vened, it could study and hopefully deter such disgraceful acts.

It is for the above reasons that I strongly support the following resolution and commend it to my colleagues:

MASSACHUSETTS HOUSE RESOLUTION

Resolutions memorializing Congress to request the President of the United States to take the necessary steps to convene an international conference to discuss the unrestrained exploitation of the fishery resources in international waters adjacent to our Atlantic shoreline

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

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

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

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

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

EPITOME OF HYPOCRISY?

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 22, 1970

Mr. BOB WILSON. Mr. Speaker, misinterpretation in all forms is an ever-increasing problem. I have just read a fine article in the Joe Holmes Commentary in which the author, Mr. Holmes, cites examples of this common occurrence. Furthermore, some misconceptions of the city of San Diego, which I represent, are clarified. I should like to share this perceptive article with my colleagues by including it in the RECORD:

Some years ago I worked on a newspaper which had quite a campaign against drunken driving. Always a worthy cause. The kicker in the story was that most of the editorials were written by a newsman who used to stumble into the office completely smashed every evening after he drank his dinner.

It was the epitome of hypocrisy.

My newsman friend comes to mind quite clearly these days as I watch various publications take up the banner of integrity, credibility.

Last Sunday the Los Angeles Times had a lead story on Page One of the United States allegedly paying various Asian nations to send troops into South Vietnam.

The headline said the U.S. was paying mercenaries to fight the war. Obviously the headline was designed to paint the U.S. in the most unfavorable light.

Webster's Dictionary defines a mercenary as one who "serves merely for pay or gain".

If I had not read the rest of Sunday's Los Angeles Times I might have accepted that organization of the loftiest ideals and possibly felt that they had the right to criticize the U.S. Government of dollar diplomacy.

However, the Los Angeles Times has little room to be a critic of mercenary tactics.

One of the supplements to that same Sunday publication was a tabloid section listing all the honor students in Los Angeles schools. On the surface it certainly looked noble. That is, until you turned to page eighteen of the forty page section where the "A" students of such high schools as Sylmar, Taft, Temple City, University City, Torrance are listed and, you find a half page advertisement.

The copy in the advertisement reads, in part, as follows:

"Mr. Bow Herbert, managing general partner and the Employees of the Horseshoe Club and the Gardena Club congratulate the A Students in the Los Angeles area."

The Horseshoe Club and the Gardena Club are two wide open poker gambling palaces, lavishly furnished and very similar to Vegas and Reno establishments on a smaller scale.

Apparently the Gardena gambling clubs wanted to plant the seed early with Los Angeles youth and, obviously the Los Angeles Times was pleased to cooperate.

It is most difficult to believe that an advertisement of a gambling operation in a high school student section was for any reason but "merely for gain".

Who is the Los Angeles Times to accuse anyone else of being mercenary?

I am unhappy over the expenditure of seventy-five cents for the magazine San Diego, a state of mind caused by the lure of a headline.

The headline: "Union-Tribune—Zapped Again".

I read the story and now I know how the housewife purchaser of a movie magazine feels. Her headline lure was likely, "Exclusive—Jackie Kennedy's New Love"—the story on the inside, of course, was about a new puppy in the Kennedy family.

San Diego Magazine's article had about as much zap as an argument between Supervisors Walsh and Austin.

The local magazine devoted one-third of the article to reprints of somewhat ancient writings by Newsweek and Time Magazine. In the trade that would be termed "lazy writing" but since the author was the publisher, there is little likelihood he will be fired.

The remainder of the article deserves some analysis.

San Diego Magazine thought it amusing that Midnite Cowboy won the Academy Award and great acclaim while the Union-Tribune refused to admit it, or any other rated movie existed.

There is no question that production of motion pictures has taken on a new tone today. Filth, degeneracy, abnormality have taken over much of the motion picture industry and any media organization which refuses to perpetuate it is simply reflecting the will of this community.

Stripping away all of the surrounding prose, San Diego Magazine blames the Union and Tribune for:

Not publishing publicity or advertisements about "Midnite Cowboys" and X-rated movie with heavy overtones of homosexuality.

We can only presume that San Diego Magazine is in favor of that new motion picture industry which has "glamourized" abnormality and lewd behavior.

Contributing to the perpetuation of a national image of San Diego as a city dominated by right wing crackpots and the Navy.

If there is any perpetuation of this erroneous concept it is done by such publications as San Diego Magazine.

For the fact that the Navy installations here were shut down, jobs rolls slashed and big vessels of the fleet ordered to other West Coast ports.

What a fantastic distortion of facts. Maybe two Navy offices have been moved, there have not been any major San Diego Naval Installation moved or closed! The Navy payroll in San Diego today is just as great as it was one year ago and as far as major Navy ships are concerned if the writer will check the bay next week he will see the Kitty Hawk back after repairs and the aircraft carrier Ticonderoga arriving to make San Diego her new homeport. If the U–T is being held responsible for the Navy actions in San Diego, they deserve some credit.

For failing to negate the Nixon's administration anti-narcotics activity, Operation Intercept and Operation Cooperation because, in the thinking of San Diego Magazine the Union-Tribune should be dominating National Policy.

In effect what the Magazine says is that the Union-Tribune did not oppose narcotics enforcement. This is some kind of a ridiculous charge.

There are many other areas where San Diego Magazine takes the U–T to task and the points are just as thin.

As a matter of fact, bad journalistic practices, inadequate reporting, suppression, all of the charges filed by the magazine against the newspaper are rampant throughout their very attack.

SENATE—*Thursday, July 23, 1970*

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

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

O Lord most holy, our hearts, our words, and our records are open to Thee. Have mercy on us when we have failed Thee. Add Thy blessing to our work which is well done. Now give us faith to count on Thy mercy for the past and to count on Thy power for the future.

Make us Thy servants. Lead us through the crucial decisions of this day so that we may lead others into a brighter tomorrow.

In the name of Him whose life was the light of men. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication 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 23, 1970.

To the Senate:

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

RICHARD B. RUSSELL,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, July 22, 1970, be dispensed with.

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

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent to limit statements to 3 minutes in relation to the transaction of routine morning business.

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

NARROWS UNIT, MISSOURI RIVER BASIN, COLO.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 992, S. 3547, and that in its consideration the Pastore rule of germaneness not apply.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered and the bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. S. 3547, to authorize the Secretary of the Interior to construct, operate, and maintain the Narrows unit, Missouri River Basin project, Colorado, and for other purposes.

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

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Interior and Insular Affairs, with amendments, on page 3, after line 13, insert a new section, as follows:

SEC. 6. The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the project shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable obligations, which are neither due nor callable for redemption for fifteen years from date of issue.

