearing are not met and providing for preventive detention of juveniles.

In short, the provisions relating to juvenile offenders attempt to treat these offenders more harshly and tend to deemphasize the rehabilitative aspects upon which the juvenile court system is based. I do not believe that crime will be reduced by treating young children as adults and subjecting them to adult prisons. Therefore, the above provisions in the bill relating to juvenile offenders should have been eliminated.

MENTAL COMMITMENT

The conference bill provides that a defendant who is acquitted by reason of insanity shall be automatically committed to a mental hospital. Within 50 days of his confinement, a hearing will be held to determine whether he is to be released from custody. The person confined shall have the burden of proof and shall only be released if the court finds by a preponderance of the evidence that the person confined is entitled to be released from custody.

This provision places a heavy burden on any defendant who raises the question of his sanity at the time of the trial. The proper procedure would be to hold a separate hearing to determine whether a defendant acquitted by reason of insanity should then be committed to a mental hospital. It is quite unfair to require the defendant to prove he is sane in order to avoid commitment to a mental hospital for an undetermined length of time.

IMPEACHMENT OF WITNESSES

The conference bill overturns the rule in the District of Columbia established in the case of *Luck* v. *U.S.* 348 F. 2d, 763 (D.C. Cir. 1966) which allowed the trial judge discretion in admitting evidence of past conviction for impeachment purposes. This present rule allows the trial judge to decide in a case where the defendant takes the stand whether the truth could best be served by allowing the defendant to testify and limiting impeachment by prior conviction or whether the risk of prejudice is so great as to require the exclusion of the convictions. The conference bill would require that the judge admit all felony convictions for impeachment purposes and all misdemeanor convictions reflecting on honesty and veracity, if they are offered for impeachment purposes.

I would not overrule the doctrine of the Luck case which merely gives the trial judge discretion.

COMMUNICATIONS WITH BAIL AGENCY

The conference bill contains a provision which permits information received by the bail agency to be used for impeachment purposes, in perjury proceedings and in trials for offenses committed during the period of pretrial release. This provision would, it seems to me, undermine the effectiveness of the bail agency since defendants would be reluctant to say anything that conceivably could be used against them. The value of this type of information appears small since much other information is usually available for the purpose of impeachment. Thus, this provision probably will do a great deal of harm to the bail agency with a small benefit to be gained in return.

CONCLUSION

I have listed some of the provisions of the conference bill which I find objectionable and generally, while the Senate conferees have worked long and diligently to remove many of the undesirable features of the House bill, the conference substitute still creates too many problems to be acceptable on constitutional grounds. I firmly believe that repressive measures are not the solution to the District of Columbia crime problem but that what is needed are more police and greater use of the many weapons which are already available to the courts, the police, and law enforcement agencies and court reorganization and criminal law changes which can be enacted easily.

Finally, it should be pointed out that the black community of the District, which represents over 70 percent of the population, greatly fears, and distrusts many provisions of the conference bill on the basis of their long experience with the police. The fact that many of the provisions in the bill will be used only in the District at this time tends to them to confirm their suspicions. Police-community relations play a vital role in law enforcement and this bill may tend greatly to undermine whatever good relations may exist at the present time.

For all the reasons I have stated, I believe the proper course is to reject the conference report and to pass S. 4080 and S. 4081 which have also been introduced as amendments Nos. 776 and 777 to H.R. 914. S. 4080 contains the provisions relating to court reorganization, the District of Columbia Bail Agency and the interstate compact on juveniles. S. 4081 deals with criminal law changes and eliminates preventive detention, no-knock searches, wiretapping, and mandatory sentences. It also makes the desired changes in the juvenile provisions and other criminal provisions. The measures will allow the District of Columbia to have an effective crime bill without unduly jeopardizing individual rights. There is good reason to believe that these bills could be expedited through the Congress so that the District would have the benefit of the enlightened provisions contained therein.

ORDER FOR ADJOURNMENT TO 11 A.M. TOMORROW

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

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

ORDER OF BUSINESS

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

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be temporarily laid aside.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 17619) making appropriations for the Department of the Interior and related agencies for the fiscal year ending June 30, 1971, and for other purposes; that the House receded from its disagreement to the amendments of the Senate numbered 6, 7, 39, 40, 57, 62, and 63 to the bill, and concurred therein; and that the House receded from its disagreement to the amendments of the Senate numbered 3, 5, 14, 25, 26, 33, 34, 38, 42, 53, 56, and 60 to the bill, and concurred therein, severally with an amendment, in which it requested the concurrence of the Senate.

INTERIOR DEPARTMENT APPROPRIATIONS BILL, 1971—CONFERENCE REPORT

Mr. BIBLE. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 17619) making appropriations for the Department of the Interior and related agencies for the fiscal year ending June 30, 1971, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. SCHWEIKER). The report will be read for the information of the Senate.

The assistant legislative clerk read the report.

(For conference report, see House proceedings of July 21, 1970, pages 25232–25235, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER (Mr. SCHWEIKER). Is there objection to the present consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

Mr. BIBLE. Mr. President, as this bill passed the Senate it provided for appropriations totaling $2,028,397,500 for the agencies and bureaus of the Department of the Interior, exclusive of the Federal Water Quality Administration, the Bureau of Reclamation and the power marketing agencies, and various related agencies, including the U.S. Forest Service and the Division of Indian Health.

The conference committee bill provides appropriations totaling $2,028,524,700 for the programs and activities of these agencies. This total is under the budget estimates of $2,034,871,600 by $6,346,900; over the House bill of $1,-

801,226,700 by $227,298,000; and over the Senate bill of $2,028,397,500 by $127,200. The bill as passed by the Senate was greater than the House bill by $227,170,800. However, the Senate considered budget estimates amounting to $229,267,000 which were not considered by the House. If these estimates are disregarded, the bill as it passed the Senate was $2,096,200 under the House bill.

I ask unanimous consent to have included in the RECORD, at the conclusion of my remaks, a tabulation setting out the appropriation for fiscal year 1970, the fiscal year 1971 budget estimate, the House allowance, the Senate allowance, and the conference allowance for each appropriation in the bill.

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

(See exhibit 1.)

Mr. BIBLE. Mr. President, the major changes from the Senate bill were an increase of $521,500 for the Bureau of Indian Affairs; a reduction of $100,000 in the amount allowed for the Bureau of Outdoor Recreation; an increase of $1,150,000 for the Bureau of Mines; an increase of $660,000 for the Office of Coal Research; an increase of $1,621,000 for the Bureau of Sport Fisheries and Wildlife; a reduction of $1,240,000 for the National Park Service; an increase of $1,576,700 for the Forest Service; a reduction of $1,245,000 for Indian Health Services; and a decrease of $2,000,000 for the National Foundation on the Arts and the Humanities. Even with this last reduction, the amount for the National Foundation is very nearly twice as large as the appropriation for last year.

When the Interior Department appropriation bill was before the Senate the matter on which most time was spent was Indian education and health. A total of $5,339,500 was added to the committee's recommendation by the Senate. The House agreed to $3,226,000, or a bit more than 62 percent of that amount. The increase agreed to in conference is primarily for Indian health, especially funding additional personnel and hospital supplies. The increase in the Indian mental program and one-half of the Senate increase for sanitation facilities was also approved.

The appropriation approved for education and welfare services is $24,670,000 over the amount for fiscal year 1970. The amount for Indian health is $9,756,000 greater than the appropriation for last year.

I do think that the position of the Senate on these items was well received and that the Senate conferees were quite successful in maintaining the position of the Senate.

Mr. President, the conference, as has been my good fortune to witness it, was an amicable one. Each side was interested in agreeing on a good bill that would enhance the development of the human and natural resources of our country and not simply in insisting on the allowances of the respective Houses. I appreciate the friendliness of the House conferees, particularly their chairman who was most cooperative.

I pay special tribute to my distinguished colleagues on the other side of the aisle, both the Senator from North Dakota (Mr. YOUNG) and the Senator from Delaware (Mr. BOGGS), who were extremely helpful throughout the course of this particular conference. In addition, I pay tribute to the staff members on both sides of the aisle.

I move that the conference report be approved.

EXHIBIT 1

Agency and item	New budget (obligational) authority, 1970	Budget estimates of new (obligational) authority, 1971	Allowances			Conference allowance compared with—		
			House	Senate	Conference	Budget estimates of new (obligational) authority, 1971	House allowance	Senate allowance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
TITLE I—DEPARTMENT OF THE INTERIOR								
Public Land Management								
Bureau of Land Management								
Management of lands and resources	$81,111,000	$58,940,000	$58,940,000	$58,605,000	$58,605,000	−$335,000	−$335,000	
Construction and maintenance	2,899,000	3,215,000	3,215,000	3,310,000	3,310,000	+95,000	+95,000	
Public lands development roads and trails (appropriation to liquidate contract authority)	(3,500,000)	(3,500,000)	(3,500,000)	(3,500,000)	(3,500,000)			
Oregon and California grant lands (indefinite, appropriation of receipts)	16,000,000	18,000,000	18,000,000	18,000,000	18,000,000			
Range improvements (indefinite, appropriation of receipts)	1,769,000	1,841,000	1,841,000	1,841,000	1,841,000			
Total, Bureau of Land Management	101,779,000	81,996,000	81,996,000	81,756,000	81,756,000	−240,000	−240,000	
Bureau of Indian Affairs								
Education and welfare services	191,445,000	216,995,000	217,145,000	217,178,500	216,115,000	−880,000	−1,030,000	−$1,063,500
Education and welfare services (appropriation to liquidate contract authority)	(1,057,000)	(1,500,000)	(1,500,000)	(1,500,000)	(1,500,000)			
Resources management	60,320,000	66,217,000	65,690,000	64,122,000	64,622,000	−1,595,000	−1,068,000	+500,000
Construction	26,264,000	[1] 18,266,000	18,935,000	18,800,000	19,885,000	+1,619,000	+950,000	+1,085,000
Road construction (appropriation to liquidate contract authority)	(20,000,000)	(20,000,000)	(20,000,000)	(20,200,000)	(20,200,000)	(+200,000)	(+200,000)	
General administrative expenses	5,513,000	5,626,000	5,600,000	5,600,000	5,600,000	−26,000		
Tribal funds (definite)	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000			
Tribal funds (indefinite)	13,204,000	13,204,000	13,204,000	13,204,000	13,204,000			
Total, Bureau of Indian Affairs	299,746,000	323,308,000	323,574,000	321,904,500	322,426,000	−882,000	−1,148,000	+521,500
Bureau of Outdoor Recreation								
Salaries and expenses	3,950,000	[2] 3,975,000	3,825,000	3,995,000	3,895,000	−80,000	+70,000	−100,000
Land and water conservation:								
Appropriation of receipts (indefinite)	115,572,000	[3] 327,400,000	138,500,000	327,400,000	327,400,000		+188,900,000	
(Appropriation out of the fund to liquidate contract authority)	(15,528,000)	(30,000,000)	(30,000,000)	(30,000,000)	(30,000,000)			
Total, Bureau of Outdoor Recreation	119,522,000	331,375,000	142,325,000	331,395,000	331,295,000	−80,000	+188,970,000	−100,000
Office of Territories								
Administration of territories	15,196,400	17,409,600	17,350,000	17,380,000	17,350,000	−59,600		−30,000
Permanent appropriations (special fund)	(239,400)	(118,000)	(118,000)	(118,000)	(118,000)			
Transferred from other accounts (special fund)	(292,700)	[4] (367,000)	(330,000)	(367,000)	(367,000)		(+37,000)	
Trust territory of the Pacific Islands	48,112,000	60,000,000	50,000,000	49,750,000	49,750,000	−10,250,000	−250,000	
Total, Office of Territories	63,308,400	77,409,600	67,350,000	67,130,000	67,100,000	−10,309,600	−250,000	−30,000
Total, Public Land Management	584,355,400	814,088,600	615,245,000	802,185,500	802,577,000	−11,511,600	+187,332,000	+391,500

Footnotes at end of table.

EXHIBIT 1—Continued

Agency and item	New budget (obligational) authority, 1970	Budget estimates of new (obligational) authority, 1971	Allowances			Conference allowance compared with—		
			House	Senate	Conference	Budget estimates of new (obligational) authority, 1971	House allowance	Senate allowance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
TITLE I—DEPARTMENT OF THE INTERIOR—Con.								
Mineral Resources								
Geological Survey								
Surveys, investigations, and research	$99,990,000	[3] $106,957,000	$108,057,000	$106,392,000	$106,392,000	−$565,000	−$1,665,000	
Bureau of Mines								
Conservation and development of mineral resources	42,495,000	44,972,000	45,122,000	45,272,000	46,422,000	+1,450,000	+1,300,000	+$1,150,000
Health and safety	27,452,000	54,395,000	54,395,000	54,395,000	54,395,000			
General administrative expenses	1,799,000	1,799,000	1,799,000	1,799,000	1,799,000			
Helium fund (authorization to spend from public debt receipts)	24,000,000							
Total, Bureau of Mines	95,746,000	101,166,000	101,316,000	101,466,000	102,616,000	+1,450,000	+1,300,000	+1,150,000
Office of Coal Research								
Salaries and expenses	15,300,000	16,200,000	16,200,000	16,500,000	17,160,000	+960,000	+960,000	+660,000
Office of Oil and Gas								
Salaries and expenses	1,085,000	1,195,000	1,181,000	1,181,000	1,181,000	−14,000		
Total, Mineral Resources	212,121,000	225,518,000	226,754,000	225,539,000	227,349,000	+1,831,000	+595,000	+1,810,000
Fish and Wildlife, Parks, and Marine Resources								
Bureau of Commercial Fisheries								
Management and investigations of resources	27,536,000	27,156,000	28,168,000	27,893,000	27,893,000	+737,000	−275,000	
Management and investigations of resources (special foreign currency program)	15,000	15,000	15,000	15,000	15,000			
Construction	2,325,000							
Construction of fishing vessels	3,000,000	200,000	200,000	200,000	200,000			
Federal aid for commercial fisheries research and development	4,603,000	4,040,000	4,040,000	4,040,000	4,040,000			
Anadromous and Great Lakes fisheries conservation	2,318,000	2,168,000	2,168,000	2,168,000	2,168,000			
Administration of Pribilof Islands	2,774,000	2,774,000	2,774,000	2,774,000	2,774,000			
Fishermen's protective fund	60,000	60,000	60,000	60,000	60,000			
General administrative expenses	896,000	896,000	896,000	896,000	896,000			
Limitation on administrative expenses, Fisheries loan fund	(385,000)	(385,000)	(385,000)	(385,000)	(385,000)			
Total, Bureau of Commercial Fisheries	43,527,000	37,309,000	38,321,000	38,046,000	38,046,000	+737,000	−275,000	
Bureau of Sport Fisheries and Wildlife								
Management and investigations of resources	52,523,000	56,226,000	56,356,000	56,705,000	56,840,000	+614,000	+484,000	+135,000
Construction	4,259,000	2,619,000	4,175,000	3,497,000	4,983,000	+2,364,000	+808,000	+1,486,000
Migratory bird conservation account (definite, repayable advance)	5,800,000	7,500,000	7,500,000	7,500,000	7,500,000			
Anadromous and Great Lakes fisheries conservation	2,311,000	2,311,000	2,311,000	2,311,000	2,311,000			
Management and investigations of resources (special foreign currency program)		100,000				−100,000		
General administrative expenses	1,875,000	1,875,000	1,875,000	1,875,000	1,875,000			
Total, Bureau of Sport Fisheries and Wildlife	66,768,000	70,631,000	72,217,000	71,888,000	73,509,000	+2,878,000	+1,292,000	+1,621,000
National Park Service								
Management and protection	53,606,000	58,021,000	57,670,000	58,035,000	57,990,000	−31,000	+320,000	−45,000
Maintenance and rehabilitation of physical facilities	41,396,000	48,763,000	48,500,000	48,543,000	48,543,000	−220,000	+43,000	
Construction	7,700,000	16,885,000	16,385,000	17,583,000	16,259,000	−626,000	−126,000	−1,324,000
Parkway and road construction (appropriation to liquidate contract authority)	(21,500,000)	(16,000,000)	(16,000,000)	(17,660,000)	(17,650,000)	(+1,650,000)	(+1,650,000)	(−10,000)
Preservation of historic properties	1,640,000	6,950,000	6,801,000	6,672,000	6,801,000	−149,000		+129,000
General administrative expenses	3,580,000	3,605,000	3,580,000	3,580,000	3,580,000	−25,000		
Total, National Park Service	107,922,000	134,224,000	132,936,000	134,413,000	133,173,000	−1,051,000	+237,000	−1,240,000
Total, Fish and Wildlife, Parks, and Marine Resources	218,217,000	242,164,000	243,474,000	244,347,000	244,728,000	+2,564,000	+1,254,000	+381,000
Office of Saline Water								
Saline water conversion	25,000,000	29,373,000	28,573,000	28,573,000	28,573,000	−800,000		
Office of Water Resources Research								
Salaries and expenses	11,281,000	13,312,000	13,181,000	13,181,000	13,181,000	−131,000		
Office of the Solicitor								
Salaries and expenses	5,904,000	7,344,000	6,924,000	7,229,000	7,074,000	−270,000	+150,000	−155,000
Office of the Secretary								
Salaries and expenses	10,614,700	11,954,000	11,353,000	11,771,000	11,563,000	−391,000	+210,000	−208,000

Footnotes at end of table.