At the beginning of line 23, change the section number from "6" to "7"; and on page 4, line 6, after the word "the", strike out "unit and for future costs, if any, incurred under section 2 of this Act." and insert "unit."; so as to make the bill read:

S. 3547

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Narrows unit, heretofore authorized as an integral part of the Missouri River Basin project by section 9 of the Flood Control Act of December 22, 1944, as amended and supplemented, is hereby reauthorized as a unit of that project for the purposes of providing irrigation water for one hundred and sixty-six thousand acres of land, flood control, fish and wildlife conservation and development, public outdoor recreation, potential future municipal and industrial supplies, and for other purposes. The construction, operation, and maintenance of the Narrows unit shall be subject to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto). The principal features of the Narrows unit shall include the Narrows Dam and Reservoir, fish hatchery and rearing ponds, acquisition and development of the existing Jackson Lake Reservoir, including some rehabilitation of Jackson Lake Dam, for public outdoor recreation and fish and wildlife enhancement, and other necessary works and facilities to effect its purpose.

SEC. 2. The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the Narrows unit shall be in accordance with provisions of the Federal Water Project Recreation Act (79 Stat. 213).

SEC. 3. The Narrows unit shall be integrated physically and financially with the other Federal works constructed under the comprehensive plan approved by section 9 of the Flood Control Act of December 22, 1944, as amended and supplemented.

SEC. 4. For a period of ten years from the date of enactment of this Act, no water from the unit authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security.

SEC. 5. To the extent that project water constitutes a supplemental irrigation supply, the provisions of the Act of June 16, 1938, relating to the Colorado-Big Thompson project in Colorado are hereby made equally applicable to the Narrows unit.

SEC. 6. The interest rate used for purposes of computing interest during construction and interest on the unpaid balance of the capital costs allocated to interest-bearing features of the project shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue.

SEC. 7. There is hereby authorized to be appropriated for construction of the Narrows unit as authorized in this Act the sum of $68,050,000 (based upon January 1969 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering costs indexes applicable to the types of construction involved herein. There are also authorized to be appropriated such additional sums as may be required for operation and maintenance of the unit.

Mr. ALLOTT. Mr. President, I wish to express my appreciation to the chairman of the Subcommittee on Water and Power Resources (Mr. ANDERSON) and to the chairman of the full Committee on Interior and Insular Affairs (Mr. JACKSON), for their cooperation and assistance in moving this measure through the committee and bringing it before the Senate.

I also wish to express my thanks to Gov. John Love, the Colorado Water Conservation Board, the Lower South Platte Water Conservancy District, the Bureau of Reclamation, the U.S. Army Corps of Engineers, and the many other interested officials and individuals without whose support and assistance this legislation would not be before us today.

As Senators well know, one of the basic principles of the reclamation program is the detention and storage of surplus or flood flows of water for release and use at times when water is in short supply, thereby putting what would otherwise be waste water to a beneficial use. The project to be authorized by S. 3547 is the exemplification of that principle.

The Narrows unit was originally authorized by the Flood Control Act of 1944, as part of the comprehensive plan for the Missouri River Basin project. However, Public Law 88–442 in authorizing appropriations for the continued prosecution of projects authorized under the comprehensive plan, deauthorized projects not already started with the following language:

No part of the funds hereby authorized to be appropriated shall be available to initiate construction of any unit of the Missouri River Basin project, whether included in said comprehensive plan or not, which is not hereafter authorized by Act of Congress.

Consequently, a new feasibility study had to be conducted. Public Law 89–561 authorized the Secretary "to complete his analysis and studies and to process reports" on proposals which he anticipated would be substantially complete by June 30, 1966.

The Narrows unit will provide an average total supplemental supply of 140,700 acre-feet of water annually to the project service area. While this additional supply will not completely fill the average annual shortage of 178,000 acre-feet experienced in the Lower South Platte Water Conservancy District, it will move the area very close to a State of water solvency.

It should be noted that no distribution system is being authorized by this legislation. The distribution system already exists and was constructed by the users. This existing distribution system will be used to deliver the water made available by this project.

The physical features of this project include: the Narrows Dam and Reservoir and a fish hatchery. The fish hatchery will take advantage of the unique opportunity afforded by the construction of this dam and reservoir to enhance the recreation, fish, and wildlife enjoyment potential. There is a distinct shortage of recreational opportunities of the type afforded by large bodies of water in the area, as is characteristic of the high plains area of the Nation.

I am informed that the State of Colorado has indicated its intent to agree to administer the areas of the unit for recreation and fish and wildlife benefits, and will bear one-half of the separable costs attributable to those functional benefits, plus interest during construction. The State would also provide for the annual costs of operation, main-

tenance, and replacement in accordance with the provisions of the Federal Water Project Recreation Act.

Periodic floods have caused major damage in the Lower South Platte Valley. The last and perhaps the most serious flood in the history of the State, occurred in June of 1965. Many lives were lost, and property damage, both public and private, exceeded the half-billion dollar mark, statewide. I first introduced legislation to reauthorize the Narrows unit early in the 90th Congress, but due to the fact that there was considerable reconsideration of how best to control the great flood flows that have originated in the Bijou Creek Basin, action on that measure was deferred. The Narrows Dam and Reservoir is on the main stem of the South Platte River, but it is upstream from the confluence of the Bijou Creek and the South Platte River about 3 or 4 miles, and, therefore, provides no control of the Bijou Creek Basin. However, the main stem of the South Platte River poses a serious threat of flood damage due to its very large drainage area. The Narrows Dam will provide substantial protection from this threat.

Mr. President, in my March 4, 1970, introductory statement on this legislation, beginning on page 5970 of the RECORD, I set forth in detail the chronology of events which led to the abandonment of the earlier proposal to construct a diversion channel from Bijou Creek into the Narrows Reservoir, and I wish to incorporate that statement by reference at this time.

Mr. President, the Narrows unit will provide supplemental irrigation water for 166,370 acres of fertile farmland in northeastern Colorado. But, more than this, by insuring a more stable and adequate supply of water, it will help to stabilize the economy of the area. Investments in stabilizing the economies of the towns and small cities of our Nation yield not only economic benefits but many social benefits. A stable economic base is a natural antecedent to a better quality of life for the residents of a given area. In this sense the Narrows unit is an investment, and I believe it to be a very good investment in the future of not only northeastern Colorado and its people but the Nation as well.

By standards generally applied to such multipurpose reclamation projects the Narrows unit enjoys a good benefit-cost ratio—1.89 to 1 for total benefits. However, if one considers the benefits in human terms, its benefit-cost ratio is even more favorable. Benefits such as greater economic stability, greatly increased recreational opportunities, enhancement of fish and wildlife, and greater security from the hazards of devastating floods cannot be adequately measured in dollars and cents. While no one has yet devised a method for measuring such benefits with mathematical precision, these are significant benefits and should not be overlooked in our consideration of such projects.

Additionally, as the Assistant Secretary of the Interior Smith pointed out during the hearings, the project will have the added benefit of improving the quality of water in the South Platte River Basin below the dam.

Mr. President, in light of all the benefits to be derived from this project, and its very favorable benefit-cost ratio, I heartily recommend the Narrows unit of the Missouri River Basin project, and urge the passage of S. 3574, which will authorize its construction.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

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.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar.