EXHIBIT 1—Continued

Agency and item	New budget (obligational) authority, 1970	Budget estimates of new (obligational) authority, 1971	Allowances			Conference allowance compared with—		
			House	Senate	Conference	Budget estimates of new (obligational) authority, 1971	House allowance	Senate allowance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Total, new budget (obligational) authority, Department of Interior	$1,067,493,100	$1,343,753,600	$1,145,504,000	$1,332,825,500	$1,335,045,000	−$8,708,600	+$189,541,000	+$2,219,500
Consisting of—								
Appropriations	1,043,493,100	1,343,753,600	1,145,504,000	1,332,825,500	1,335,045,000	−8,708,600	+189,541,000	+2,219,500
Definite appropriations	(896,948,100)	(983,308,600)	(973,959,000)	(972,380,500)	(974,600,000)	(−8,708,600)	(+641,000)	(+2,219,500)
Indefinite appropriations	(146,545,000)	(360,445,000)	(171,545,000)	(360,445,000)	(360,445,000)		(+188,900,000)	
Authorization to spend from public debt receipts	24,000,000							
Memoranda—								
Appropriations to liquidate contract authority	(61,585,000)	(71,000,000)	(71,000,000)	(72,860,000)	(72,850,000)	(+1,850,000)	(+1,850,000)	(−10,000)
Total, new budget (obligational) authority and appropriations to liquidate contract authority	(1,129,078,100)	(1,414,753,600)	(1,216,504,000)	(1,405,685,500)	(1,407,895,000)	(−6,858,600)	(+191,391,000)	(+2,209,500)
TITLE II—RELATED AGENCIES								
Department of Agriculture								
Forest Service								
Forest protection and utilization:								
Forest land management	222,253,000	[6] 199,567,000	199,567,000	199,617,000	199,617,000	+50,000	+50,000	
Forest research	43,922,000	45,066,000	45,391,000	45,294,000	45,591,000	+525,000	+200,000	+297,000
State and private forestry cooperation	22,939,000	21,939,000	23,939,000	23,939,000	23,939,000	+2,000,000		
Total, forest protection and utilization	289,114,000	266,572,000	268,897,000	268,850,000	269,147,000	+2,575,000	+250,000	+297,000
Construction	[7]	12,008,000	15,125,700	14,188,000	15,467,700	+3,459,700	+342,000	+1,279,700
Forest roads and trails (appropriation to liquidate contract authority)	(100,570,000)	(115,000,000)	(115,000,000)	(115,000,000)	(115,000,000)			
Acquisition of lands for national forests: Special acts (special fund, indefinite)	80,000	80,000	80,000	80,000	80,000			
Cooperative range improvements (special fund, indefinite)	700,000	700,000	700,000	700,000	700,000			
Assistance to States for tree planting	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000			
Total, new budget (obligational) authority, Forest Service	290,894,000	280,360,000	285,802,700	284,818,000	286,394,700	+6,034,700	+592,000	+1,576,700
Federal Coal Mine Safety Board of Review								
Salaries and expenses	148,000							
Commission of Fine Arts								
Salaries and expenses	115,000	115,000	115,000	115,000	115,000			
Department of Health, Education, and Welfare Health Services and Mental Health Administration								
Indian health services	105,993,000	113,217,000	114,692,000	118,436,000	117,986,000	+4,769,000	+3,294,000	−450,000
Indian health facilities	20,952,000	17,950,000	17,950,000	19,510,000	18,715,000	+765,000	+765,000	−795,000
Total, Health Services and Mental Health Administration	126,945,000	131,167,000	132,642,000	137,946,000	136,701,000	+5,534,000	+4,059,000	−1,245,000
Indian Claims Commission								
Salaries and expenses	850,000	1,000,000	1,000,000	1,000,000	1,000,000			
National Capital Planning Commission								
Salaries and expenses	[8] 247,700	1,390,000	1,070,000	941,000	891,000	−499,000	−179,000	−50,000
National Foundation on the Arts and the Humanities								
Salaries and expenses	1,610,000	2,700,000		2,660,000	2,660,000	−40,000	+2,660,000	
Endowment for the arts	8,250,000	16,090,000		15,090,000	15,090,000	−1,000,000	+15,090,000	
Endowment for the humanities	8,050,000	16,210,000		15,560,000	13,560,000	−2,650,000	+13,560,000	−2,000,000
Total, National Foundation on the Arts and the Humanities	17,910,000	35,000,000		33,310,000	31,310,000	−3,690,000	+31,310,000	−2,000,000
Public Land Law Review Commission								
Salaries and expenses	922,000	171,000	171,000	171,000	171,000			
Smithsonian Institution								
Salaries and expenses	29,365,000	36,367,000	34,987,000	35,066,000	34,702,000	−1,665,000	−285,000	−364,000
Museum programs and related research (special foreign currency program)	2,316,000	4,500,000	2,500,000	2,500,000	2,500,000	−2,000,000		
Construction and improvements, National Zoological Park	600,000	200,000	200,000	200,000	200,000			
Restoration and renovation of buildings	525,000	1,130,000	1,080,000	950,000	950,000	−180,000	−130,000	
Construction	200,000							
Construction (appropriation to liquidate contract authority)	(3,300,000)	(8,897,000)	(5,200,000)	(5,200,000)	(5,200,000)	(−3,697,000)		
The John F. Kennedy Center for the Performing Arts	7,500,000							
Salaries and expenses, National Gallery of Art	3,581,000	3,716,000	3,716,000	3,716,000	3,716,000			
Salaries and expenses, Woodrow Wilson International Center for Scholars	100,000		750,000	750,000	750,000	+750,000		
Total, Smithsonian Institution	44,187,000	45,913,000	43,233,000	43,182,000	42,818,000	−3,095,000	−415,000	−364,000

Footnotes at end of table.

Agency and item	New budget (obligational) authority, 1970	Budget estimates of new (obligational) authority, 1971	Allowances			Conference allowance compared with—		
			House	Senate	Conference	Budget estimates of new (obligational) authority, 1971	House allowance	Senate allowance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
TITLE II—RELATED AGENCES—Continued								
Executive Office of the President								
Salaries and expenses, National Council on Marine Resources and Engineering Development	$700,000							
Federal Field Committee for Development Planning in Alaska								
Salaries and expenses	213,500	$263,000	$214,000	$214,000	$214,000	−$49,000		
Historical and Memorial Commissions								
Lewis and Clark Trail Commission								
Salaries and expenses	5,000							
American Revolution Bicentennial Commission								
Salaries and expenses	185,000	375,000		373,000	373,000	−2,000	$+373,000	
National Council on Indian Opportunity								
Salaries and expenses	286,000	300,000	275,000	275,000	275,000	−25,000		
Federal Metal and Nonmetallic Mine Safety Board of Review								
Salaries and expenses		[9] 167,000		167,000	167,000		+167,000	
Total, new budget (obligational) authority, Related Agencies	483,608,200	496,221,000	464,522,700	502,512,000	500,429,700	+4,208,700	+35,907,000	−$2,082,300
Consisting of—								
Appropriations	483,608,200	496,221,000	464,522,700	502,512,000	500,429,700	+4,208,700	+35,907,000	−2,082,300
Definite appropriations	(482,828,200)	(495,441,000)	(463,742,700)	(501,732,000)	(499,649,700)	(+4,208,700)	(+35,907,000)	(−2,082,300)
Indefinite appropriations	(780,000)	(780,000)	(780,000)	(780,000)	(780,000)			
Memoranda—								
Appropriations to liquidate contract authority	(103,870,000)	(123,897,000)	(120,200,000)	(120,200,000)	(120,200,000)	(−3,697,000)		
Total, new budget (obligational) authority and appropriations to liquidate contract authority	(587,478,200)	(620,118,000)	(584,722,700)	(622,712,000)	(620,629,700)	(+511,700)	(+35,907,000)	(−2,082,300)
RECAPITULATION								
Grand total, new budget (obligational) authority, all titles	1,551,101,300	1,839,974,600	1,610,026,700	1,835,337,500	1,835,474,700	−4,499,900	+225,448,000	+137,200
Consisting of—								
1. Appropriations	1,527,101,300	1,839,974,600	1,610,026,700	1,835,337,500	1,835,474,700	−4,499,900	+225,448,000	+137,200
Definite appropriations	(1,379,776,300)	(1,478,749,600)	(1,437,701,700)	(1,474,112,500)	(1,474,249,700)	(−4,499,900)	(+36,548,000)	(+137,200)
Indefinite appropriations	(147,325,000)	(361,225,000)	(172,325,000)	(361,225,000)	(361,225,000)		(+188,900,000)	
2. Authorization to spend from public debt receipts	24,000,000							
Memoranda—								
Appropriations to liquidate contract authority	(165,455,000)	(194,897,000)	(191,200,000)	(193,060,000)	(193,050,000)	(−1,847,000)	(+1,850,000)	(−10,000)
Grand total, new budget (obligational) authority and appropriations to liquidate contract authority	(1,716,556,300)	(2,034,871,600)	(1,801,226,700)	(2,028,397,500)	(2,028,524,700)	(−6,346,900)	(+227,298,000)	(+127,200)

[1] Includes $4,000,000, S. Doc. 91-81, May 13, 1970.
[2] Reflects reduction of $50,000, S. Doc. 91-87, June 2, 1970.
[3] Includes $188,900,000, S. Doc. 91-81, May 13, 1970.
[4] Includes $37,000, S. Doc. 91-81, May 13, 1970.
[5] Includes $1,200,000, S. Doc. 91-81, May 13, 1970.
[6] Includes $14,000, H. Doc. 91-305, Apr. 13, 1970.
[7] Included in Forest Land Management and Forest Research.
[8] In addition, $770,000 transferred from "Land Acquisition, National Capital Park, Parkway, and Playground System."
[9] S. Doc. 91-68, May 11, 1970.

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

Mr. BIBLE. I am delighted to yield to the distinguished Senator from Montana.

Mr. MANSFIELD. Mr. President, when this bill passed the Senate, it included $600,000 for magnetohydrodynamics coal research. In addition, there was $400,000 for this purpose in the Bureau of Mines. Will the distinguished chairman advise me whether this amount was approved by the conference?

Mr. BIBLE. Both items were held in conference.

Mr. MANSFIELD. Mr. President, will the Senator yield further?

Mr. BIBLE. I yield.

Mr. MANSFIELD. Mr. President, as I understand it, this will permit appropriate executive agencies to initiate this research in the immediate future, even in advance of the final report of the Electric Research Council task force which is mapping out the long-term MHD program. Is this correct?

Mr. BIBLE. It is my understanding that it is correct.

Mr. MANSFIELD. I have one more question. As I mentioned previously, I think that it is very important that this program be conducted so that funds are used in a concentrated fashion aimed at a pilot plant to demonstrate the feasibility of this process of generating electricity. I would hope the distinguished chairman would agree with me.

Mr. BIBLE. I certainly do. We will follow it closely. I do agree with what the Senator said.

Mr. MANSFIELD. I thank the distinguished Senator.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point an excerpt from the RECORD of July 1, 1970, which reflects a colloquy between the distinguished Senator from Nevada (Mr. BIBLE) and me.

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

Mr. MANSFIELD. Mr. President, the Interior appropriations bill is traditionally one of the more important money bills for Montana.

I am very pleased that this appropriation for fiscal 1971 includes $600,000 for magnetohydrodynamics coal research and development in the Office of Coal Research. I am also informed there is $400,000 for this purpose in the Bureau of Mines. While my colleague, Senator METCALF, and I had hoped that amount would be larger, we recognize the stringent budget limitations under which we are now operating. I know you will agree that this program, with its promise of coal utilization, lower-cost electricity, and reduction in pollution, deserves larger support as it becomes possible. And I hope you agree that it is very important that this work be begun as rapidly as possible, even in advance of the final report of the Electric Research Council task force which is mapping out the long-term MHD program. The fiscal 1971 appropriation can be put to work right away to begin this important project, and when the task force reports, the long-term program can take up from there.

And I hope you agree, Mr. President, that it is very important that this program be

conducted so that the funds are used in a concentrated fashion aimed at a pilot plant to demonstrate the feasibility of this process of generating electricity. I think it is appropriate for the Government to take the lead in this vital program.

Mr. BIBLE. Mr. President, I agree with the distinguished majority leader. We were very happy to add the item. I think it is a very worthwhile amendment.

Mr. MANSFIELD. I thank the distinguished Senator from Nevada.

Mr. BIBLE. Mr. President, I yield to the Senator from North Dakota.

Mr. YOUNG of North Dakota. Mr. President, of the several regular major appropriation bills that have passed the Senate thus far, this is the only one that is under the budget and it probably will be one of the few to pass the Senate this year under the budget.

I believe this is due to the very fine work of the distinguished chairman of the committee, Mr. BIBLE, the distinguished ranking minority member, Mr. BOGGS, and Mr. Paul Eaton, one of the ablest staff members I know; Mr. Edmund King, the minority staff member too has been very helpful through all our consideration of this bill. I also want to commend the chairman of the House committee, Mrs. JULIA BUTLER HANSEN, Representative BEN REIFEL, the ranking minority member and their very able staff.

Mr. President, this committee worked long and hard on this bill and dealt fairly with all the interests. In doing so they still kept the bill under the budget which is a real accomplishment.

I commend the distinguished Senator from Nevada.

Mr. BIBLE. I thank the distinguished Senator. In all these bills that move forward in the Committee on Appropriations we have splendid relationships with our counterparts on the other side of the aisle and also our staff members, Mr. Paul Eaton on our side, and Mr. Ed King on the other side.

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

Mr. BIBLE. I yield.

Mr. MANSFIELD. Mr. President, I wish to aline myself with what the distinguished senior Senator from North Dakota, the ranking member of the Committee on Appropriations, has just said, with one exception. He points out this is the first appropriation bill reported showing a figure below that which was requested by the administration. There will be other bills with reference to which that will be true. And, of course, our work on last year's requests netted the Congress $1.4 billion in savings on items that were requested for this fiscal year.

Beginning Thursday next we will take up the military procurement bill. The distinguished Senator from Mississippi (Mr. STENNIS), the chairman of the committee handling that bill, informs me that that measure authorizes a total that will be $1.3 billion below the budget sum requested by the administration.

May I point out again, just for emphasis, that Congress last year reduced not the Johnson budget request but the Nixon budget request by $6.4 billion—Republicans and Democrats alike—and to say it again—we made allowance for another $1.4 billion cut in requests covering this fiscal year.

I anticipate that the total cuts this year will equal at least those achieved last year by Congress. I must say I am very proud of the part the Senate has played in bringing about these reductions and on this score I do not look and have never looked critically upon this Congress or the preceding 10 Congresses covering the last 20 years. In each of these Congresses, major reductions were taken from administration annual budget requests no matter who happened to be in the White House. So instead of finding fault and pointing a finger at a so-called spendthrift Congress, I wish each Member would stand to commend and congratulate the Senate and the Congress for the diligence and scrutiny exhibited when faced with the budget not only of this President but of every President in the past 20 years. Traditionally, it is a fine record. This Congress will continue and uphold that tradition.