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

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar will be stated.

AMBASSADOR

The assistant legislative clerk read the nomination of John G. Hurd, of Texas, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of South Africa.

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

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE DIPLOMATIC AND FOREIGN SERVICE

The assistant legislative clerk proceeded to read sundry nominations in the Diplomatic and Foreign Service, which had been placed on the Secretary's desk.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

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

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

LEGISLATIVE SESSION

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

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

ORDER OF BUSINESS

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

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

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore (Mr. METCALF). Without objection, it is so ordered.

ANNOUNCEMENT OF HEARING ON SENATE JOINT RESOLUTION 209 BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS

Mr. PASTORE. Mr. President, for the information of the Senate, I am today announcing that the Subcommittee on Communications will open hearings on Senate Joint Resolution 209 which would amend the Communications Act so as to require broadcast licensees to provide public service time to authorized representatives of the U.S. Senate and the House of Representatives to present the views of their respective bodies on issues of public importance.

The hearings will begin at 10 a.m. on August 4 in room 5110, New Senate Office Building. In announcing the hearings I have stated that during the past few weeks numerous requests have been made by elected officials and other public figures for an opportunity to present differing viewpoints on issues of public importance. The issues surrounding these requests involve the FCC's fairness doctrine. I expect during these hearings to develop every aspect of this important subject matter so that the committee may be in a position to take whatever appropriate legislative action is necessary.

I am inviting all of my colleagues, and especially I would hope that all members of the Commerce Committee, whether members of the subcommittee or not, will attend the hearings. I expect to hear from the chairman of the Democratic National Committee. I expect to hear from the chairman of the Republican National Committee. I expect to hear from the FCC, the networks, and all interested parties.

I think in this area there is a state of confusion at this time. I think it ought to be resolved once and for all. I am going to have the representatives of the public, the networks, the broadcasting companies, and anyone else interested in the matter present their views to the committee.

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

Mr. PASTORE. I yield.

Mr. SCOTT. Mr. President, I congratulate the Senator for setting down this matter for hearings. There has been a great deal of controversy about it. Everyone has his own definition of what constitutes fairness. It is important that all sides be heard on national controversies.

It is not an exact parallel, perhaps, when a legislator replies to a President,

no matter how important the legislator might be, or when the chairman of a national committee replies to a legislator or to a President. I do not know whether the principle would be evolved which would lead to some system or theory of matching up the matter of who ought to reply to whom. But I do think the whole thing needs to be clarified.

Charges have been leveled that one of the networks indulges in bias. I suppose that the networks will all vigorously deny it.

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

Mr. SCOTT. Mr. President, I ask unanimous consent that the Senator be permitted to continue for an additional 3 minutes.

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

Mr. SCOTT. Mr. President, I am sure that the public will, with equal concern and reaction, disbelieve them. However, here is a good chance to explore this matter and to find out whether there does exist any bias in the networks pro or con a political party or political individual and who would probably have the right to cite that situation and bring about a redress.

I am aware of the fact that sometimes the networks on Sundays feature almost entirely the members of one party or the other. I am told the answer to that situation is that it is difficult to get members of one particular party on that Sunday. That may well be the reason.

It would be well to explore the matter. As a member of the Senator's subcommittee, I am very glad to join in this matter.

Mr. PASTORE. Mr. President, this is a very complex problem. The President of the Unted States is the President of the United States, whether he be a Republican or a Democrat. Indeed, he is the President of all of the people of the United States, with the right and responsibility to communicate with them. But there have been instances where certain very delicate areas have been intruded upon that actually create a dilemma for the networks and the broadcasters. Some people resent the particular things that are being said. They dissent and feel that they should be allowed to explain their side of the issue.

I think it is the privilege of the President of the United States to say, "I have sent a bill to Congress on such and such a subject, and the Congress has not done anything about it."

I think the President has the perfect right to express his opinion. But whether the President can make such a statement without someone answering him—that is the important question. Such a statement as "I have sent a bill to the Congress, but the Democratic Congress has done nothing about it," involves getting into partisan politics. That raises a question. That is where the dilemma arises.

I would think that the President is perfectly free to say that if he wants to say it. I cannot stop him. But if we are going to follow the rule that the President of the United States is the President of the United States and speaking for all the people, then we get into an area that is more or less political. We get a popping up of people who resent it.

No one is more sensitive than a politician, especially when he is up for election.

Mr. SCOTT. How true.

Mr. PASTORE. Take the case of Senator MANSFIELD. He was given the opportunity to answer the President of the United States. He gave a very gentlemanly performance.

Mr. SCOTT. I agree.

Mr. PASTORE. Mr. President, Senator MANSFIELD'S opponent in Montana was immediately on all of the stations under the fairness rule for 25 minutes.

We ought to make some sense out of this. I do not know what the answer is at the moment.

Mr. SCOTT. Mr. President, the President of the United States is hardly in a position to get up and demand equal time whenever any columnist or cartoonist tries to do him in. He could hardly do that. It is not compatible with the dignity of his office.

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

Mr. SCOTT. Mr. President, I ask unanimous consent that the Senator be allowed to continue for an additional 3 minutes.

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

Mr. SCOTT. Mr. President, there is this gray area. Every time the President speaks, he speaks as the Chief Executive of the United States. He speaks also at times as the Commander in Chief of the Armed Forces. At other times he speaks as the head of his party.

At times some Senators might see implications which some may think to be highly political. Most of it may not be.

That decision should not be left in the hands of network presidents, some of whom in my respectful opinion have not always been totally free of a little leaning themselves to one side or the other. Each of them has built for himself his own mental lean-to over the years. It may lean to one side or the other.

It is too much power to put in the hands of the presidents of networks, for them to be the sole judge as to whether the President of the United States is speaking as President, as Commander in Chief, as party leader, or all three.

Mr. PASTORE. Mr. President, that is the reason why we have the fairness doctrine which has been substantiated and affirmed by the Supreme Court. We have section 315 that has to do with equal time. We have the Federal Communications Commission, which is Republican controlled. It has the supervision of the broadcast industry—not the networks, but the broadcasting industry.

I quite agree with the Senator from Pennsylvania. I know how fair the Senator from Pennsylvania is. He is a member of my subcommittee. I would hope that he would come to the hearings. I assure him that there is nothing politically partisan in what I am undertaking. It is bigger than the Senator from Pennsylvania or the Senator from Rhode Island as a Republican or a Democrat. It has to do with informing the public properly. It has to do with informing the President of the United States. It has something to do with maintaining the integrity of the Congress of the United States. All of these items are involved.

There are so many imponderables involved that I worry sometimes as to whether we can legislate on the whole thing. It comes down to the matter that we are all human beings. We all have our own dogmas, our own prejudices. Any strong-minded man must have an opinion of his own. It is hard for him to alienate himself from his opinion.

The Senator from Pennsylvania has been in public life longer than I have been—and I have been in it for 35 years. We know only too well that usually we have a life of responsibility and not a life of glory.

Mr. SCOTT. Not that alone, but I am trying—and there are days when I try more than others—to avoid the situation in which the public would get all their opinions from a great complex of invisible government of networks. The networks are not under the jurisdiction of the FCC as the rest of the broadcasting industry is.

I am just as anxious as is the Senator from Rhode Island to clarify it on a nonpartisan basis and try to make sure that everyone is fairly treated, because, after all, if discrimination and unfairness exist that erodes the whole concept of the democratic structure of Government.

Mr. PASTORE. I agree implicitly with the Senator from Pennsylvania. I hope we can be fair about this, and I expect to be fair. I have no ax to grind and neither has the Senator from Pennsylvania. We should straighten out this matter once and for all because there has been too much feuding going on in the newspapers, and it has solved nothing. We should solve it, if we can. This election is immaterial and the next election is immaterial, but for the future we should straighten out the entire matter.

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

Mr. PASTORE. I yield.

Mr. GRIFFIN. Mr. President, as another member of the subcommittee, I wish to join in commending the Senator for scheduling the hearings. I am sure they will be useful.

The Senator referred to a bill which would allow TV time for Members of the House and Senate.

Mr. PASTORE. That is the Fulbright bill. Senator FULBRIGHT introduced the measure.

Mr. GRIFFIN. I believe the intent is clear from the colloquy this morning that the scope of the hearings and the testimony would extend beyond that.

Mr. PASTORE. It is as broad as the distance between the Atlantic Ocean and the Pacific Ocean.

Mr. GRIFFIN. The whole subject.

Mr. PASTORE. That is correct.

Mr. GRIFFIN. The distinguished minority leader made reference to the fact that, of course, it is very difficult for the President, who is attacked politically all

the time by various spokesmen, and some of them in Congress. The President is attacked on television and in other forums. Obviously he is not in a position to ask, or would not respond or ask for, equal time in each such situation. I think it is quite obvious—and some people are pressing for this kind of situation—that we could get to the point where every time the President speaks to the people as the President, equal time would be allotted for political attacks against him. That could push a President into a position of not communicating with people as the President, or putting him in the position of communicating only as a politician rather than as the President. I think that would be very unfortunate.

Mr. PASTORE. I do not want that.

Mr. GRIFFIN. We are moving in that direction, as I see it, with some of the demands that have been made.

Mr. PASTORE. That is why we are holding the hearings. We do not want to be pushed into that corner. I might say to my distinguished colleague that it is not only the President who carries this cross of people criticizing him and he has no way to answer every time. The Senator and I have lived that kind of a life for a long time. Let us face it.

ORDER OF BUSINESS

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

Mr. SCOTT. Mr. President, I ask unanimous consent that I may proceed for 1 additional minute on another matter.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.

AMERICAN PRISONERS OF WAR

Mr. SCOTT. Mr. President, as the war in Vietnam continues, and a certain amount of unrest continues to surface here at home, I often think of the sentence from the Book of Jeremiah, chapter 31, verse 29:

> The fathers have eaten sour grapes, and the children's teeth are set on edge.

This may be so, but there is one thing we must remember. Over 1,400 American men are still held prionsers of war by the North Vietnamese in violation of the Geneva Convention. This we must never forget. Let their sad plight, and the relieving of it, be our daily concern.

THE CASE AGAINST DENIAL OF TAX DEDUCTIBILITY OF CONTRIBUTIONS TO PRIVATE SCHOOLS IN THE SOUTH

Mr. ALLEN. Mr. President, a recent editorial in the Montgomery, Ala., Advertiser-Journal makes an irrefutable case against the recent action of the Internal Revenue Service in denying the deductibility, for income tax purposes, of contributions to private elementary and secondary schools in the South.

I have given notice to the Senate that when a revenue measure of any sort comes over from the House I will offer an amendment that, if adopted, would require the continuation of the allowance of such deductions. At that time the issue will be discussed in depth.

In the meantime, I believe that my colleagues would profit by reading this editorial, and I ask unanimous consent that it be printed in the RECORD at this point.

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

[From the Montgomery (Ala.) Advertiser-Journal]

PUNISHING THE HERETICS

The recent Internal Revenue ruling that private schools would not be entitled to tax-exempt status unless they can prove that they aren't "private" at all seems to be an extension of the tax law which properly belongs to Congress.

But let's assume, for the sake of argument, that IRS was legally empowered to do what it did; that it can by administrative ukase decree that private means public and can enforce this. The precedent is thus clearly established for a long overdue ruling on the tax status of some 30,000 foundations—a great many set up as simple tax dodges, others to attempt to change laws or public policy.

The precedent is also set for acting against religious organizations that have much of their estimated $100 billion in net worth invested in wholly unreligious activities—from wineries to skating rinks, parking lots and girdle factories.

Last year, former Commissioner of Internal Revenue Mortimer M. Caplin, in testimony before the House Ways and Means Committee, attacked these church-owned businesses:

"A number of churches have entered into active and aggressive commercial endeavors. One, for example, has become a wholesale distributor of popular phonograph records. Another has acquired at least seven sportswear and clothing manufacturing businesses. Others conduct real estate development businesses, provide petroleum storage facilities and carry on a broad variety of manufacturing enterprises."

There has been little done to penetrate these privileged tax sanctuaries, or those of the foundations, including some run by and for hoods.

Private schools established in the South in recent years will, at best, break even. Many will collapse, and would have before IRS tried to make assurance doubly sure. Few have any taxable profits and rich donors are fast disappearing. There are now so many struggling private schools, even the wealthiest benefactor can't give to one without offending others.

Large gifts had all but disappeared before the IRS ruling. Parents who contribute to building funds for their schools will be penalized, but who cares about them? They are in the group which pays most of the income taxes anyway and have never been accustomed to anything more than piddling exemptions and deductions. (Tuition is not involved, since it has never been a tax-exempt contribution.)

IRS was careful to point out that it wasn't getting into the religious, foundation or fraternal organization thicket. Why not? Because these represent political power and billions of dollars, whereas private school patrons and their benefactors are few, the money involved is relatively trivial, and Negro militants wanted something done about the "white flight" to private schools.

Senator Allen raked the Administration in Congress the other day for ignoring the foundations while concentrating on Southerners who "carry a double burden." They continue to support public schools, Allen said, then pay high tuition rates for the only right of free choice and association left to them.

In May, the Justice Department filed a brief supporting tax-exempt status of all private schools. But an internal squabble in the Administration resulted in a strategic withdrawal.

Columnist David Lawrence asked an irreverent question: How can tax deductions "be justified for gifts to an organization known as the 'National Association for the Advancement of Colored People' and yet be denied when made to organizations which seek to advance the education of white people?"

The doctrine liberal answer would be that this is different because the NAACP has defended minority rights and done nothing unconstitutional. Just so. But the record will show that NAACP has for years, before and after the school decisions, challenged laws and decisions it didn't like.