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

Mr. BIBLE. I yield.

Mr. HOLLAND. Mr. President, first, I thank the distinguished Senator for the able handling he has given this bill in company with the ranking minority Member, the Senator from Delaware (Mr. BOGGS) and particularly to congratulate them on the fact that except for the District of Columbia bill, this will be the first annual appropriation of the session to go to the White House. I think the Senator is entitled to congratulations on that point, aside from the fact that it is a conservative bill in amount and a constructive bill in the things it has accomplished.

I wish to thank the Senator particularly for insisting upon the inclusion of the budget item of $1.5 million for the purchase of lands which I believe will complete the "Ding" Darling Wildlife Refuge on Sanibel Island in Florida. As the Senator knows, I have a little personal interest in that because in a former position, as an executive of the State of Florida, I had the privilege of helping to see that some of the State lands which were badly needed to initiate that project were made available and are still almost the heart of that project.

I want to say that not only does this project bear a distinguished conservationist's name but it happens to be so peculiarly located—on salt water, brackish water, and fresh water, with various types of vegetation, on migration routes, and adjoining a beach which is said to be the best shelling beach on the North American Continent by reason of the peculiar shape of the island and the prevailing winds and the offshore shallows and bars and shallow water. I think this will be one of the outstanding, but small, wildlife refuges in our Nation.

I want the record to show that I think the Senator from Nevada and his distinguished committee are entitled to a large amount of the credit for completing and making available to the American public and to the world this very fine refuge, the "Ding" Darling Wildlife Refuge on Sanibel Island, Fla.

I thank my colleague.

Mr. BIBLE. I appreciate the sentiments of my distinguished colleague from Florida. I think the amount of $1.5 million was completely justified. The House conferees obviously thought the same. That is why the amount is preserved in the bill which we are about to send to the White House.

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

Mr. BIBLE. I yield.

Mr. BOGGS. I just want to join my colleague the Senator from North Dakota (Mr. YOUNG) in expressing my appreciation to the distinguished chairman of the subcommittee, the Senator from Nevada (Mr. BIBLE), for the outstanding job he has done as chairman of the subcommittee.

It has been a privilege to serve on the subcommittee with him. He certainly has handled the whole matter and all the hearings and the conference in a very businesslike and expeditious way. It has been a great personal pleasure and privilege to serve with him on the committee. I also want to join in the commendation to the staff, Mr. Paul Eaton and Mr. Edmund King, for their kind and always helpful assistance, no matter what the subject was.

I think it is a good bill. The sentiments about it have been well expressed. I am happy we are bringing it to the point where the conference report can be accepted and forwarded to the White House.

Mr. BIBLE. I appreciate the sentiments expressed by the Senator from Delaware. He has been a most helpful ally. This area is completely nonpartisan, and we always operate in that manner.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. BIBLE. I yield.

Mr. BYRD of West Virginia. Mr. President, I want to associate myself with the remarks made by Senators who have complimented the able chairman of the Senate Subcommittee on Appropriations for the Department of Interior and Related Agencies. He is a very diligent, able, and effective chairman. He conducts a very pleasant conference. Those of us who have served as conferees so many times know that conferences can be not only boring but also distasteful and enervating, and we dread them; but, to the contrary, the conference on yesterday was one of the most pleasurable conferences I have ever attended. It lasted a little over an hour. The able chairman of the conference on our side and the able chairman of the conferees on the House side, Mrs. JULIA HANSEN, are both very knowledgeable and congenial, and, as a result, on items of disagreement, they and all conferees worked together well. They and the other conferees tried to be considerate and understanding. So it was an agreeable and enjoyable conference, with everyone working together in a spirit of cooperation and harmony.

The able Senator from Nevada has served his State and the Nation well.

I join in the compliments also to the staff, and particularly to Mr. Paul Eaton, who has been most helpful to all of us.

I thank the Chairman for yielding.

Mr. BIBLE. I thank the Senator from West Virginia.

I, too, want to emphasize, as I did in my opening statement, the very fine, cooperative spirit, particularly of the marvelous and capable and competent Congresswoman from Washington, JULIA BUTLER HANSEN. It was a pleasure to work on the conference with her and other members of the conference. It is a kind of pleasant conference to work on. We all come out feeling better, rather than being angry at each other. I think that is a rewarding experience, particularly in these days.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nevada that the conference report be agreed to.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will now state the amendments in disagreement.

The assistant legislative clerk read the amendments in disagreement, as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 3 to the aforesaid bill, and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment, insert "$217,615,000".

Resolved, That the House recede in its disagreement to the amendment of the Senate numbered 5 to the aforesaid bill, and concur therein with an amendment as follows: In lieu of the sum proposed by said amendment, insert "$19,885,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 14 to the aforesaid bill, and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment, insert "$96,600,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 25 to the aforesaid bill, and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment, insert "$46,422,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 26 to the aforesaid bill, and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment, insert "$17,160,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 33 to the aforesaid bill, and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment, insert "$56,840,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 34 to the aforesaid bill, and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment, insert "$4,983,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 38 to the aforesaid bill, and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment, insert "$57,990,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 42 to the aforesaid bill, and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment, insert "$16,259,000".

Resolved, That the House recede from its disagreement to the amendment of the Senater numbered 53 to the aforesaid bill, and concur therein with an amendment, as follows: In lieu of the first sum proposed by said amendment, insert "$15,467,700".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 56 to the aforesaid bill, and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment, insert "$891,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 60 to the aforesaid bill, and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment, insert "$34,702,000".

Mr. BIBLE. Mr. President, I move that the Senate concur in the amendments of the House to the amendments of the Senate, as stated, en bloc.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nevada.

The motion was agreed to.

Mr. BIBLE. Mr. President, I yield the floor.

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

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

LIMITATIONS ON SULFUR IMPORTS

Mr. LONG. Mr. President, on July 10, 1970, I introduced a bill (S. 4075) to provide for limitations on the importation of sulfur, which was referred to the Committee on Finance. Since that time, the junior Senator from Texas (Mr. TOWER) has expressed his desire to be a cosponsor of that bill. I, therefore, ask unanimous consent that the name of the Senator from Texas be added as a cosponsor of S. 4075.

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

Mr. LONG. On June 17, I called the attention of the Senate to the critical situation in which the U.S. sulfur industry has been put, with loss of sales, mine shutdowns, unemployment, and the virtual cessation of exploration for new sulfur reserves. The legislation I have introduced is based upon clear and compelling evidence that, unless corrective steps are taken, events are leading toward the closing of other U.S. sulfur mines and the drying up of the domestic sources of sulfur upon which the Nation now relies.

Mr. President, before discussing the way in which my bill proposes to alleviate this critical situation, let me point out how important sulfur is to our economy. It is a vital raw material for all segments of industry and agriculture. In elemental form or as sulfuric acid, it enters into the production or processing of fertilizers, chemicals, titanium and other pigments, pulp and paper, rayon and film, iron and steel, dyestuffs, vulcanized rubbers, insecticides, fungicides, and many other products. Our country consumes annually more than 100 pounds of sulfur for each man, woman, and child. We use twice as much sulfur as aluminum, five times as much as copper, eight times as much as lead or zinc, and 70 times as much as nickel.

Although vital to our economy, sulfur represents a minute part of the cost of most of the final products it helps to make. For example, a $1 per-ton reduction in the price of sulfur would reduce the cost of a ton of newsprint by only 2 cents, the cost of a ton of galvanized steel by less than a cent, the cost of four passenger tires by only a half cent and the cost of a gallon of exterior paint by only one-tenth of a cent. This same $1 per-ton reduction in the price of sulfur would reduce the price of diammonium phosphate, a popular fertilizer which retails for $80 to $85 per ton, by only 39 cents.

Consequently, changes in sulfur prices do not affect the level of sulfur consumption. Nor do they affect the prices of the end products paid by the consumer. He neither gains nor loses from reductions or increases in sulfur prices. As a matter of fact, although sulfur prices have been declining, fertilizer producers recently issued new price lists increasing the prices of fertilizers.

However, fluctuations in the price of sulfur do have a demonstrable effect on sulfur supply. Historically, higher prices have resulted in stepped-up exploration efforts and the development of new domestic sources. Lower prices, conversely, have retarded exploration and development, and in time have caused shortages.

For a great many years, our domestic sulfur industry has taken good care of the requirements for sulfur of U.S. industry and agriculture. In World War II sulfur was one of the very few products that never had to be rationed or allocated. Our domestic mines supplied U.S. needs in full—and also a considerable part of the needs of our allies. In the Korean war, our domestic sulfur industry again supplied a considerable part of the needs of our allies, although it was necessary to allocate sulfur here at home in order to do so.

U.S. sulfur has long competed successfully against the sulfur mined in foreign countries and has done so without the help of tariffs, quotas or other government support. Now, however, it is facing a new and unfair kind of competition—competition that has nothing to do with efficiency of operation, productivity of workers, wage rates or the other elements generally involved in foreign competition. This competition is that created by the rapidly increasing production of large quantities of sulfur derived as a byproduct from sour natural gas in Canada and being forced into United States and other markets. It is this pressure of Canadian sulfur that is creating chaos in U.S. sulfur markets and providing the U.S. sulfur industry with the most serious threat of its three-quarter century life.

Because the Canadian sulfur must be removed from the natural gas to make the gas salable, the amount produced is dictated not by the demand for sulfur but by the demand for gas. Although sulfur

recovery from sour gas is not new, never before has it occurred as a byproduct in such volume or has it been forced into markets at such diminishing prices.

From the start of 1968, the first year of the current sulfur oversupply, the daily production rate of Canadian recovered sulfur has increased by nearly 75 percent. Canadian production has tripled in the last 6 years and Canada has surpassed the United States as the world's largest exporter of sulfur.

Figures provided by the Department of Commerce show imports of Canadian sulfur in 1969 of 929,000 tons as compared to 655,000 tons in 1965. Production from the Western Canadian oil and gas fields is expected to increase from 3,700,000 tons in 1969 to 4,300,000 tons in 1970. At the present rate, Canadian shipments of sulfur into the United States this year will exceed one million tons.

The large increase in the production of Canadian sulfur, virtually all of which is produced in the province of Alberta, has had an impact on sulfur prices far out of proportion to the quantity involved. Canadian producers and their brokers—in an effort to sell ever-increasing amounts of sulfur in markets which are already fully supplied—have steadily cut prices. According to the monthly reports of the Alberta Oil and Gas Conservation Board, the average net price f.o.b. plant for sulfur produced in Alberta has declined from $33.73 per ton—Canadian dollars—in January of last year to $9.33 per ton in March of this year This is a drop of nearly 75 percent in only 14 months.

The record of what has happened to sulfur prices in the U.S. Midwest market illustrates the effect of this price cutting. According to data provided to me by a U.S. producer, there have been 10 successive price reductions—all instigated by Canadian producers—in this market since June 1968. U.S. sulfur producers, in order to hold what business they could, have had to meet these insistently lower prices of Canadian sulfur.

I understand that the price cutting is continuing and, with the anticipated increase in production of Canadian sulfur, the effects can be calamitous in U.S. sulfur markets.

Already, six sulfur mines in Louisiana and Texas have shut down, with a loss of productive capacity of a million and a quarter tons a year. If the plummeting price situation could be corrected and demand improved, three of these mines might be reactivated. In all probability, the others will never reopen, and we will permanently lose the reserves of sulfur in the ground at those locations. In addition, there are believed to be at least six other U.S. sulfur mines which are operating marginally at existing price levels and which may be required to shut down. Most of the mines still operating have had to cut back. More than 1,000 jobs have already been lost in the U.S. sulfur industry and the jobs of thousands of other sulfur mineworkers are in jeopardy.

In addition, our previously favorable balance-of-payments situation with respect to sulfur has been reversed. The United States in 1969 changed from a net exporting nation to a net importer of sulfur.

Even more important, in the long view, is the curtailment of exploration for new reserves of sulfur in the United States. This curtailment is seriously endangering the national interest with respect to future supplies of a vital raw material. The U.S. Government, which does not stockpile sulfur but depends upon domestic producers' production and inventories, has long recognized the essential nature of sulfur to the national defense and economic well-being.

Mr. President, it seems to me that what we have here is an important domestic industry being threatened with being put out of business by the unfair competition of a foreign byproduct being offered at extremely low prices without regard to production cost or market demand. This domestic sulfur mining industry provides employment and tax revenue to my State, Louisiana, and also to Texas. There is the possibility that—under proper economic conditions—sulfur deposits may be found and developed in other States. New Mexico and Mississippi for example. In all, 25 States produce sulfur from one source or another. The industry, moreover, has nationwide significance for another reason—the paramount importance to U.S. industry and agriculture of having a large and dependable source of sulfur production within our borders. We must not let this industry be destroyed by the caprice of producers whose main concern is not sulfur but rather the products of which sulfur is a minor sideline.

I have attempted to deal with this critical problem by the introduction of S. 4075 to provide for limitations on the importation of sulfur. The limitation would be accomplished by either one of two means: First, quantitative limits on imports based on price levels and allowing for growth in domestic consumption or second, international arrangements or agreements under Presidential action.

Mr. President, I ask unanimous consent that the text of the bill (S. 4075) be printed in the RECORD at this point.

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

S. 4075

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

SEC. 101. The Congress finds that increasing imports of sulfur into the already fully supplied United States markets have caused grave injury to the domestic sulfur industry and may jeopardize its very existence if permitted to continue unchecked. Such imports have caused mine closings, resulting in unemployment to large numbers of workers. It has also brought to a virtual halt exploration for, and development of, new sulfur reserves. Several sulfur mines are now operating on a marginal basis, may be required to be closed. Because sulfur is an essential item, vital to the well-being of the United States, an immediate remedy for the intolerable conditions prevailing in the sulfur industry must be provided.

SEC. 102. It is the policy and purpose of this Act to provide for the regulation of commerce in sulfur among the several States and with foreign nations so as to foster the maintenance and expansion of an economically strong sulfur industry in the United States and to avoid undue disruption of the markets for sulfur in the United States. This regulation shall be accomplished by the imposition of quantitative limitations on imports of sulfur in accordance with the provisions of section 103 of this Act, or by agreement with other governments or instrumentalities providing separately for limiting imports of sulfur from such nations or instrumentalities into the United States in accordance with the provisions of section 104 of this Act.

SEC. 103. Except as provided in section 104:

(a) The total quantity of sulfur originating in any country which may be entered, or withdrawn from warehouse, for consumption during the calendar year beginning January 1, 1971, shall be limited to the average annual quantity of sulfur originating in such country which was entered, or withdrawn from warehouse, for consumption during the three calendar years 1965–1967.

(b) Beginning with the calendar year 1972, the total quantity of sulfur originating in any country which may be entered, or withdrawn from warehouse, for consumption during that calendar year and during each succeeding calendar year shall be increased or decreased in amounts proportionate to increases or decreases in domestic consumption of sulfur, as determined in accordance with this subsection. Increases or decreases in domestic consumption of sulfur shall be determined by comparing the domestic consumption of sulfur during the preceding calendar year with the average domestic consumption thereof during the two calendar years immediately preceding such calendar year.

(c) All determinations required by this section shall be made by the Secretary of Commerce and shall be published in the Federal Register not later than December 31 of the year preceding that for which a limitation on sulfur imports is established Determinations of consumption for a then current year may represent the Secretary's best estimate.

SEC. 104. The President is authorized to enter into international arrangements or agreements with foreign governments or instrumentalities separately regulating the quantities of all sulfur originating in such nations or instrumentalities which may be entered, or withdrawn from warehouse, for consumption. The provisions of each such arrangement or agreement entered into hereunder shall substantially carry out and implement the declared purposes and findings of this Act and assure the avoidance of undue disruption of the markets for sulfur in the United States. The President shall make such arrangements or agreements effective by proclamation, and is authorized to issue regulations necessary to carry out the terms thereof. The total quantity of sulfur which may be entered, or withdrawn from warehouse, for consumption from any country which has entered into such an arrangement or agreement hereunder shall not be subject to the provisions of section 103 while such agreement is in force and effect.