Parents who send their children to private schools are not doing anything nearly so bold. They are not challenging laws or refusing to pay their school taxes, but merely opting out of the federalized system for reasons they think are good. They are conscientious objectors.

What could be more American than this silent, peaceful dissent, paying for schools they left as well as those they choose to send their children to?

But, as we said at the outset, assume that IRS is right, legally and morally, and that private school patrons and their vanishing contributors are wrong, legally and morally. Then the ukase must be extended to foundations and religious organizations.

The Cathedral of Tomorrow Church of Akron, Ohio, owns the Real Form Girdle Company and a plastics corporation on Long Island. Churches own millions in stock in an infinite variety of companies, including some their own members may think quite sinful. They pay no taxes on their income and their records are not reported.

Writing in Look for May 19, Kenneth Gross revealed that one New York City church had an investment portfolio of $257,000,000; another of $175,000,000.

One-third of the land in New York City is untaxed. Churches and synagogues own most of it. The lowest estimated value of the land they occupy is $726,000,000, but tax experts say a more realistic accounting would amount to at least twice that.

Not all of it is used for non-religious purposes of course, but much of it is. Many churches are landlords and giants of industry and commerce. More than a few are slumlords.

In 1969, Congress would not tamper with the ancient privilege, although the tax reform law did give the churches six years to get rid of businesses unrelated to religious purposes. The grace period will almost certainly be extended indefinitely.

The IRS, following the private school precedent, could crack down now with its own directive. Will it? Of course not. It even exempted religious private schools from its July 10th directive.

We believe in the absolute necessity of public education, but that is not the issue. The issue is whether or not a minority of Americans who choose to remove their children from the system, for whatever reason, are to be tainted with the label of illegality, while thousands upon thousands of infinitely wealthier enterprises enjoy tax-exempt status simply because they are too powerful for IRS to tangle with.

The issue, in essence, is freedom, not money; so little is involved. For political purposes, the Administration has chosen to stigmatize a group of Americans who are dissenting lawfully and constitutionally,

even as they bear the load for both public and private education. As parents, they have elected to pay this price, which most of them can't afford.

Some may be prejudiced, but then prejudice in the purest sense is evident in every religion, every fraternal organization in all groups where people choose to associate with those with whom they have ideological, ethnic, religious or other reasons for common understanding.

Of all these, only one has now been declared a taxable "prejudice"—the desire of parents, for whatever reason, to seek what they consider the best for their children, their dearest possessions. They may be wrong in their beliefs, just as other groups may be; but they alone have been singled out for damnation by IRS, which picks on the weak and blinks at the powerful.

If it is tax money IRS is seeking, it could find, without half looking, so much richer fields as to beggar comparison. But it's not that. IRS has simply been used, willingly it appears, as an instrument of quasi-religious excommunication of heretics.

The secular theology pronounced in Washington is total integration. Those who quietly decide they won't accept the dogma are to be punished by double taxation, a crude perversion of equal justice under the law.

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

The ACTING PRESIDENT pro tempore (Mr. METCALF). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

WEAPONS SYSTEMS COSTS—REPLY TO SENATOR PROXMIRE

Mr. STENNIS. Mr. President, I think all Members of the Senate know that I have long been concerned by the question of cost growth in connection with our major weapons systems. For this reason I asked the Department of Defense in January 1969, to establish a system whereby the status of the schedule, cost, and performance characteristics of major weapons systems would be reported to the Senate Committee on Armed Services on a quarterly basis. My concern in this area has continued and our surveillance of the major weapons systems has been intensified.

It was for this and other reasons that I was greatly interested in the comments of the distinguished Senator from Wisconsin (Mr. PROXMIRE) on the floor of the Senate on July 20, 1970, with respect to cost increases of major weapons systems. Since the Senator's comments dealt with a subject matter which is of intense interest to me, I would like to take a few minutes to comment briefly on his statement.

I want to make clear that I admire the Senator from Wisconsin and his work very much, and think that he does a great deal of good in this field. I think in this instance, though, the facts that were given him were somewhat incomplete, and his conclusions, therefore, were not fully justified on the basis of all the facts.

The distinguished Senator stated that the costs of 38 selected major weapons systems had increased by $3.6 billion to $23.8 billion over the planned costs in the 9 months period from June 30, 1969, to March 31, 1970.

That is just a period of 9 short months, and if those figures were the entire story, we would have an alarming and drastic situation indeed.

The Senator added that the figures which he had recited were taken "from a report by the Comptroller General of the United States," which he had earlier requested.

He asserted that "the major cost increases occurred on four programs—Safeguard ABM, P–3C aircraft, Minuteman II, and Minuteman III." He listed a cost increase for Safeguard ABM of $1,754 million; for P–3C aircraft of $291.1 million; for Minuteman II of $464.4 million; and for Minuteman III of $1,142.8 million.

He stated:

> In only one of these 4 systems, Minuteman III, was the cost overrun attributable to any extent to an increase in the number of units purchased. Even in the case of that program a major portion of the added costs was caused by reasons unrelated to the change of the number of units.

I repeat that my remarks today are not intended to be critical of the Senator from Wisconsin in any way. I admire the fine work he has done with his subcommittee. What I say today is merely for the purpose of making the record with respect to these weapons systems clear and complete.

In the first place, most of the figures furnished the Senator by the General Accounting Office represented data obtained from the March 31, 1970, selected acquisition reports—SAR. These are the reports which I mentioned as being established pursuant to my request back in January 1969. Copies of these are furnished each quarter to the Senate Armed Services Committee, the House Armed Services Committee, the Senate Appropriations Committee, the House Appropriations Committee, and the General Accounting Office. The General Accounting Office merely took the estimated cost data off of these SAR's and as it states in a letter to me of July 14, 1970, it "made no audit or verification of the reported data." Some of the systems in the GAO reports are not reported on quarterly SAR's and, therefore, the figures represented a one-time report as of June 1969.

Mr. President, I have already explained how difficult it is to get at the true basis or the beginning of these so-called estimates. Error crept into the Senator's statement, as I see it, because of some incomplete information that he had, although the figures were furnished by the Department of Defense itself.

We should recognize that cost analyses, and the determination of whether or not there has been, and, if so, the extent of, cost growth is a complex, difficult and demanding function. A simplistic approach to the problem simply is not adequate. There must be assurance that apples and oranges are not being compared. Thus it often becomes necessary, in considering currently estimated costs, to make appropriate adjustments for changes in quantities, scope of the work, and performance characteristics. Also, it can be misleading to compare a current "hard" estimate of cost to completion with the "initial planning estimate" made before the specifications and detailed characteristics of a weapon system had been laid down and agreed upon and before the realistic cost data which is necessary for a firm estimate had been developed. If these and other pertinent factors are not taken into consideration, the conclusions can be inaccurate and misleading.