Mr. LONG. Mr. President, this bill recognizes the grave injury that has been done to the U.S. sulfur industry by the effect of under-priced, byproduct sulfur moving into domestic markets from foreign sources. In its three-quarter century of production in this country, the U.S. sulfur mining industry has never had Government assistance in the regulation of sulfur imports. It has been able to operate productively despite a veritable jungle of restrictions which it encounters in world markets outside of North America. More than 25 countries impose tariffs on U.S. sulfur, some of which merely restrict imports, such as the proposed act would do, or are imposed as revenue-raising agents. Other

foreign restrictions are so high that they constitute a complete embargo against U.S. sulfur. In addition to tariffs, foreign trade barriers encountered by U.S. sulfur include blockade by tariff, embargo on sulfur, discriminatory tariff, restrictive import licensing, and onerous deposit bond requirements. If, in the home market, U.S. sulfur companies are damaged by unfair competition to the extent that they cannot compete, we may well see the demise of the U.S. sulfur mining industry.

I have offered my bill in the hope that, given assistance, the U.S. sulfur mining industry will be able to continue to contribute to the Nation a vital raw material in a sound economic environment.

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

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

DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970—CONFERENCE REPORT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate resume the consideration of the unfinished business.

The PRESIDING OFFICER (Mr. SCHWEIKER). Without objection, the Chair lays before the Senate the unfinished business, which will be stated.

The unfinished business was stated 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.

The Senate resumed the consideration of the conference report.

Mr. ERVIN. Mr. President, on yesterday I inserted in the RECORD a number of letters and telegrams contending that the District of Columbia crime bill conference report is contrary to basic American principles.

The Nashville Tennessean of July 18, 1970, published an editorial, entitled "Crime Bill Full of Danger." The editorial reads in part:

Some features of President Nixon's crime bill now being considered by Congress would strike at basic constitutional guarantees and should be rejected.

Perhaps the most dangerous recommendation is one that would permit police in some instances to enter homes without first knocking at the door or identifying themselves.

This measure is proposed for effectiveness in the District of Columbia only, but it is being advanced as a model law, possibly to be extended to the rest of the country at a later date.

If there were any valid reason for singling out the District of Columbia for the initiation of this oppressive law, it has not been made clear what it is. Certainly there is no justification for believing the nation should begin to give up its constitutional protections for the purpose of providing short cuts to law enforcement.

I will omit a compliment it pays to me, and I will continue:

It is too early to tell whether Senator Ervin can turn the tide against this unwise bill. But he deserves the gratitude of those who believe it is still possible to have effective law enforcement in the U.S. without chipping away at the basic principles on which the nation was founded.

I have a letter from Mr. D. A. Smith of the Department of History of Yale University, addressed to me, and reading in part as follows:

I want to tell you how fervently I hope your opposition to the "no-knock" preventive-detention anti-crime bill succeeds. The civil liberties which it invades were won after centuries of struggle against arbitrary power, both in Britain and America. To sacrifice them on the altar of "law and order" is a travesty of what law and order ought to mean.

Please accept by heartfelt thanks and best wishes.

Yours sincerely,

D. A. SMITH.

I have a telegram from Mr. Joseph T. Byrne, of Philadelphia, addressed to me, reading as follows:

Re: Anticrime legislation. I strongly implore you and all Senate Members not to vote for this legislation. More positive results may be found in the recommendation of the Commission on the Causes and Prevention of Crime chaired by Dr. Milton Eisenhower. Letter to follow.

Sincerely,

JOSEPH T. BYRNE.

I have received a telegram from the president and executive secretary of the board of directors of the American Civil Liberties Union, of Tennessee, addressed to me, reading as follows:

The board of directors of the American Civil Liberties Union of Tennessee strongly urge that you oppose and vote against the District of Columbia Crime bill, S. 2601. This bill incorporates extended police wiretapping, no-knock policy entry, and preventive detention. All severe and intolerable infringements on individual freedom.

JOHN CLEVELAND,
President.
Mrs. R. W. CHILDERS,
Executive Secretary.

I have received a telegram from the executive director of the Wisconsin Civil Liberties Union, of Milwaukee, Wis., addressed to me, reading in part as follows:

We strongly support your efforts to defeat conference commitee report on District crime bill, especially preventive detention.

EDWARD M. MCMANUS,
Executive Director, Wisconsin Civil Liberties Union.

I have received a letter from Prof. Albert J. Rosenthal, professor of law at Columbia University addressed to me, reading as follows:

I should like to congratulate you for your valiant efforts in opposing the preventive detention and "no-knock" provisions of the District of Columbia Crime Bill.

As a student of constitutional law I believe that both are of doubtful constitutionality. At least as important, however, is the fact that, whether constitutional or not, these provisions are unfair, cruel and completely out of place in a democratic nation.

There is much that needs to be done to reduce crime, both in the District of Columbia and in the nation at large. Such constructive measures as the court reorganization plan are urgently needed. What we do not need, however, are intrusions upon the civil liberties of the citizens, which in the view of most experts won't even contribute materially to a solution of the crime problem.

I would add to what Professor Rosenthal says that attempting to solve the crime problem through the agency of preventive detention is about as wise and practical as attempting to empty the Atlantic Ocean with a quart cup.

Mr. President, last Friday I delivered a speech in the Senate in which I read various provisions of the Constitution. I read the provision in article III which says that all crimes, except charges of impeachment, shall be tried by jury. I read the provisions of the Bill of Rights which declare that unreasonable searches and seizures shall be prohibited and a search warrant can issue only on probable cause. I would say inferentially that probable cause is something that exists at the moment and does not exist sometime in the future, as the no-knock provision of this bill provides.

I also read the fifth amendment which provides that no person can be required to answer for a capital or otherwise infamous crime except upon an indictment by a grand jury.

I also read the provision of the Constitution which declares, in section 6, that in all criminal prosecutions, the accused is entitled to a speedy trial by jury.

I also read the provisions of the fifth amendment which provides that no person shall be compelled to be a witness against himself in any criminal prosecution.

I also read the due process clause and gave its interpretation, as it has been interpreted by the Supreme Court.

So I was somewhat surprised to find in the RECORD this morning the statement by the able and distinguished senior Senator from Maryland, in a speech he delivered, that:

The clear implication of Senator Ervin's remarks was that the provisions on pages 142, 143, 154, and 155 of the conference report constitutes a clear departure from precedent and right thinking.

I did not imply that. I charged that to be true. But the thing that I was rather intrigued about was the next statement of the distinguished Senator from Maryland. He said:

Such, of course, is fiction.

I do not know what the Senator from Maryland meant when he said that what I had said was fiction. I had been reading the Constitution of the United States. I hope the Senator was not referring to the Constitution of the United States as being fiction. I would dislike to believe that any Senator regards the Constitution of the United States as fiction, even if he advocates the passage of a bill that provides that notwithstanding the declaration of the Constitution of the United States that no person shall be held to answer for any capital or infamous crime, except upon an indictment of a grand jury, that a person can be tried for an infamous crime and

sentenced to infamous punishment without ever being indicted by a grand jury.

Let us see whether what I was talking about is fiction. I invite the attention of Senators to the provisions of this bill which appear on page 142. Subsection (a) of section 201 reads:

SEC. 201. (a) Section 907 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22–104), is amended to read as follows:

"SEC. 907. (a) If any person—

"(1) is convicted of a criminal offense (other than a non-moving traffic offense) under a law applicable exclusively to the District of Columbia, and

"(2) was previously convicted of a criminal offense under any law of the United States or of a State or territory of the United States which offense, at the time of the conviction referred to in paragraph (1), is the same as, constitutes, or necessarily includes, the offense referred to in that paragraph.

such person may be sentenced to pay a fine in an amount not more than one and one-half times the maximum fine prescribed for the conviction referred to in paragraph (1) and sentenced to imprisonment for a term not more than one and one-half times the maximum term of imprisonment prescribed for that conviction.

This provision says that if a man is convicted of a criminal offense under law applicable exclusively to the District of Columbia, and was previously convicted of a similar criminal offense under the laws of the United States, or any State or territory, he can be punished by imprisonment for 1½ times the maximum term of imprisonment prescribed for the offense.

Under Federal law, a misdemeanor cannot be punished by imprisonment for more than 1 year. Under Federal law, a man cannot be tried for a crime punishable by more than 1 year in prison unless he is indicted by a grand jury.

This first provision of the section provides that where an accused is convicted of a simple misdemeanor punishable by imprisonment for not to exceed 1 year, and he had a prior conviction for a similar misdemeanor in the District, he would be liable to a punishment of one and a half years imprisonment.

The second provision of this section says:

If such person was previously convicted more than once of an offense described in paragraph (2), he may be sentenced to pay a fine in an amount not more than three times the maximum fine prescribed for the conviction referred to in paragraph (1) and sentenced to imprisonment for a term not more than three times the maximum term of imprisonment prescribed for that conviction.

This provides that if a man has committed two previous offenses of the character described in subsection (a) of section 201, he can be sentenced to three times the imprisonment which would be authorized for one conviction, and that would make many cases, under the Code, subject to a punishment in excess of 1 year. If an accused commits a misdemeanor punishable by 1 year's imprisonment after two previous convictions for misdemeanors he would be converted into a felon and be subject to 3 years' imprisonment.

Then it has another provision which says:

No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section.

This is another one of the curiosities in this bill. This provision says by implication that if a man has been pardoned for a prior offense on any ground other than the fact that he was innocent of such crime his prior offense will be taken into consideration in determining his punishment. That is a flat violation of the provisions of the Constitution dealing with the pardoning power of the President and, some provisions of State constitutions dealing with the pardoning power of Governors. This is so because a pardon wipes out all future consequences of the crime for which the man is pardoned; notwithstanding this fact, the District of Columbia crime conference report says that unless the pardon is granted on the ground that a man was wholly innocent of the crime for which he was convicted, it will count that crime in determining his punishment despite the decisions of the courts holding that a pardon annuls all the future consequences of the crime. The Supreme Court so held in respect to a presidential pardon in the Klein case.

The third subsection (b) provides:

"(b) This section shall not apply in the event of conflict with any other provision of law which provides an increased penalty for a specific offense by reason of a prior conviction of the same or any other offense."

(b) Such Act is amended by adding after section 907 the following new section:

"SEC. 907A. (a) (If—

"(1) any person (A) is convicted in the District of Columbia of a felony, and (B) before the commission of such felony, was convicted of at least two felonies; and

"(2) the court is of the opinion that the history and character of such person and the nature and circumstances of his criminal conduct indicate that extended incarceration or lifetime supervision, or both, will best serve the public intent,

the court may, in lieu of any sentence otherwise authorized for the felony referred to in clause (A) of paragraph (1), impose such greater sentence as it deems necessary, including imprisonment for the natural life of such person.

Thus, the various subsections of section 201 of the District of Columbia crime conference report provide for increased punishment for habitual criminals. Under it the increase in one category is to the maximum imprisonment for a second conviction an additional 50 percent of the original authorized punishment; and, in a second category an accused who had a conviction of two prior convictions, would be subject to as much as three times the original punishment prescribed for the offense on a conviction for a third offense.

Another provision stipulates that if one is convicted of a felony and at the time of his conviction has been previously convicted of two other felonies, he can be imprisoned for life under this conference report.

The section which undertakes to implement these provisions of the bill is section 23–111. It says:

§ 23–111. Proceedings to establish previous convictions

(a) (1) No person who stands convicted of an offense under the laws of the District of Columbia shall be sentenced to increased punishment by reason of one or more previous convictions, unless prior to trial or before entry of a plea of guilty, the United States attorney or the Corporation Counsel, as the case may be, files an information with the clerk of the court, and serves a copy of such information on the person or counsel for the person, stating in writing the previous convictions to be relied upon. Upon a showing by the Government that facts regarding previous convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years, unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

There are some curiosities in section 23–111 which are designed to implement Sec. 201. In the first place, it says that the question of prior conviction can be raised by an information, even in cases where punishment will run as much as 3 years. That is a clear violation of the provision of the Constitution which declares that no man can be tried or punished for an infamous offense except upon indictment by a grand jury. Furthermore, it seems to provide for the correction of the charge when made by an indictment, despite the rulings that an indictment cannot be corrected without the consent of the grand jury which returned it.

This provision in subsection (b) of section 23–111 relates to a conviction for a new offense—an offense one has just been tried for and been convicted of. It says:

If the prosecutor files an information under this section, the court shall, after conviction but before pronouncement of sentence, inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a previous conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

In other words, after the accused has been convicted the prosecution serves an information on him charging that he has been previously convicted of other crimes, and in calling upon him to plead to the information, the court informs him that he must set out anything that invalidates his previous conviction before the sentence.

Then it proceeds in subsection (c) (1):

If the person denies any allegation of the information of previous conviction—

Senators will notice that it says "denies any allegation." This is the information setting out previous convictions and it necessarily sets out that this is the man who was previously convicted.

I continue to read:

(c) (1) If the person denies any allegation of the information of previous conviction, or

claims that any conviction alleged is invalid, he shall file a written response to the information.

I submit that this violates the provision of the Constitution which declares that a man cannot be compelled to be a witness against himself in any criminal case. This provision makes him a witness against himself because it further stipulates, in substance, that unless he denies the allegations of the information about his having been previously convicted, they shall be taken as proved. In other words, he cannot stand mute. He cannot plead not guilty. But if he does not deny them, then his denial is to be taken as a confession on his part that he is guilty of the previous convictions.

Now mark this: The Senator from Maryland says that I was mistaken when I said that this provision places the burden of proof on the accused to show that he is not the man involved in the previous convictions or that the previous convictions were invalid.

Section (c) (1) reads further:

If the person denies any allegation of the information of previous conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the prosecutor. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment.

One of the things that would except the accused from increased punishment would be that no such previous convictions were ever suffered by anyone. Another would be that the accused was not the man previously convicted. And if the previous conviction were invalid, he would have to set out in his response the facts showing it to be unconstitutional or invalid.

The court must hold a hearing to determine where the accused is subject to increased punishment. The Conference Report provides that the hearing shall be by the court without a jury and either party may introduce evidence.

That is the hearing upon a charge that the accused has been convicted of previous offenses. And it is a hearing that might result in the accused being sent to prison, for life if he has been convicted of a felony, and has a record of two previous felony convictions.

In other cases, he could be sent to prison for far in excess of 1 year's imprisonment. The report authorizes up to 3 years' imprisonment in cases where the accused has not been indicted by a grand jury. It stipulates that the trial of the prior offense allegations shall be by a judge without a jury.

Mind you, Mr. President, that is a provision under which a man could be sentenced to life imprisonment on a trial by a judge without a jury. And this is a criminal case—not a civil proceeding.

When a man is charged as an habitual offender, he is not being tried a second time for his original crimes of which he has been previously convicted. He is being tried for a new crime whose punishment is increased because he has been previously convicted.

I inserted in the RECORD on Thursday opinions and citations of cases—somewhere in the neighborhood of 25 State cases—which had provisions guaranteeing the right to trial by jury in criminal cases. Those cases hold that the question of whether previous offenses had been committed and whether the present accused was the person who committed those previous offenses were questions of fact for a jury.

Furthermore, those cases hold that those facts had to be proved beyond a reasonable doubt by the testimony. But when the able and distinguished Senator from Maryland replied to what I had said, he said that I was just speaking fiction. If the Senator will read the cases that I had printed in the RECORD, he will find that there is no fiction in what I said. He cannot contend that any provisions of the Constitution of the United States are fiction.

The Senator said I was mistaken when I said that the report put the burden of proof on the accused in violation of the due process clause.

Here is what the report says on that point—subsection (c), subdivision (1) of section 23–111:

If the person—

That is the accused—

denies any allegation of the information of previous conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information.

I have also read the provision which stipulates that the hearing on the issues raised by the response to the information will be held by a judge without a jury.

The Senator from Maryland said I was mistaken when I said that the burden of proof was placed upon the accused.

Subsection (c) of section 23–111 states in words as plain as are to be found in the English language that if the person denies any allegation of the information of previous convictions, or claims that any conviction alleged is invalid, he shall file a written response to the information.

Then it says:

The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment.

Manifestly, if the response said that no such previous crimes were ever committed by anyone or that if they were committed, they were not committed by the accused, it would raise those issues. If it said the previous convictions were unconstitutional or invalid, it would raise another issue. All these issues would be issues of fact.

Subsection (1) of subsection (c) of section 23–111 states:

Except as otherwise provided in paragraph (2) of this subsection, the prosecuting authority shall have the burden of proof beyond a reasonable doubt on any issue of fact.

Now, mind you, Mr. President, that states "except as otherwise provided in paragraph (2)" the burden is on the prosecuting attorney. What does paragraph (2) state? It states:

A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in response to the information.

The preceding paragraph had already stated, in substance, that he must set forth that the previous offenses had not been committed or that he had not been convicted of them, or that the previous conviction was invalid. This section states:

The person shall have the burden of proof by a preponderance of the evidence on any issue of fact—

Any issue of fact—what this clearly states as an exception to paragraph (1) or subsection (1) is that the burden of proof is on the accused in respect to any issue of fact. If this is not an exception to the paragraph (1), it is a flat contradiction of paragraph (1) and controls because it is the last legislative provision on the subject.

One of the issues of fact would be denial of previous convictions; another would be denial of the identity of the accused as the person previously convicted; and the third would be any fact or circumstance which invalidated the previous conviction if the accused had been previously convicted. So we have a contradiction. I do not think it is a contradiction because it is stated in paragraph 1 that:

Except as otherwise provided in paragraph (2) of this subsection, the prosecuting attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact.

But paragraph (2) states that the burden of proof shall be on the accused, so that comes within the exception of paragraph (1) and the burden is placed upon the accused to show what is, in effect, his innocence of being a habitual offender and he has to show that he is not a habitual offender by the greater weight of the evidence.

I say that this states what is means when it states in paragraph (1) that the burden is on the prosecution, except as otherwise provided in paragraph (2); and when paragraph (2) states that the burden of proof is on the defendant, that that is in harmony with paragraph (1); but if it is a mere contradiction this shows how careless this act was drawn. Its drafters paid no more attention to its words than they did to the Constitution when they drafted it.

This act is sought to be imposed on the people of the District of Columbia against their will. I have received petitions from over 6,000 people of the District of Columbia opposing the proposal that the Senate approve the conference report. I hold them in my hand.

The Senator from North Carolina asserts that the Constitution of the United States is not fiction. It is not fiction that the Constitution provides in the fourth amendment:

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 assert that a search warrant cannot issue, a no-knock warrant cannot issue, except upon probable cause, and probable cause consists of facts and circumstances

existing at the moment the officer makes an affirmation or oath to get a search warrant. A search warrant cannot issue on the basis of a prophecy of what will exist at some time in the future when the officer undertakes to serve the warrant. Yet that is exactly what the no-knock provision of this statute provides.

The proposal states that the officer must set out facts showing that at the later time when he arrives at the door to serve the search warrant certain conditions are likely to be existing. How can a man know what is likely to be existing in the future?

I have served in the Senate for a long time and I have been watching Senators for a long time. I am well acquainted with the political philosophies of most Senators. This bill states a search warrant can be issued on the prophecy of an officer as to what is to happen in the future. It states a man can be preventively detained on the prophecy of a judge of what the man is going to do in the future.

As well as I know the Senators, I would not undertake to prophesy how any Senator is going to act in the future. I would not even undertake to prophesy how Senators are going to vote on this conference report. There are many peculiarities in the conduct of Senators. In saying this I mean nothing personal. When we were having a hearing before the Subcommittee on Constitutional Rights on preventive detention proposals, the executive officer of the Washington bureau—if that is the correct term—of the American Civil Liberties Union said:

> You cannot exactly pin men down by labels.

Take the Senator from Maryland (Mr. TYDINGS). He is in favor of preventive detention, and he is said to be a liberal. The Senator from North Carolina is against preventive detention, and he is said to be a conservative. So I do not think anyone can predict how Senators are going to act. And I do not think judges can predict how people are going to act in the future. I do not think any officer can prophesy at the time he applies for a search warrant, which may be served hours later and miles away, what is going to happen inside the house after he gets there.

If he had been required to make such predictions as the report requires judges and officers to make, old Jeremiah would have had to go out of business. Law enforcement procedures ought not to require prophesying.

The truth is the provisions of this bill which authorize the issuance of no-knock search warrants upon the affidavit of an officer as to things which are going to happen in the future when he attempts to execute the search warrant is nothing in the world except an effort to nullify and render ineffective the fourth amendment which 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.

The fourth amendment is clearly violated when an officer of the law breaks down a door to gain entrance to a building without any notice to its occupants.

Such action is unreasonable. It is an unreasonable search. Human beings are mysterious beings.

I have told this story before on the floor of the Senate. It appears in a book by Marquis James. Archibald, a cockroach, lived in a house inhabited by human beings. When the human occupants of the house had retired for the night, Archie would go into the study, and get on top of the typewriter and dive down on the typewriter keys and write his observations about human beings. On one occasion he wrote this story. He said that during the afternoon the master of the house was coming home and saw a ravenous wolf seize a little lamb and attempt to devour it to satisfy his hunger. The master was so infuriated by the cruelty of the wolf that he slew the wolf and picked up the little lamb and carried it gently home in his bosom. When he got home he slew the little lamb, cooked it, and ate it for supper. Having had a good meal of lamb's meat, he sat down before the fire to meditate upon the universe. While he was meditating upon the universe, he happened to think of how cruel hungry wolves are to lambs and broke down and wept.

Senators speak much about the freedoms of Americans. They boast that every American's home is his castle. They are rightly much incensed by burglars who enter the homes of American citizens without notice to them and against their will. Despite this, Senators arise on the floor of the Senate and advocate a law to make it legal in the United States of America, in the year of our Lord 1970, for officers of the law to enter dwelling houses of residents of the District of Columbia in exactly the same manner that burglars enter those dwellings. They remind me of the man who sat down, after having his supper of lamb's meat, and wept on account of the cruelty of wolves to lambs.

We are going to continue to make it illegal for burglars to break into people's houses in the nighttime without their consent and without notice, but we are going to make it legal for officers of the law to emulate the example of burglars and break into people's houses without their consent and without advance notice to them.

What is a poor occupant to do when he hears someone breaking into his house in the middle of the night? Is he going to wait to determine whether it is an officer of the law or a burglar? I fear not. He is going to be tempted to make a natural human response against the unwarranted intrusion into his house.

Last Thursday I read the concurring opinion of Justice Jackson in a case which arose here in the District of Columbia. In that case officers of the law suspected that certain men who lived in a boardinghouse in the District were operating a lottery. So they went to this house one night and they wanted to surprise the men. The roominghouse was operated by a woman. They pried open the window of that woman's bedroom to enter the house to catch the people that they suspected were running a lottery. They caught the men and they did get some evidence indicating that they were running a lottery.

When the case was tried, a motion was made to suppress the evidence on the ground that the officers of the law had entered the house in violation of the fourth amendment. The Supreme Court sustained the point. Justice Jackson wrote a concurring opinion stating that when officers of the law engage in conduct like that, they bring the enforcement of the law into contempt. He also expressed the opinion, by way of dicta, to the effect that if the woman had shot the plainclothes officer when she saw him prizing up the window of her bedroom to come into her house, her act would not have been punishable because it would have been justifiable homicide. Then he stated that officers of the law should acquaint the occupants of houses of their presence and purpose before entering a house for their own protection. He said if the officer of the law on that occasion had noticed the woman drawing a gun to shoot him, he might have been tempted to shoot her. Justice Jackson added that if the officer had done so he—that is, Justice Jackson—would have disliked to have had the responsibility of persuading the jury that that officer was not guilty of murder.

Why should the Congress pass a bill to encourage officers of the law to break into dwelling houses in the nighttime, without acquainting the occupants of the houses of their presence and their purpose? Why should the Congress do that? Would it not be better for a few narcotic peddlers or a few narcotic addicts or a few criminals to escape justice than to destroy the proud boast of the American law that every man's home is his castle?

Moreover, by passing a law of this nature, Congress would place officers of the law in jeopardy. They would be in danger of being killed by occupants of houses when they undertook to invade the homes of those occupants without identifying themselves as officers of the law. If fired upon, officers would be tempted to reply in kind. By the passage of a law like that embodied in the conference report, Congress would encourage homicides. It would place officers of the law in constant jeopardy of their lives.

I shall not dwell on the other provisions of the bill. I reiterate, however, that I placed in the RECORD last Thursday citations and opinions and decisions of State courts, which declare that when a person is charged with being a habitual criminal because of his convictions upon previous criminal charges, he had a right to have a trial by jury on the question of whether there were such prior convictions and whether he was the man who was convicted on those prior occasions, and that the burden was on the prosecution to satisfy the jury beyond a reasonable doubt from the testimony that the facts on those issues were adverse to the accused.

Why should Congress pass laws in the name of law and order which violate

fundamental principles of our Constitution, freedoms which were purchased for us at a great cost in blood? The American Revolution was fought in large part because officers of the Crown used general warrants as no-knock warrants for invading the homes of the people of Boston.

John Adams attributed the birth of the American Republic to the eloquence of James Otis in opposing such tyrannies upon the American people. He said the eloquence of James Otis in resisting those no-knock provisions that the officers of the Crown were imposing upon the people of Boston breathed the breath of life into the nostrils of the 13 Colonies and that in consequence the child independence was born.

We rebelled against England because its Government imposed no-knock laws upon our people. Many of our people fled from France because they abhorred preventive detention in the Bastille. Despite these things, the Senate is being asked in the year 1970, that it establish no-knock laws and abolish the principle that every man's home is his castle; yea, more, that the United States actually make it legal for an officer of the law to invade the home of a private citizen just as burglars invade those homes, and that, in addition to that, we establish a system like that which provoked the French people into destroying the Bastille, a place which was used by the French Government as a place for preventively detaining persons in France who offended the government.

I have said—and I have had no one point out a single syllable in this bill which shows me to be incorrect in my interpretation—that there is nothing in this bill which provides that any man who is preventively detained is going to be released from preventive detention after 60 days' imprisonment.

All this bill says on that subject is that upon the expiration of 60 days, unless his trial is in progress, the accused will be restored to his status at the time of his arrest and have a judicial officer pass upon the conditions once again whether he is to be released.

Page 194 says this—and this is the only thing it says about what happens to a man after 60 days of preventive detention:

"Such person—

That is, the person who has been preventively detained—

(2) Such person shall be treated in accordance with section 23–1321—

(A) upon the expiration of sixty calendar days.

Now, what does it mean when it says that he is going to be treated in accordance with section 23–1321?

Section 23–1321 says he will go back and be treated just like he was treated originally; that the judge will release him upon his own recognizance, or upon an appearance bond, unless the judge finds that such release will not assure his appearance at the trial, or such release will not reasonably assure the safety of any person or the community

Since a judicial officer has already found those conditions against the accused, he will have no chance of release unless the judicial officer reverses the holding made 60 days before. Indeed, section 23–1321 expressly forbids the judicial officer to release the accused on his personal recognizance or upon an appearance bond, if he finds that such action will not reasonably assure the safety of any person or the community.

Section 23–1321 then specifies that if he finds that, the judicial officer will then determine whether other prescribed conditions, "will reasonably assure the safety of any person or the community." If the judicial officer determines again what was determined 60 days previously, namely, that none of these conditions will reasonably assure the safety of any person or the community, he cannot release him. If this redetermination is made, the provisions of section 23–1321 are exhausted, and the next section 23–1322, comes into play. This section provides for nothing except another preventive detention if none of the specified conditions will reasonably assure the safety of any person or the community.

So under these provisions an accused can be held under one preventive detention order after another, until he is tried or until he dies, or, if he happens to be immortal, until the last lingering echo of Gabriel's horn trembles into ultimate silence.

That is the kind of legislation Congress is being asked to apply to the District of Columbia to enforce the law in the District of Columbia. Instead of providing for reasonable law enforcement, this legislation makes a mockery of the Constitution. It makes a mockery of the fourth amendment's prohibition against unreasonable searches and seizures. It makes a mockery of the provision of the Constitution saying 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. It makes a mockery of the provision of the Constitution which says that all criminal cases shall be tried by a jury. It makes a mockery of the provision of the Constitution which says that no man shall be compelled, in any criminal case, to be a witness against himself.

We are told that this is necessary, that conditions have got so bad here in the District of Columbia that it is essential for such legislation to be enacted. I do not believe this.

The complete answer to that plea was given by one of the greatest statesmen of all time, William Pitt, in the British Parliament, back in 1783, when he said:

Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves.

Let us not accept the argument of tyrants, and destroy in the District of Columbia some of the basic rights for which our forefathers died in order that we might enjoy them, just because some people may commit some crimes in the District of Columbia.

Instead of doing that, let us implement the constitutional provision which guarantees the right of a speedy trial by jury. Instead of adopting preventive detention for persons charged with crimes in the District of Columbia, let us provide an adequate number of judges, an adequate number of prosecuting attorneys, and an adequate number of supporting personnel, and then detain the prosecuting attorneys in their offices long enough for them to prepare cases for trial, and detain the judges in the courthouses long enough for them to try the cases. By so doing, we will have prompt administration of justice, and there will be no occasion for preventive detention of the citizens of the District of Columbia.

Mr. President, just one brief further statement. A book has been written about the history of Nazi Germany entitled "The Order of the Death's Head." It contains a chapter entitled "Heydrich And the Gestapo," which includes this statement:

The authority to issue warrants for preventive arrest, and consign men to concentration camps placed a murderous weapon in the hands of the Gestapo. It undermined the rule of law in Germany and all the machinery of judge, solicitor and defence counsel was unable to prevent men suddenly disappearing behind the barbed wire of the concentration camps.

Let us not convert the police officers of the District of Columbia into a Gestapo.

Mr. TYDINGS. Mr. President, the Senate has been debating the President's District of Columbia crime legislation for a week. We who support the legislation have tried calmly and fully to explain the provisions of the bill and answer the criticisms which have been levelled against it.

It is indispensable for reasonable debate that we proceed on the basis of the facts of the bill and not on the basis of fiction.

Time does not permit me to rebut the dozens and dozens of factual errors which have been asserted by critics of the conference report. I trust that my colleagues will reach back yet again and study the conference report, the Senate statement of managers, and the extensive rebuttal which I delivered yesterday afternoon—printed in the CONGRESSIONAL RECORD of July 21, 1970, at pages 25201 through 25212.

I feel that it is my obligation to the Senate, nevertheless, to point out a sample of the plain errors that continue to plague this debate:

My distinguished colleague, the senior Senator from North Carolina, introduced into the RECORD of yesterday afternoon a letter from 12 Yale University law professors, including the outgoing Dean Louis Pollack, attacking, and I quote, "the District of Columbia anticrime bill in the form in which it was reported out by the House-Senate conference committee on July 13."

Mr. President, of the five so-called unconstitutional, unjust, and unwise items mentioned by the professors, three—three out of five—amount to flat misstatements of the facts of what the conference report contains. Much as I respect all of the gentlemen from Yale who authorized this letter, I must warn the Senate once again to measure every statement about the pending report against the actual report language itself and the official explanation contained in the statement of managers:

First, the conference report on S. 2601 does not contain weakened procedural protections for juveniles. Except as to the issue of jury trial—where the modern tendency, endorsed by the action of four-fifths of all the States is to eliminate juries in juvenile cases—the new juvenile code represents in every respect a substantial improvement over the procedures and protections available to juveniles under existing District of Columbia law.

Second, the conference report on S. 2601 does not "establish new categories of harsh mandatory minimum sentences." As I have explained to the point of exhaustion, there is but one mandatory minimum sentence set forth in the entire conference report—the 5-year minimum sentence which applies to second and subsequent armed violent crimes and which is comparable to the 1968 Federal Firearms Act as well as S. 849 passed by the Senate this year.

Third, the conference report on S. 2601 does not require plaintiffs in wrongful arrest actions to pay the attorneys' fees of the defendant police officer, as Senator ERVIN, in introducing the letter into the RECORD, admitted.