That is exactly what has happened with a great many of these estimates on weapons programs without anyone being at fault, either the Pentagon or the Members who might be using these figures. It is just a failure to take into consideration these hard and difficult problems affecting the original guess—and it cannot be any more than a guess, as I explained yesterday; guess as to what a weapon may cost, long before it has really been conceived or its dimensions or specifications have been settled. The guess occurs at a stage when there is just a concept of a need that is coming up or is going to appear on the horizon.

This proposition, I believe, is made abundantly clear by the history and cost reporting status of several of the programs which the Senator from Wisconsin mentioned in his floor statement. I will comment on one or two.

For example, in citing the increase of $1,754 million for the Safeguard ABM system, the distinguished Senator failed to mention that $1,345 million of this increase results from Presidential approval of the modified phase II Safeguard program, which includes a third site at Whiteman Air Force Base. For the Minuteman II program, the Senator cited an increase of $464.4 million. I would like to point out that $356 million of this amount is for military construction costs that were not in the earlier quarterly reports because of the definition of program costs in effect at that time.

That was certainly not his fault, and I lay no fault at his feet; but the hard fact is that if the Department of Defense had reported all costs on June 30, 1969, it would have shown that $356 million of this amount, as I have stated, was for military construction costs that are entirely apart from the cost of the weapon itself. One of the areas where we have improved the reporting system is requiring the inclusion of total program costs, and when the Department of Defense was not including these items of total program costs, it was creating an error in the thinking of all of us. So we now demand—well, I do not like that word "demand"—and now require that in reporting these costs, they include the total program costs.

The Senator has referred to these increases as program "cost overruns," but I doubt very much that the Senator would consider the program cost decreases that he reports for the F–111 and

C-5A programs to be "cost underruns." And indeed they are not. The point is, Mr. President, that to really have an accurate figure as to overruns, a firm starting point should be established other than the original planning estimate that is made long before the program details are grimly established or the program under contract. The additional point is that adding quantities to a program or enlarging the scope of work such as in the Safeguard program are not properly classified as "cost overruns."

They are just simply additions to the program, like a man starts to build a seven-room house and decides to enlarge it by putting on two additional rooms. That is not a cost overrun; it is just an additional cost because of additions or added buildings that go onto the original plans, added as an afterthought.

I would just like to add one brief comment, Mr. President, regarding the reports on major weapons systems. The Committee on Armed Services is now monitoring some 36 major on-going weapons systems with projected costs estimated at about $100 billion on the latest quarterly reports for the period ending March 30, 1970. The GAO report that Senator PROXMIRE refers to covers 38 weapons systems with a projected cost of about $66 billion. These include such older programs as the Titan III missile and the Mark-46 Torpedo where most of the program funds have already been authorized and appropriated. It is important to emphasize, as I have before, that of the projected cost of $100 billion reported to the Armed Services Committee, as of March 30, 1970—and this is a very important point—only about 34 per cent of the funds have been authorized and appropriated. It is also important to point out that some of these program costs are projections into the 1980 time frame—fully 10 years in advance. That is another reason why they cannot be absolutely certain. But the big point here is that of those amounts, only about 34 percent of the funds referred to, on March 30, 1970, had been authorized and appropriated.

The Senator from Wisconsin, in good faith, states:

> In my judgment, the cost overruns in these programs are largely the result of waste and mismanagement.

He also states:

> They represent public funds that are being used foolishly and that probably ought not to be spent by the Department of Defense at all.

Mr. President, the inference that the funds for all of these programs have been authorized and appropriated should be corrected. Only 34 percent of them have been authorized and appropriated. In fact, Mr. President, the majority of the funds for the current on-going programs have yet to be approved by the Congress.

It is easy to use words. It is easy to have a statement before you, which the Senator had before him, which unadvertently does not give all the facts. I say that it is easy to use words, but I submit that to paste the label of waste and mismanagement on all these funds to which he was referring, when two-thirds of it had not even been appropriated—much less spent—is inaccurate. How could it be called waste, when Congress had not even authorized it or appropriated the funds, and how could it be called mismanagement?

Those words go out on the wires and are put in the columns of the newspapers, they are commented upon by columnists, and the original error goes back to a mistake of fact.

The Senator said that the money was used foolishly. Mr. President, two-thirds of these funds have not even been used. They could not be used foolishly, when they have not been used—that is, two-thirds have not ever been appropriated. The Senator concluded from these erroneous facts that they probably ought not be spent at all. Well, that is a matter of judgment. But I point out that two-thirds of the funds had not been appropriated, and they have not been spent yet.

So I emphasize how easy it is to paste a department of government with labels and charges that are based upon incomplete information. This influences public opinion, but we cannot act on matters unless we have all the facts.

I know that this is error. I have talked with the Senator from Wisconsin a great deal, and he gets a world of information. I know he is always very frank and candid about matters when he has all of the facts and the complete story.

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

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the Senator be permitted to proceed for an additional 5 minutes.

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

Mr. STENNIS. I have another matter in mind carried over from last year, and I mention this for the sake of clarity. Last year, a speech was made on the floor of the Senate that did not charge that some $23 billion, I believe it was—a very large sum, in any event—had been wasted, but it was picked up by someone who inferred that the Senator charged waste. I am not referring now to the Senator from Wisconsin.

Then someone else picked that up, and finally many of the columns all read that this $23 billion had been extravagant waste. I found out about that later. I was busy holding hearings and later got into a detailed analysis of it. I found that in those items that were charged to waste were some of the most reliable missiles we had in the early stages of missile programs—the ones we relied on and spanned the gap, and the ones that made the difference. The old Atlas and Titan I missiles, I recall, were on the list. They became outdated and passed into oblivion, but they were the very workhorses of our program for a long time.

When those facts were brought out, only a very small percentage of this large sum could have been charged to waste, and that was merely with respect to cases in which the weapon did not work out well and had to be abandoned. In research, you get part of your money's worth even if a program does not prove to be successful.

I am merely trying to put what I think is the proper light on these matters, particularly in view of the forthcoming debate we will have—and a very good and timely one—on the military procurement bill.

Mr. President, I am furnishing the Senator from Wisconsin a copy of this statement. I came directly to the Chamber from a meeting of a subcommittee at which I had to be the presiding officer, and I did not have a chance to get in touch with him; but I have done so through this statement.

I yield the floor.

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (S. 3279) to extend the boundaries of the Toiyabe National Forest in Nevada, and for other purposes, and it was signed by the Acting President pro tempore (Mr. ALLEN).

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON PROPERTY ACQUISITIONS OF EMERGENCY SUPPLIES AND EQUIPMENT

A letter from the Director of Civil Defense, reporting, pursuant to law, on property acquisitions of emergency supplies and equipment by the Office of Civil Defense for the quarter ended June 30, 1970; to the Committee on Armed Services.

PROPOSED LEGISLATION TO AUTHORIZE THE DISPOSAL OF CELESTITE FROM THE NATIONAL STOCKPILE AND THE SUPPLEMENTAL STOCKPILE

A letter from the Assistant Administrator, General Services Administration, transmitting a draft of proposed legislation to authorize the disposal of celestite from the national stockpile and the supplemental stockpile (with accompanying papers); to the Committee on Armed Services.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on progress and problems in implementing the Federal Claims Collection Act of 1966, dated July 23, 1970 (with an accompanying report); to the Committee on Government Operations.