On page 25224 of yesterday's CONGRESSIONAL RECORD, Senator ERVIN suggested to the Senate that the criminal law section of the American Bar Association opposes the no-knock provision in this bill. This suggestion is 100 percent unfounded, Mr. President. On the very same page in the CONGRESSIONAL RECORD the verbatim recommendations of the criminal law section are spelled out: Recommendation No. 10 is that the Congress adopt the Senate version of no-knock and also extend the provision to include arrests. Mr. President, the conference report on S. 2601 follows the ABA recommendation precisely.

The distinguished Senator from North Carolina, Senator ERVIN, since the beginning of this debate has suggested that a person may be detained beyond the 60-day maximum simply by repeating the detention procedure. This claim, Mr. President, is contrary to the plain language and clear intent of the conference report. The conference report provides that a detained person's trial must begin within 60 days of arrest or he must be released. Section 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 release section—I repeat, the release section, section 23–1321, not the detention section 23–1322. This point also, Mr. President, which is as plain as can be, is one which I have made over and over.

Another of the many possible examples of plain misstatements of the bill's provisions by its opponents can be found in criticism directed against the juvenile court provisions of the conference report earlier this week by my distinguished colleague from Maryland (Mr. MATHIAS).

In a chart my colleague inserted in the RECORD of July 20, 1970, at page 25055, the very first item states that under the bill 16- and 17-year-old first-offenders are "irrevocably" sent to adult court. This is untrue. Only 16- and 17-year-olds charged with murder, forcible rape, armed robbery, and first degree burglary—and felonious assault with intent to commit one of these—are sent to adult court for trial. What is most important, they are not sent "irrevocably" to adult trial or anywhere else. Juvenile court jurisdiction is retained as to any other subsequent offense, even if the juvenile is found guilty of the original charge which led to automatic transfer.

Mr. President, of the 12 points mentioned on the chart, four, that is, one-third are in error on the facts.

Mr. President, I respect the concern of those Senators who have spoken out against this bill. I too have shared many of those concerns during the past year and a half I have labored over this legislation. In the process of Senate amendment of the President's legislation and in the conference with the House, we pursued these concerns, eliminated the unwise provisions and produced a solid, effective constitutional piece of legislation which ought to be enacted.

While I understand the concern of the critics, I am at a loss to understand the continued misstatement of many of the bill's provisions, and the unreasonable interpretation placed on others for the sake of argument. I have been severely disappointed by the flagrantly emotional, thoroughly irresponsible and frequently inflammatory rhetoric which has been substituted for reason in too much of the discussion of the bill.

The debate regarding so-called no-knock entry and pretrial detention has been particularly emotional and ironic. Two of the most formidable critics of these proposals—the distinguished Senators GOODELL and MUSKIE—represent States where both these practices are sanctioned by their own State's laws. New York's laws permit widespread pretrial detention and no-knock entry without any of the safeguards provided by this bill. Maine authorizes pretrial detention, without safeguard, in a number of serious cases. And, I am informed that the common-law no-knock entry is not only permitted under Maine's law, but generally practiced in narcotics cases there.

I think a serious study of this legislation and the laws of most States in the Union, including the States which the most vocal critics represent, will indicate that this legislation is a reasonable response to a grave problem clearly consistent with State practice, the Constitution, and individual liberties.

There is repression in this city; but it is not repression by the government and it is not repression by this bill. It is the repression of fear and crime and violence which is destroying homes and families and businesses within the shadow of the Capitol itself. It is the repression which leads people to bar their windows and flee the streets at dark. It is the repression which leads people to keep arsenals and police dogs in their homes for fear of being assaulted, not by the police, but by vicious killers and thieves.

We have an enormously difficult and tragic crime problem to deal with in this city. Its victims know it better than any of us ever can. Our responsibility is to address that crime problem rationally, calmly, and deliberately, and to formulate effective answers to it within the framework of our Constitution and our concept of individual rights and liberties. This bill is that kind of response.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. STENNIS obtained the floor.

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

Mr. STENNIS. I yield.

Mr. COOPER. Mr. President, I have not engaged in the debate on the pending conference report. I have not heard all of the speech the distinguished Senator from North Carolina has made today. I have read carefully the full text of the first speech he made in the course of this debate on Friday, July 17.

The Senator from North Carolina should be commended for the tremendous analytical work he has done on this report and for providing the Senate with legal precedents from the Federal courts and many of the State courts.

We have all come to know that the Senator from North Carolina loves the Constitution. He is a deep student of the Constitution. He understands the history of the Constitution—even beyond that, the causes which led to its adoption, and its philosophic basis. He knows Locke and Montesquieu and the great writers and legal scholars of our own country.

I know that we all have a problem on bills such as this, because we are aware of the crimewave in this country. We are very conscious of its depth in the District of Columbia. We are torn by the feeling that we should do everything possible to ameliorate its causes, to provide strict enforcement and speedier justice, and bring to punishment those who are guilty. But we are faced also with the question of whether in trying to deal with this situation, we surrender or abridge the most precious liberties that have been accorded the people of this country or of any other country.

I served as a State judge, both county and circuit, years ago and had some experience with respect to search and seizure and rights in our State constitution, patterned on those embodied in the fourth, fifth, and sixth amendments to the Constitution of the United States. It was during the time of prohibition, and almost every case we passed upon dealt first with the validity of the search warrants.

I have read the section on preventive detention. I know the argument is made that, to a degree, the process will supersede present practices of refusing bail to the accused when considered dangerous is termed a hypocritical system. But there is a distinction when a person is charged with a crime, a grand jury has found probable cause that an offense has been committed by the accused and the question of bail arises.

In the case of preventive detention, no specific crime is charged, but it is a question of whether or not the person is so dangerous that he cannot be permitted to be free. I agree with the Senator from North Carolina that this raises the specter, as he has stated, of the early history in England and of our colonial days, of the detention of ones person by the State, without due process of law.

We have had recent examples. I do not want to exaggerate, because I know they are not entirely analogous, but we saw preventive detention in Germany, under the Nazi rule, and it prevails in Communist countries throughout the world—Russia and in non-Communist totalitarian countries.

I do not know what the courts would hold if this section ever became law, but if it should be held constitutional, it would deny the great principles for which we have stood and which are embodied in the Bill of Rights.

The fourth amendment to the Constitution provides for the right of the people to be secure in their persons as well as in their property—person, as a physical entity, as an intellectual being, a spiritual being, cannot be detained, except by due process of law.

This is one of a series of bills which have applied to the District of Columbia.

When I first served in the Senate it was for only 2 years. The first year I was here—1947—I served on the District of Columbia Committee and the Judiciary Committee. As I recall, in that year a bill was proposed which would have authorized arrest procedure, something which would not have been considered in any State in the United States. That was a bill to authorize an officer to arrest a person, as I recall, practically on suspicion. We were able to defeat it.

It will be recalled that later in the early 1950's a great effort was made to permit the detention of a person for 8 hours before arraignment, and that was defeated.

Now we have the proposal of detention for 60 days and, as the Senator from North Carolina has said, under certain conditions even longer.

I voted against the crime bill 2 years ago with regret because it did have many good provisions in it, because it had some provisions which, in my view, challenged the Bill of Rights and the concept of due process and of human liberty as we have nurtured it in our country.

I believe, with the Senator from North Carolina, that the best method of controlling crime is the quick and sure trial. Many provisions in our codes and some holdings of the courts have the effect of postponing trial. But great improvements can be made by reorganization of the courts to remedy this situation.

Mr. President, this is the only statement I have made during the course of this debate. I see the distinguished Senator from Maryland (Mr. TYDINGS) coming into the Chamber. I have great respect for him. I know what a faithful worker he has been on behalf of the District of Columbia and how faithful his work has been on the Judiciary Committee in trying to reform many phases of our judicial system. He has had great success and he deserves great credit, the commendation of the Senate and the country as a whole.

But for the reasons I have just outlined inadequately, I cannot vote for the conference report.

In closing, let me say again that we owe a great debt of gratitude to the distinguished Senator from North Carolina (Mr. ERVIN).

Mr. ERVIN. Mr. President, let me resume the floor merely to thank the distinguished Senator from Kentucky (Mr. COOPER) for his gracious and generous remarks concerning me.

One of the proudest experiences I have ever had in the Senate was several years ago, when the Senator from Kentucky and I stood together in the fight to make the first amendment to the Constitution effective.

SURVEILLANCE OF DEFENSE PROCUREMENT

Mr. STENNIS. Mr. President, I believe that the Senate will be interested in the activities of the Armed Services Committee during the past year in monitoring defense procurement activities.

Defense procurement has become one of the most controversial and discussed subjects of the day. Its importance is highlighted by the tremendous cost of modern weapon systems and the maintenance of a close surveillance over defense programs authorized by the Congress is a challenging task that has been compounded in recent years by technological difficulties and cost growths associated with the procurement of sophisticated major weapon systems in a period of rapidly rising prices.

To fulfill its responsibility in this field, the Committee on Armed Services, through its Preparedness Investigating Subcommittee, has taken positive action to provide continuous surveillance over the progress of weapon systems procurement.

In January 1969, the subcommittee initiated action to establish a reporting system by the Defense Department covering the cost, performance, and schedule status of major weapon systems. These reports, submitted quarterly, are intended to provide basic data to keep us informed of any significant changes or slippages in cost estimates, production schedules, performance characteristics or other important items connected with the programs and contractual obligations. While these reports do not provide the everyday detailed data needed by a project manager, they are supplemented regularly by requests for additional data. I will discuss this later.

The initial reports were of benefit during last year's consideration of the authorization bill. Improvements were made during the year and the reports now contain useful and valuable data reflecting a fairly accurate status of the programs. Notable improvements made were: the establishment of a consistent basis for acquisition costs; the addition of other costs directly related to the program; a more complete analysis of the cost, performance, and schedule variances; and highlights of recent significant program events. We are continuing to work to make further improvements in the reports.

We now receive quarterly reports on 36 major weapon systems selected as significant ongoing programs, with an aggregate projected program cost of $100 billion. The Department of Defense has expanded the reporting system to cover programs in addition to these selected by us, and these reports are reviewed as the occasion warrants.

These quarterly reports are also distributed to the House and Senate Appropriations Committees, the House Armed Services Committee, and the GAO. The Department of Defense believes that these reports have made a significant contribution in providing timely procurement information and improving its management controls.

After reviewing the data on these reports, the Preparedness Investigating Subcommittee staff has further analyzed a number of the programs.

Mr. President, we now have on the committee highly competent men trained in this field, working under the direction and control of the committee, and I can say that we do have an objective analysis of the status of such programs by competent personnel.

As a result, the committee has obtained an objective analysis of the status of such programs. In selected instances this past year, we were assisted by the General Accounting Office by detailed analyses of several programs prior to hearings on the fiscal year 1971 budget authorization, including the Minuteman and Poseidon missiles and the P–3C and F–111 aircraft programs.

It was my idea from the beginning, when we took up this additional activity, that we could make the greatest contribution by keeping an eye on the progressive developments at each stage of the new contracts and, in that way, I believe, we are exerting a far-reaching influence.

I would like to update the Senate on the latest quarterly report data on the 36 weapon systems. As I have previously stated, these programs have a projected total cost of about $100 billion, and include a projected cost growth of about $19 billion. I do not in any way condone these cost growths, but I do believe that the Senate should understand the situation with respect to them. The fact is that, through fiscal year 1970, only about 34 percent of the projected $100 billion cost has been funded by the Congress. At the same time, some programs are reporting and projecting costs into the 1980 time period. Therefore, while there are certain programs with cost growths that have been funded nearly to completion, the greatest part of the funding for the programs being monitored has yet to be authorized or appropriated. Thus the Congress will have ample opportunity in the future to consider and reconsider the funding of the major portion of the defense procurement activities which we are monitoring.

The quarterly reporting system provides one means for surveillance of major weapons programs, but the committee has other activities to assist in monitoring defense procurement activities.

During the past year the Prepared-

ness Investigating Subcommittee has been looking for improvements by the Department of Defense in procurement contract practices. In view of the controversial aspects of the contracts on the C–5A and F–111 programs, the Preparedness Subcommittee is performing analyses of the contractual aspects of some of the newer programs authorized, including the F–14 and F–15 aircraft contracts. In this we have the able assistance of the General Accounting Office, which is providing an independent analysis of the contractual features. We have also initiated analysis work on the contractual features of the S–3A and AWACS—airborne warning and control system—aircraft programs and plan to follow through on other programs in the next fiscal year.

Finally, Mr. President, I would like to discuss again the findings of the committee during the past year regarding weapon systems cost growths. As I mentioned previously, the cost growth of about $19 billion that we find projected on the 36 weapon systems involved is a projection of costs anticipated to be incurred sometime through the 1980 time period on programs that the Congress will have ample opportunity to review.

Our reviews and analyses, this past year, have helped the committee recognize that a significant problem in this area lies in the "initial planning estimate." In many cases, the estimated cost, performance, and scheduling data being used as a basis for computing cost growths were established long before full agreement was reached within the Department of Defense or information received from potential contractors on the specific design or concept to be used in a particular weapon system. They were merely guesses of cost and performance which had little or no validity.

They were merely guessing—I emphasize that word "guessing"—because they were not even estimates but guesses on cost and performance which have had little or no validity.

I am not trying to assess blame for that. That goes with part of the system. This is an imaginary weapon, existing only in the imagination of our engineers and military men as to what they would like to have here, without any real concept of whether such a weapon could be built, much less its actual cost. The initial figure which finds its way onto the books, being nothing more than a guess—it is not even an estimate—could lead to troublesome situations in the future with reference to that weapon.

With some lack of patience at times, I have called on the Department of Defense to try to be more accurate and concrete with reference to these so-called estimates, but I am convinced now that it is a difficult, one might call it almost impossible, job to get anything to start with about an imaginary ship, an imaginary plane, an imaginary tank, or any other kind of imaginary weapon, to get anything that is respectable at the beginning as to an estimate of its dollar cost.

Mr. President, the committee, during the current year, plans to delve deeper into the establishment of the baseline cost performance and schedule requirements on major new programs that will be presented for next year's authorization, and to examine other problems, such as concurrency, which contribute to real or apparent cost growths on weapon programs.

Mr. President, I can give assurance that the Committee on Armed Services is meeting its responsibility in the surveillance of the procurements of major weapon systems and monitoring the expenditure of funds authorized and appropriated by the Congress in a responsible manner. I believe that the committee is approaching the problem in the procurement of these systems objectively and properly. We have made great strides in the past year. I believe we will continue to make significant strides in the future.

Mr. President, I believe this is part of the responsibility of the committee, to follow through on the funds recommended here on this floor for approval by the Senate. That is exactly what we are trying to do in this colossal undertaking, especially in the Department of Defense. The Department of Defense is trying to cooperate. A great deal has been learned about the wrong type of contracts which have led to so much trouble in the past. The GAO is rendering an outstanding service in connection with its duties and responsibilities in this field.

Mr. President, I yield the floor.

ORDER OF BUSINESS

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

The PRESIDING OFFICER (Mr. HUGHES). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLOTT. 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. ALLOTT. Mr. President, there are one or two questions which I would like to discuss with the manager of the bill.

The first question relates to the no-knock provision. I am concerned about one facet of that provision, even though it is my intention to support the conference report. It concerns a situation where an officer holds a valid no-knock warrant but mistakenly enters the wrong abode.

I refer the Senator from Maryland to the incident that occurred recently in his own State when policemen entered the wrong home by breaking down the door. I am sure that there will be mistakes as time goes on. They are bound to occur. I mention this specific incident only for illustrative purposes. The question is in two parts.

What civil remedy does the innocent party have to correct any damage which occurred?

Mr. TYDINGS. Mr. President, the remedy would be the same as the remedy today in the event of a common law no-knock entry under the existing District of Columbia law.

It would be a suit for a wrongful arrest which would be brought against the Metropolitan Police Department, the District of Columbia, and the policemen involved.

As we know, the bill does not enlarge the conditions under which any no-knock entry may be made. It codifies the existing common law and accepts the general rule under which one always announces himself, identifies himself, and states his purpose before executing the warrant. It codifies the present law, but takes the decision out of the streets and puts it in the hands of the court.

Insofar as a wrongful arrest which might ensue, the remedy would be the same as if a wrongful arrest were to occur today under the common law in the District of Columbia. A suit would lie against the Metropolitan Police, the police officer, and the District of Columbia itself. The District would be responsible to pay any damages arising out of the action to the same extent that it is today.