RECOMMENDATIONS OF FIRST CONSTITUTIONAL CONVENTION OF GUAM

A letter from the Governor, Territory of Guam, transmitting, for the First Constitutional Convention of Guam; to the Committee on Interior and Insular Affairs.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. MUSKIE, from the Committee on Public Works, with amendments:

S. 2005. A bill to amend the Solid Waste Disposal Act in order to provide financial assistance for the construction of solid waste disposal facilities, to improve research programs pursuant to such act, and for other purposes (Rept. No. 91–1034).

Mr. MANSFIELD subsequently said. Mr. President, I ask unanimous consent that the Committee on Public Works have authority to file its report on S. 2005 together with the individual views of the Senator from Florida (Mr. GURNEY).

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

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. PASTORE, from the Committee on Commerce:

Clay T. Whitehead, of California, to be Director of the Office of Telecommunications Policy.

By Mr. YARBOROUGH, from the Committee on Labor and Public Welfare:

Colston A. Lewis, of Virginia, to be a member of the Equal Employment Opportunity Commission.

Mr. YARBOROUGH. Mr. President, from the Committee on Labor and Public Welfare, I report favorably sundry nominations in the Public Health Service which have previously appeared in the CONGRESSIONAL RECORD and ask unanimous consent, to save the expense of printing them on the Executive Calendar, that they lie on the Secretary's desk for the information of any Senator.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). Without objection, it is so ordered.

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

Charles M. Bowyer, and sundry other candidates, for personnel action in the regular corps of the Public Health Service.

Mr. STENNIS. Mr. President, as in executive session, from the Committee on Armed Services I report favorably the nominations of 10 flag and general officers in the Army, Navy, and Air Force. I ask that these names be placed on the Executive Calendar.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). Without objection, it is so ordered.

The nominations, ordered to be placed on the Executive Calendar, are as follows:

Lt. Gen. John S. Hardy (major general, Regular Air Force), U.S. Air Force, to be placed on the retired list in the grade of lieutenant general;

Maj. Gen. John MacNair Wright, Jr., U.S. Army, to be assigned to a position of importance and responsibility designated by the President, to be lieutenant general;

Maj. Gen. Edward Leon Rowny, U.S. Army, to be assigned to a position of importance and responsibility designated by the President; to be lieutenant general;

Lt. Gen. Ferdinand Thomas Unger, Army of the United States (major general, U.S. Army); and Lt. Gen. Frank Joseph Sackton, Army of the United States (major general, U.S. Army), to be placed on the retired list in the grade of lieutenant general;

Rear Adm. Fred G. Bennett, U.S. Navy, for commands and other duties determined by the President, for appointment to the grade of vice admiral while so serving;

Rear Adm. Dick H. Guinn, U.S. Navy, for appointment as Chief of Naval Personnel;

Rear Adm. Dick H. Guinn, U.S. Navy, for appointment to the grade of vice admiral;

Rear Adm. Ralph Weymouth, U.S. Navy, for commands and other duties determined by the President, for appointment to the grade of vice admiral while so serving;

Vice Adm. Ralph W. Cousins, U.S. Navy, for commands and other duties determined by the President, for appointment to the grade of admiral while so serving; and

Rear Adm. Gerald E. Miller, U.S. Navy, for commands and other duties determined by the President, for appointment to the grade of vice admiral while so serving.

Mr. STENNIS. Mr. President, in addition, I report favorably 1,830 appointments and promotions in the Army in the grade of major; and 2,700 promotions in the Navy in grade of lieutnant commander and below. Since these names have already been printed in the CONGRESSIONAL RECORD, in order to save the expense of printing on the Executive Calendar, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). Without objection, it is so ordered.

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

Darrel W. Basom, and sundry other persons, for appointment in the Regular Army of the United States;

Gasper V. Abene, and sundry other officers, for promotion in the Regular Army of the United States; and

Ralph P. Abenante, and sundry other officers, for promotion in the U.S. Navy.

BILLS INTRODUCED

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

By Mr. MATHIAS (for himself and Mr. SPONG):

S. 4111. A bill to amend chapter 55 of title 10, United States Code, to provide for the continuation of certain benefits to mentally retarded and physically handicapped dependents of members of the uniformed services after the death of such member or after his discharge or release from active duty for a service-connected disability; to the Committee on Armed Services.

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

By Mr. TYDINGS:

S. 4112. A bill to improve judicial machinery by amending title 28 of the United States Code, to provide for the defense of suits against Federal employees, and for other purposes; to the Committee on the Judiciary.

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

By Mr. BAKER:

S. 4113. A bill to provide for the return of certain war trophies to Jack D. McKeehan; to the Committee on Finance.

By Mr. JACKSON (by request):

S. 4114. A bill to amend certain laws relating to Indians; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. JACKSON when he introduced the bill which appear under a separate heading.)

By Mr. JACKSON (for himself, Mr. ALLOTT and Mr. HANSEN) (by request):

S. 4115. A bill to establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior, and for other purposes; to the Committee on Interior and Insular Affairs.

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

By Mr. JACKSON (for himself, Mr. ALLOTT, Mr. FANNIN, and Mr. HANSEN) (by request):

S. 4116. A bill to provide for financing the economic development of Indians and Indian organizations, and for other purposes; to the Committee on Interior and Insular Affairs.

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

By Mr. MONDALE:

S. 4117. A bill to make permanent the provisions of the Agricultural Trade Development Act of 1954, as amended; to the Committee on Agriculture and Forestry.

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

S. 4111—INTRODUCTION OF A BILL TO PROVIDE BENEFITS FOR VIETNAM WAR VETERANS

Mr. MATHIAS. Mr. President, last week, on July 17, I reported to the Senate my concern over the present unfortunate situation in which the dependents of a serviceman killed in action can be left without the benefits of special remedial and handicapped medical aid, as provided for in chapter 55, title 10, of the U.S. Code. This section, in part, provides for the diagnosis, treatment, training, rehabilitation, special education, and institutional care if such inflicted dependents while a serviceman is on active duty for at least 30 days. This program, which is contracted by the Secretary of Defense, has my strong and admiring support. We pride our society on our willing and humane acceptance of responsibility for each other, especially the small children who enter our world seriously handicapped. Chapter 55 of title 10 assumes part of that responsibility and I would like to take this opportunity to commend the Defense Department for the administration of the program as currently authorized.

I feel that it would be in accordance, not only with the overall purpose of the present program, but also with the moral obligation of our society for youngsters orphaned by war, to extend this program to include dependents of those servicemen who have died or been disabled in service to their country. There is now no area in veterans benefits which provides for the specialized medical and health care to which I am referring. The medical burdens of a family in such cases are drastically increased. For war widows, such as Mrs. James H. Palmer of Falls Church, Va., medical costs can increase by as much as $150 a month. Such a hardship only compounds the painful adjustments which must be made when a soldier returns disabled or not at all. I feel that we have an obligation to correct such past inequities and to ensure that they shall not occur again.