Mr. ALLOTT. It would lie against the individual who did it?

Mr. TYDINGS. The Senator is correct.

Mr. ALLOTT. I was speaking not so much of the wrongful arrest, but rather of the damages that might occur from breaking down a door. The Senator's answer would be the same.

Mr. TYDINGS. That would be part of the provable damages involved in the wrongful arrest.

Mr. ALLOTT. The second part is, Does the Senator know whether the District has established a claims section to handle matters of a similar nature?

Mr. TYDINGS. My understanding is that such a claims procedure does exist, and that it has handled claims along these lines in the past.

Mr. ALLOTT. Mr. President, my second question deals with section 23–1322(b). In that section the drafters have set out numerous criteria for the trial judge to consider in reaching his decision regarding pretrial detention.

I am concerned that even with the considerations provided in the statute, an individual may not receive the personal attention which is so important in arriving at a decision to release on bond or to detain, but rather that the process could evolve into a sort of rubberstamp operation.

I know that the Senator has given this matter much thought. I would appreciate his comments, particularly on this facet of it.

Mr. TYDINGS. The concern of the Senator from Colorado was shared by the Senator from Maryland and all members of the conference between the Senate and the House. For that matter, we incorporated into the bill, when we rewrote it, some 18 important safeguards in the pretrial release and detention section to protect against the fears of the Senator from Colorado, the Senator from Maryland and others.

Let me simply list them for the record.

The first is that the detention eligibility is restricted to persons charged with one of a limited number of specific offenses.

The second is that detention eligibility is further conditioned upon a showing of

prior criminal activities, at the very least consisting of a provable pattern of dangerous behavior.

The third, detention cannot be ordered unless the court holds an adversary hearing.

The fourth, the defendant has the right to counsel at the hearing.

The fifth, the court must find at the conclusion of the hearing, and so state with written findings of fact and conclusions of law subject to appeal, that no condition or combination of conditions of release will reasonably assure the safety of the community.

As a matter of fact, if the Senator will look at pages 191 through 195, he will note that subchapter II is entitled "Release and Pretrial Detention." A substantial part of page 191 and most of page 192 is with respect to release in noncapital cases.

Prior to trial, it provides different kinds of conditional release for dangerousness which will, when the bill is enacted, be realistically available to the judges of the District of Columbia.

Today, the judges of the District of Columbia are forced to make the decision either to completely release an individual, no matter how dangerous he might be, or set the money bail so high that the judge knows the individual cannot reach it. The judge today does not ever face the factor of dangerousness head on.

We spell out in the law that the judge must find that no condition or combination of conditions of release will reasonably assure the safety of the community.

Those conditions include release subject to the supervision of a bail agency, a minister, or other suitable person or organization, the requirement of employment, narcotics testing, or periodic reporting, or release for the working hours of the day but providing that the defendant has to report back in the evening. The court must find that none of these conditions and no conceivable combination of conditions of release would reasonably assure the safety of the community before detention may be imposed.

The sixth, then, is that in making such finding, the court must exhaust a searching list of possible release conditions which, as I indicated, include third-party custody, restrictions on travel, association, or place of abode, daily narcotics use testing, employment requirement, daytime release, and so forth.

The seventh, the expansion of the Bail Agency will make third-party custody a realistic, as well as the preferred, alternative when release on personal recognizance is insufficient.

The eighth, use of money bond in dangerousness cases is prohibited.

So we get away from the hypocrisy existing where defendants do not have any right to counsel or appeal and where the judge arbitrarily sets a high money bail which happened last year in 40 percent of the cases in the District of Columbia. The bond is set so high that the defendant cannot get the money. He must content himself with cooling his heels in jail with no right to appeal for 6, 8, 10, or 12 months until the case comes up for trial.

The ninth. The prosecution must establish that there is a substantial probability of conviction on the preferred charge.

The 10th. An immediate and expedited appeal from a detention order is afforded the defendant.

The 11th. Detention orders are limited to a nonrenewable 60-day maximum period, unlike the 6, 10, or 12 months now faced by persons who sit in jail on high money bond and where the consideration of dangerousness is not visible on appeal.

The 12th. The maximum detention, the 60-day period, is not tolled by timely defense motions. In other words, time consumed by motions count as part of the 60-day period.

The 13th. An expedited trial calendar must be provided for all cases involving pretrial detention.

The 14th. Both the House and Senate Statements 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.

The 15th. 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.

The 16th. Pretrial detainees must be confined apart from convicted persons.

The 17th. Liberal access to counsel while in detention is assured.

The 18th. 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 tried to outline some of the 18 specific safeguards which I enumerated in my speech yesterday. I went into further detail yesterday. In the drafting of this section we drafted it at every step of the way to provide every type of protection possible. We were not satisfied with the British system or the Canadian system. We wanted to go further. We were not satisfied with the New York State system, where the criminal code allows pretrial detention of any person charged with a felony. We were not satisfied with the system the First Congress adopted in the first bail bill which permitted the automatic detention of anyone charged with a capital crime, and at that time capital crimes included many offenses.

Mr. President, a fair reading of the bill by an objective person will support the statement I make; namely, that the provisions of the bill will actually protect the rights of the defendant as well as provide protection for the public as a whole; that in the long run we will have less people detained in the District of Columbia; the right people will be detained, but they will have had their day in court with an adversary proceeding, as well as a speedy trial within 60 days; and there will not be the hypocrisy of the present system where 40 percent of these accused in felony cases cool their heels because they do not have the money to meet the bond.

Mr. ALLOTT. Mr. President, I thank the Senator for his comprehensive answer, and particularly in delineating the safeguards that have been set up around the preventive detention section of the bill. I think the key to it lies in the adversary proceedings, which goes directly to the question which I posed, dealing with the rubberstamp problem. I feel this is as acceptable an answer as we can come up with in this matter.

Mr. President, in recent days, several prominent newspapers have spoken out in support of the pretrial detention provision in the District of Columbia Court Reorganization and Criminal Procedure Act of 1970. Other newspapers have expressed general support for the bill.

I would like to highlight several salient comments in these editorial statements.

The St. Louis Globe-Democrat remarked that limited authority for "pretrial detention is the only sensible answer to the extremely serious problem of dangerous defendants who have a history of repeating crimes or who are considered dangerous to be at large for other valid reasons."

The Portland Oregonian observed:

> The potential of danger inherent in the pretrial release of some defendants is real. A National Bureau of Standards study published three months ago, focusing on 426 defendants in the District of Columbia, revealed that 17 percent of those charged with "violent crime" and 25 percent of those charged with "dangerous crime" were rearrested while on bail.
>
> Other cities have had similar experiences. Records in Philadelphia for 1969 show that 37 percent of persons arrested on burglary charges, 34 percent of those arrested in robbery cases, and 29 percent of those taken on homicide charges were on bail at the time of the crime.

The Richmond News Leader expressed the important point that—

> Those who oppose preventive detention somehow view judges as ogres who would welcome an opportunity to put every criminal suspect behind bars. The record suggests otherwise. Judges who deal daily with violent criminals soon learn to recognize a hardened criminal when he appears in their courtrooms. These judges also recognize their responsibility to uphold the law, acting as instruments of that law. Arguments against preventive detention suggest that most judges are corrupt and that they have no ability to distinguish a hardened criminal from a first offender, an unjustified insult to the Federal judiciary.

I am confident that judges in the District of Columbia will employ pretrial detention with discretion and restraint. No one seeks unnecessary pretrial detention. The objective is to protect the community when that protection is essential.

Mr. President, I ask unanimous consent to have printed in the RECORD several editorials.

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

[From the Portland Oregonian, July 21, 1970]

LIMITS ON DETENTION

Two of the Administration's crime control bills currently in Congress have a common controversial provision—pretrial detention of a defendant in a criminal prosecution for a dangerous or violent crime.

Pretrial detention is one of the chief points of debate over S2600 amending the Bail Reform Act of 1966. A similar provision is contained in the District of Columbia Crime

Control Bill which also includes other controverted provisions such as that permitting law enforcement officers to enter a building or room without knocking under certain circumstances.

Pretrial detention and "no-knock" entry have become dirty phrases to some opponents of the legislation. Their implication is that there would be no protection against the abuse of such authority. By no means. Both procedures would be surrounded by limitations.

For example, to effect a pretrial detention in any case, the government would have to proceed against a defendant in a hearing of record. It would bear the burden of producing evidence leading to a judge's finding that "no condition or combination of conditions of release will reasonably assure the safety of the community." A judge's ruling in favor of pre-trial detention would be subject to appeal. Detention would be limited to 60 days.

The potential of danger inherent in the pretrial release of some defendants is real. A National Bureau of Standards study published three months ago, focusing on 426 defendants in the District of Columbia, revealed that 17 per cent of those charged with "violent crime" and 25 per cent of those charged with "dangerous crime" were rearrested while on bail.

Other cities have had similar experiences. Records in Philadelphia for 1969 show that 37 per cent of persons arrested on burglary charges, 34 per cent of those arrested in robbery cases, and 29 per cent of those taken on homicide charges were on bail at the time of the crime.

In 1966, more than two years before the Nixon Administration took office, the President's Commission on Crime in the District of Columbia recommended adoption of legislation to authorize the pretrial detention of those defendants who present "a truly high risk to the safety of the community." The report said, "After considering the opposing arguments, the majority concludes that the courts are presently capable of identifying those defendants who pose so great a threat to the community that they should not be released, and that a constitutionally sound statute authorizing detention in certain cases can be drawn."

The proponents of the current legislation contend that it meets these standards. It should be noted also that as early as 1927 the American Law Institute included a provision for pretrial detention in its Model Code of Criminal Procedure.

Of course, the legal profession is well aware that pretrial detention is already widely practiced by the courts by setting extravagant bail figures, despite the injunction of the Eighth Amendment to the U.S. Constitution that "excessive bail shall not be required." Such practice obviously discriminates against most defendants and in favor of the wealthy, including those supported by a crime syndicate.

The prospect is that both society and many defendants would be better served by a pretrial detention system operating strictly under court supervision and the limitations of an adversary hearing.

Moreover, it should not be ignored that S2600 contains important, non-controversial bail reforms that would make the criminal courts more responsive to the interests of both the accused and the public.

[From the Delaware State News, July 16, 1970]

BALANCING THE PENDULUM SWING

(By Jack Smith)

Strip away all its fancy fixings, government exists to protect people.

Wise public policies preserve our freedoms, keep us from bodily harm, guarantee property rights and preserve justice. These are all forms of protection.

For many complicated reasons the forces of anarchy prevail in this nation. If allowed to continue unchecked, our previous rights and freedoms will disappear.

The American people must not allow a few old men in Congress to block the Organized Crime Control Act of 1969. The lead story Tuesday in this newspaper, by the Associated Press, told the sad tale of how Rep. Emanuel Celler, age 82, is serving the well-meaning but dangerous opposition of the assorted liberals opposing this package.

The criminals in this nation are delighted with this confusion. They look at Congress as a bunch of stupid individuals. They steal, rape and kill. If they happen to get caught, they're released. The present system makes it easy, actually encourages them.

Don't go for this stuff about the danger of repression. It exists, of course, but there's little chance of it now in this permissive society. Those who raise this cry these days are just suckers for those who are destroying the finest nation this world has ever known.

Important in this package of bills that will be passed if the American people put on the pressure is the one (S. 2600) authorizing limited pretrial detention of dangerous defendants.

Don't let the liberal con you on this one. Of course the ultimate answer is speedier trials. But this is not practically attainable. Despite all the money we're spending on our courts, it's a bottomless pit.

As a fellow who once prepared watches and clocks—the trouble is obvious to me. The pendulum in the clock of criminal justice has swung over way to far. There it will stay until the clock is properly balanced. Passage of these crime control laws will help make the adjustment.

Call and wire our Congressman or any you know—today. Balancing the pendulum swing will allow the government to get to its basic job—protecting people.

[From the New York Daily News, July 21, 1970]

BIG LAW AGAINST BIG CRIME

The House last week passed, by a 332–64 vote, the Nixon-backed crime bill for the District of Columbia—a big package of tough measures which it is hoped will become a model for crime-harried cities the nation over.

A Senate vote is expected this week; and we hope the bill may win an impressive majority in Congress' upper house. Or doesn't the Senate want prosecutors and police adequately equipped to defend decent people against criminals and crooks?

[From the Charleston (S.C.) News and Courier, July 15, 1970]

PRETRIAL DETENTION

After voluminous and often heated testimony before a Senate subcommittee on constitutional rights, the issue of pretrial detention is coming before the U.S. Senate for decision.

The proposal for detention in jail before trial of someone charged with a crime takes the form of an amendment to the Bail Reform Act of 1966. That act was designed to minimize the use of money bond as a means of detention and a barrier to a person's freedom.

In practice, as Richard G. Kleindienst, Dept. of Justice deputy attorney general, has told the Senate subcommittee, the Bail Reform Act "absolutely precludes a trial judge from considering danger to the community in setting conditions of pretrial release in a non-capital case."

Under the act, every defendant charged with forcible rape, arson, kidnaping, armed robbery, burglary, bank robbery and a number of other crimes has an unequivocal statutory right to release before trial, unless substantial evidence exists that he will attempt to escape jurisdiction of the court.

Those opposed to reforming the act contend that if a person charged wtih a crime can be detained prior to trial his freedom is being denied without due cause. Those favoring reform offer compelling evidence that defendants released under the Bail Reform Act are free, until their trial, to continue to prey on the community.

"Eliminating money bond," Mr. Kleindienst has said, "does not eliminate the social need to detain those persons who pose a serious threat to the public safety."

This threat has increased since the Bail Reform Act was passed. A survey made by the U.S. Attorney's Office discloses that of 557 robbery defendants indicted during 1968, some 70 per cent of the 345 defendants released before trial were rearrested for a new crime. Pretrial detention could have protected the public against these criminals.

Under proposed legislation, no one would be detained unless (1) he came within one of a group of carefully chosen categories who may pose a danger to society, (2) the judge finds that the defendant cannot be released on any condition that would reasonably assure the safety of the community, and (3) there is a "substantial probability" of the defendant's ultimate conviction.

Sen. Robert C. Byrd, D-W. Va., has said that the Bail Reform Act, passed with the best of intentions, "is proving a windfall to the chronic violent criminal." Society deserves protection against such persons. Until the judicial system can be geared up to speed trials of those charged with crimes against society, pretrial detention seems to provide the only means by which chonic offenders can be kept off the streets.

[From the Indianapolis (Ind.) Star, July 17, 1970]

MAKING CRIME EASIER

One afternoon a man posing as a janitor gained entry to the apartment of a young woman in Washington, D.C., threatened her with a knife, raped her, tied her with a scarf and fled.

He was identified from fingerprints and a photograph as John C. Swann. Swann was arrested and released on personal recognizance four days after the assault.

A month later, Swann, still at large, accosted the rape victim as she left a suburban shop where she worked. He fired four gunshots, one of which wounded her in the left shoulder. Then he escaped.

It was not until nine months later, after he was located and rearrested, that Swann was tried by a jury and found guilty of rape. Subsequently he also was convicted of intimidating a witness.

Washington police files bulge with cases of serious crimes committed by suspects released pending trial on felony charges. Such cases have risen scandalously since a liberal Congress enacted the so-called Bail-Bond Reform Act of 1966. Under this act, defendants charged with forcible rape, arson, kidnapping, armed robbery, burglary, bank robbery, mayhem, manslaughter and assault with intent to kill have unequivocal rights to release before trial, if a judge so decides, without putting up one cent of bail bond money.

As Senator Hugh Scott (R-Pa.) remarked recently, John Dillinger, who robbed at least 13 banks, three supermarkets, a mill, a drugstore and a tavern before he was first captured in 1933, would be guaranteed pretrial release today in the District of Columbia. So would a defendant caught red-handed setting fire to a children's hospital after planting bombs in every public building in Washington.

It is no wonder that this absurd "reform" has been followed by the worst crime surge in the district's history.

Consequently, lawmakers upon recom-

mendations of the Department of Justice have drafted legislation that would provide for preventive detention, after a judicial hearing, of defendants whose release would be dangerous to "the safety of any other person or the community."

House and Senate conferees have agreed to include preventive detention in the D.C. Omnibus Crime Bill, which has at last emerged from conference after months of negotiation, and has been approved by the House. It is now before the Senate, where there is stiff opposition.

A coalition of Senate liberals opposes this move, planning instead to introduce separate legislation for court reorganization. Under the guise of improving court procedures, their measure would have the effect of bypassing the Senate-House Conference Committee working on the Omnibus Crime Bill.

The liberal package would omit the preventive detention provision which means, of course, that dangerous repeat offenders can continue, pending trial, the unrestrained criminality that has converted the nation's capital into a city virtually under siege. Sponsors of the move include Senator Birch E. Bayh Jr. (D-Ind.) and other senators who have consistently fought administration crime-control efforts.

Bayh, at a hearing where he urged rejection of preventive detention, talked evasively of prison conditions, education, housing and employment but he assiduously sidestepped the problem of keeping dangerous repeater criminals off the streets prior to trial. Maintaining his evasion, he expressed the opinion that the problem did not represent a matter for serious concern.

Perhaps to Bayh and his fellow liberals it does not. But it does to those who must suffer the consequences.

In their rush to pose as champions of the underdog, Bayh and his associates display heart-wringing concern for the rights of repeater criminals charged with serious crimes.

They do not seem to feel anything like the same concern for the rights, safety and lives of innocent, law-abiding citizens—the criminals' victims and potential victims.

[From the St. Louis (Mo.) Globe-Democrat July 6, 1970]

PRETRIAL DETENTION FOR REPEATERS

Opponents of the Nixon Administration's proposed amendment of the Bail Reform Act of 1966, which would authorize pre-trial detention of "hard-core" crime repeaters, are resorting to scare tactics in their attempt to block this urgently needed change in the law.

They claim it "smacks of the police state," that it convicts individuals of "probable guilt" and so on.

As a matter of fact pre-trial detention is the only sensible answer to the extremely serious problem of dangerous defendants who have a history of repeating crimes or who are considered dangerous to be at large for other valid reasons.

Some critics of the pre-trial detention proposals say that the complete answer to crime recidivism is to make speedy trials mandatory.

But speedy trials are not the whole answer.

As Deputy Attorney General Richard K. Kleindienst pointed out in testimony before a Senate Judiciary subcommittee, "Professional armed criminals whose sole occupation is to break into homes or stage holdups on the street will still commit crimes while awaiting trial."

"Narcotics addicts who must commit crime to support their habits will commit those crimes while awaiting trial. Incorrigible troublemakers with a manifest streak of viciousness and violence will strike again while awaiting trial.

"Compulsive sex offenders may lose control and commit new crimes while awaiting trial."

Is it really a "police state" tactic to impose limited pre-trial detention on a sex offender who has repeated this crime and in the view of the judge represents a danger to the community?

Locally, it will be recalled that Milton Brookins Jr., accused of being the "phantom rapist" and identified by seven women in St. Louis as the man who raped them, was released on a $12,000 bond after two of the women signed warrants against him and caused his arrest.

While he was out on bond he was accused of forcing his way into an apartment of a young woman to brutally beat and shoot her as he attempted to rape her, and also of attempting to ravish her companion.

In two subsequent trials on charges resulting from this episode, Brookins was sentenced to 60 years in prison for armed robbery and 99 years for assault with intent to ravish.

Again, the question can be asked. Should Brookins have been released on bond after so many women identified him as a rapist?

Pre-trial detention in such cases should be made mandatory to protect society from criminals who have demonstrated by their actions that they are too dangerous to be at large. The time limit of 60 days on such detention seems reasonable.

The District of Columbia Crime Bill reportedly has been stalled in a conference committee by objections of several senators to the preventive detention provision. It is hoped that the conference committee will keep this important section in the final version. This bill could well serve as a model for other cities throughout the nation.

[From the Milwaukee (Wis.) Sentinel, July 16, 1970]

PROTECT SOCIETY

House and Senate conferees have agreed on a District of Columbia anticrime bill that includes a provision for preventive detention—limited pretrial jailing without bond of criminal suspects found to be dangerous.

Under the bail reform act of 1966, a trial judge is absolutely precluded from considering danger to the community in setting conditions of pretrial release in noncapital cases.

Historically, danger to the community has been considered by trial judges who could set money so high as to effect detention—a hypocritical, unreliable and discriminatory procedure.

Now, every defendant charged with forcible rape, arson, kidnaping, armed robbery, burglary, bank robbery, mayhem, manslaughter, and assault with intent to kill has an absolute, unequivocal statutory right to release before trial, unless there is substantial evidence that he will attempt to escape.

This turns loose on society pending trial professional armed criminals whose sole occupation is to break into homes or stage holdups on the street, narcotics addicts who must commit crimes to support their habits, incorrigible troublemakers with a manifest streak of viciousness and violence, and compulsive sex offenders.

Also turned loose are other defendants with special motives to engage in crime while awaiting trial, such as those who may desire to "bankroll" their families for the time they are in prison, or to pay off a bondsman or a loan shark or a gambler, or to simply have a "last fling."

As Deputy Atty. Gen. Richard G. Kleindienst pointed out at a Senate hearing, "Society has the inherent right to protect its members, for limited periods through due process procedures, from persons who pose a serious threat to life and safety . . .

"Today, federal judges are faced with an agonizing decision when a dangerous defendant stands before them. They must either disregard the mandate of the Bail Reform Act by setting bail beyond the defendant's means, or they must shut their eyes to community danger. One course perpetuates hypocrisy; the other course is hazardous to society.

"Open pretrial detention would eliminate hypocrisy from the bail system . . . defendants would be afforded a due process hearing in which they would gain a significant measure of protection against arbitrary determinations."

It is to be hoped that Congress not only will adopt the pretrial detention system for the District of Columbia but that it will pass legislation applying the system to all federal courts throughout the land.

[From the Norman Brewer Report, WMC–TV, Memphis, Oct. 16, 1969]

A proposal by President Nixon to legalize pretrial detention of certain Federal criminal defendants on grounds that they are dangerous is up for consideration in Congress. The plan is controversial. Legal authorities differ on whether it is constitutional—a question the Supreme Court may some day be asked to settle. They also disagree on whether pretrial detention would achieve its purpose—to protect society from violent crimes committed by some defendants while they are free, pending trial on earlier offenses. A House Judiciary Subcommittee is scheduled to hold hearings on the Administration proposal to authorize Federal judges to order pretrial detention of certain defendants after a hearing and compliance with specified conditions. The problem has become acute in the District of Columbia—the only place in which Federal jurisdiction includes street crimes. The D.C. police have reported that 35 percent of defendants indicted on armed robbery—who were released pending trial, were re-arrested and re-indicted on subsequent felonies—mostly armed robberies—before they came to trial in their first cases. D.C. police authorities declared recently that crime in the Capital City could almost be "cured" if 300 hardcore criminals and narcotics users could be put in jail. The records show that not only in Washington, but nationwide, increasing numbers of crimes are being committed by persons already indicted but free on pretrial release. Many are being arrested up to seven times for new offenses while awaiting trial. Libertarians will be screaming about how pre-trial detention of hardcore criminals will violate the American system of justice. But that system is in deep trouble. Isn't it time that some changes were made in it? Changes that balance protection of the innocent with protection of the guilty?

[From the Richmond (Va.) News Ledger, June 30, 1970]

LET THE JUDGES DECIDE

A few days ago in Washington, a traffic patrolman shot and killed a robbery suspect fleeing from a liquor store holdup, after the suspect had shot the patrolman through the chest and neck. Details of the shooting repeat a pattern that has prevailed in the nation's capital since passage of the Bail Reform Act of 1966, under which all suspects charged with other than capital crimes in Federal courts must be released on bond if the judge considers them likely to show up for trial.

Had Federal District judges in Washington been permitted to consider a suspect's record or the likelihood that he would commit other crimes while free on bond, the recent shootout might not have occurred. The suspect in the case, Franklin E. Moyler, had the record of a hardened criminal. He had served two years in jail on charges of assaulting an officer. He subsequently chalked up a number of assault charges: In January, he was charged on four counts, including assault with a deadly weapon, but was released when he posted one-tenth of a $1,500 bond. On June 1, he was charged again with robbery and released on a $2,000 bond. So he was free on June 19 to shoot and to wound a policeman critically.

The latest incident adds yet more imperative reasons for approval of a preventive detention provision included in the D.C. Crime Bill, under which Federal District judges would be permitted more discretion in setting bail. The Tydings Advisory Panel Against Armed Violence recently endorsed preventive detention as "an immediate response to armed violence." The panel found, in its investigation, that one out of every 11 suspects released on bond is charged with subsequent offenses before reaching trial on the first charges. The panel also reported that offenders charged with certain crimes, such as burglary, robbery, and narcotics offenses, are much more likely to be charged with subsequent offenses while free on bond.

The preventive detention proposal has sincere opposition from those who believe that it infringes on the constitutional rights of criminal suspects. After all, they say, the suspect has not yet faced trial on his charges, and therefore he must be presumed innocent and set free until proved guilty. Opponents further contend that only a small percentage of those released actually commit new crimes before their trials, and preventive detention would punish both the innocent and the guilty.

These arguments fail to persuade. In recent testimony before a Senate subcommittee, U.S. District Judge George Hart recounted 14 cases in Washington in which preventive detention would have prevented commission of new crimes by the suspects, all of whom had been charged with crimes of violence. The subsequent crimes included rape, attempted murder, and armed robbery. In Judge Hart's view, the right of society to be protected from crimes of violence justifies approval of preventive detention.

Those who oppose preventive detention somehow view judges as ogres who would welcome an opportunity to put every criminal suspect behind bars. The record suggests otherwise. Judges who deal daily with violent criminals soon learn to recognize a hardened criminal when he appears in their courtrooms. These judges also recognize their responsibility to uphold the law acting as instruments of that law. Arguments against preventive detention suggests that most judges are corrupt and that they have no ability to distinguish a hardened criminal from a first offender, an unjustified insult to the Federal judiciary.

The arguments continue, pro and con, and a great deal of misinformation results. Meanwhile, the crime rate in Washington rose 21 per cent during the first three months of this year over the same period in 1969; the national crime rate rose by 13 per cent. Even the liberal *Washington Post* has recognized that the lack of preventive detention has contributed to Washington's crime problems. With support from both conservative and liberal elements, preventive detention in conjunction with a speedier trial system, may yet prove a highly effective weapon against those who repeatedly threaten the lives and safety of citizens in the nation's capital.

ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. BYRD of West Virginia. 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 o'clock and 24 minutes p.m.) the Senate adjourned until tomorrow, Thursday, July 23, 1970, at 11 a.m.

EXTENSIONS OF REMARKS

ONE MAN'S PERSEVERANCE

HON. LOUIS C. WYMAN

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 22, 1970

Mr. WYMAN. Mr. Speaker, an article appeared in Sunday's Boston Globe that describes the splendid work of Mr. Hugh Tuttle, former mayor of Dover, N.H., in keeping his family's three-century-old farm a prosperous and going concern in the fact of growing urbanization.

Hugh Tuttle's energy, industry, and dedication to his home and his fellow citizens are well known in Dover, N.H., and throughout New Hampshire's First Congressional District. In these rapidly changing, and often confusing times, Hugh's accomplishment serves as an inspiration to us all.

The article follows:

IN AGE OF DISAPPEARING FARMS: HUGH TUTTLE LOVES THE LAND TOO MUCH TO GIVE UP

(By Nathan Cobb)

DOVER, N.H.—It is this simple: Hugh Tuttle loves the land.

For 325 years, the Tuttles have been farming the rich soil of Dover Point, three miles southeast of the center of this milltown of 20,000. The developments that chewed up the other farms along the Point and spit out the box-like houses that replaced them now squat at the borders of Hugh Tuttle's land, and he realizes they will someday invade his own fields.

But he also knows it has been his own ingenuity and foresight that has sustained the Tuttle farm for at least one more generation, thus assuring him he will always be a farmer. And that's all he ever wanted, really.

The success of Hugh Tuttle is ironic. His property has been worked by 10 generations of Tuttles and is the oldest farm in America that has continually passed from father to son. But Hugh's refusal to cling to the past has been its salvation.

Educated in botany at both Harvard and the University of New Hampshire, Tuttle has an advantage over most of his fellow farmers. He not only knows how something grows, he knows why.

As he drives you through his 40-plus acres of salad crops, he is likely to tell you about one of his latest experiments, perhaps the black sheets of polyethylene he is using to warm the topsoil. He has been active in the Soil Conservation Service for nearly 25 years, and he is constantly talking about "a better way."

But the main reason the Tuttle land has not yet gone for housing sits conspicuously beside Dover Point Road at the northwest corner of the farm. It is formally designated "Tuttle's Red Barn," but people hereabouts—who know Hugh as a former city councilor, mayor, acting city manager and state legislator—call it simply "Tuttles." It is the store where Tuttle sells the vegetables they grow, as fast as they can grow them.

"My father always sold to the independent stores," recalls Tuttle, who is 50 but whose bone-thin features, mahogany-colored skin and closely-cropped hair skim a decade off his age. "But then the chain supermarkets came in. They weren't interested in quality, just in buying cheap and selling high. We struggled along for several years and just weren't making enough income. I could see we had to do something."

Tired of paying 40 cents or more on the dollar to a middleman, the Tuttles warily opened their 125-year-old barn as a roadside store in 1956. They were immediately inundated by a quality-starved market that has been growing ever since. The daily appearance of 800–1000 customers who spend around $1200 is not uncommon, a volume of business that is a far cry from the two truckfuls of preordered groceries Tuttle was laboriously delivering to local stores every day 15 years ago.

The unchallenged manager of the store is Hugh's wife, Joan. She defies the stereotype image of a farmer's wife as she rushes about in fashionable bellbottoms and sandals, anxiously checking the loading platform in back for more vegetables or happily discussing four types of strawberries with a customer out front.

All three Tuttle children passed their growing-up summers in the store. But Rebecca, a long-legged blonde who is 17 and will start college in the Fall, may well be spending her last season on Dover Point. And Lucy, 25, lives in Paris, while 23-year-old William Penn Tuttle 3d is working in Boston.

The barn opens for the season with the green lettuce and spinach of late May, runs through the yellow corn of hot summer, and closes with the orange pumpkins of Halloween. Cars fill the parking lot long before the 10 a.m. opening, and many daily pickings are gone by noon. There is no such thing as "day-old," and smart shoppers telephone ahead to reserve certain vegetables.

The atmosphere around the store is chaotic crackerbarrel. The hectic filling of orders is likely to be salted with numerous questions about children, introductions of grandchildren and exchanges of news.

Not only are customers called by name. So are their dogs.

While all this controlled mayhem is taking place at the barn, Hugh Tuttle usually can be found quietly managing his fields. "It's better that way," he smiles. "Sometimes if a customer complains, I take it personally."

The farm now produces some 60 vegetables, everything from Swiss chard to Chinese peas. "We decided we were going to make these meat and potato Yankees like salads, and we've done it," Hugh laughs, His land covers 245 acres (the average U.S. farm being 250), but some 200 of this pasture, hayland, wasteland and the woodland that produces the fireplace logs he sells during Fall and Winter.

He keeps precise records of when, where and what he grows, as well as shortage and excess records. These details will make up his "bible" for subsequent years.

Complicated? "It's either do it this way or mechanize and grow only two or three crops, ship them to Boston, pay off the top, and let everyone make more money than you do," he says flatly.

Hugh Tuttle's day begins at 5:30 a.m., and by 7:30 he is joined by his pickers. Unlike many New England farmers, he has a built-in labor market. Dover is filled with low-income families who are anxious to have their teenagers work in the fields, and the University of New Hampshire is only four miles away. The farm receives some 200–300 work applications every year.

Picking goes on all day, with Tuttle acting as a liaison between the store and fields. When his wife tells him customers are waiting for peas, he hurriedly moves pickers to that area of the farm. Or beans. Or corn. And on it goes.

It was one John Tuttle—"Immigrant John", the family calls him—who first made his way to Dover Point from Bristol, England, in 1632, having been shipwrecked off the coast of Maine along the way. The land