For these reasons I now introduce the bill with the cosponsorship of the Senator from Virginia (Mr. SPONG), I hope that the members of the Armed Services Committee will share my concern and act expeditiously in support of it.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The bill will be received and appropriately referred.

The bill (S. 4111) to amend chapter 55 of title 10, United States Code, to provide for the continuation of certain benefits to mentally retarded and physically handicapped dependents of members of the uniformed services after the death of such member or after his discharge or release from active duty for a service-connected disability introduced by Mr. MATHIAS, for himself and Mr. SPONG, was received, read twice by its title and referred to the Committee on Armed Services.

S. 4112—INTRODUCTION OF A BILL—AMENDMENT OF TITLE 28, UNITED STATES CODE, TO PROVIDE FOR THE DEFENSE OF SUITS AGAINST FEDERAL EMPLOYEES

Mr. TYDINGS. Mr. President, by the provisions of the Federal Tort Claims Act of 1946, the United States waived its sovereign immunity and provided for redress for damage to or loss of property or personal injury or death brought about by the negligence or wrongful act or omission of a Government employee while acting within the scope of his office or employment. The act provided that the United States would be liable to the injured party for such acts by its employees under circumstances where a private person would be so liable under the applicable State law where the act or omission causing the damage of injury occurred.

As originally enacted, the Federal Tort Claims Act did not provide a bar to an action against the employee personally, although a judgment in a civil action brought under the act would bar an action against the employee for damages arising from the same act or omission—28 United States Code, section 2676. In practice the continued right to sue an employee personally has not provided any additional meaningful protection for claimants.

In 1961 and 1965, statutes were enacted which barred personal action against two classes of Federal employees. In 1961, Public Law 87–258, the so-called Government Drivers Act, was enacted providing that suits against the United States under 28 United States Code, section 1346(b) for damages resulting from the operation of a motor vehicle by an employee of the Government while acting within the scope of his office or employment shall be exclusive—see 28 United States Code, section 2679 (b) and (c) for procedures for its invocation. The 1965 act—Public Law 89–311, 38 United States Code, section 4116—provides similar protection for medical personnel of the Veterans' Administration. Although bills have been introduced in subsequent sessions of Congress to provide other classes of employees with the same type of immunity from personal suit, no final action to provide such protection has been taken.

The time has come to provide such protection for all Federal employees while in the discharge of their official duties. There is no reason why, for example, the driver of a Government vehicle or a Veterans' Administration physician should be so insulated while a physician or lawyer in another branch of the Government stands outside the charmed circle of such coverage, particularly since, as a practical matter, the availability of the personal suit burdens the Government employee without significantly benefiting the potential plaintiff. In the military service, for example, the physician, functioning for the Government in the same manner as his counterpart in the Veterans' Administration must personally carry professional liability insurance or stand under the cloud of possible personal private litigation, litigation from which the Veterans' Administration physician has complete immunity. This untenable situation has an adverse impact on the retention of much needed physicians for career military service.

The bill that I am introducing today, for appropriate reference, will eliminate the present inequity by repealing 38 United States Code, section 4116 and providing all Federal employees with immunity from personal linability in tort through the exclusiveness of a remedy provision contained in the proposed amendment to 28 United States Code, section 2679(b).

In addition, this bill closes another avenue of possible action against a Federal employee by removing the possibility of suit in a State court, when an alternative system of benefits or compensation has been provided. In *Feres* v. *United States*, 340 U.S. 135 (1950), the court held that an injured serviceman was barred from suit under the Federal Tort Claims Act because Congress had provided an alternative system of compensation under chapter 61, title 10, United States Code. While this decision serves under the facts of that case as a bar to suit against the Government, it does not protect the alleged tortfeasor from suit in a State court, despite the fact that the injured party is entitled to or is in receipt of such alternate compensation. This bill clarifies the presently vague state of the law by making it clear that immunity is provided to the alleged tortfeasor, as well as the Government, when an alternate system of compensation has been provided.

The legislation that I am introducing today makes one other improvement in the law, title 28, section 2680(h) in its present form subjects medical personnel, rather than the Federal Government, to personal suit because of a technical assault or battery arising out of the performance of medical, dental, or related treatment or clinical studies or investigations, because of the language excluding suits based on a theory of assault or battery from the coverage of the Federal Tort Claims Act. 38 United States Code, section 4116 provides protection from such claims to Veterans' Administration medical personnel. Section 3 of the bill repeals section 4116 and provides instead such protection for all Government medical personnel, including Veterans' Administration physicians or paramedical personnel, bringing them all under the same protection of the Federal Tort Claims Act.

In my opinion the protection that would be provided by this legislation to Government medical and other personnel, particularly those in the armed services, is long overdue. I hope that the legislation will be enacted this year.

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

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

The bill (S. 4112) to improve judicial machinery by amending title 28 of the United States Code, to provide for the defense of suits against Federal employees, and for other purposes, introduced by Mr. TYDINGS, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

S. 4112

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2679(b) of title 28, United States Code, is amended to read as follows:

"(b) The remedy against the United States provided by section 1346(b) and 2672 of this title, or by alternative benefits provided by the United States for injury or loss of property or personal injury or death, caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, shall hereafter be exclusive of any other civil action or proceeding arising out of or relating to the same subject matter against the employee or his estate whose act or omission gave rise to the claim, or against the estate of such employee."

SEC. 2. Section 2676(d) of title 28, United States Code, is amended to read as follows:

"(d) Upon a certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings deemed a tort action brought against the United States under the provisions of this title and all references thereto. After removal the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States under the Federal Tort Claims Act. Should a United States district court determined on a hearing on a motion to remand held before a trial on the merits that the employee whose act or omission gave rise to the suit was not acting within the scope of this office or employment, the case shall be remanded to the State court."

SEC. 3. Section 2680(h) of title 28, United States Code, is amended to read as follows:

"(h) Any claim arising out of assault or battery (other than assault or battery arising

out of the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations), false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights."

SEC. 4. Section 4116 of title 38, United States Code, is repealed.

SEC. 5. This Act shall apply to all claims accruing on or after the first day of the third month which begins following the date of its enactment.

S. 4114, S. 4115, AND S. 4116—INTRODUCTION OF BILLS RELATING TO INDIANS, AND ESTABLISHMENT OF AN ADDITIONAL ASSISTANT SECRETARY OF THE INTERIOR

Mr. JACKSON. Mr. President, I introduce, for appropriate reference, three proposed bills submitted by the Secretary of the Interior in furtherance of President Nixon's message of July 8 on American Indian Affairs.

Other Senators may wish to join in the sponsorship of these measures, and I will be happy to include their names if they will so advise me.

Mr. President, I ask unanimous consent that the letter from the Secretary of the Interior asking that these bills be introduced be printed in the RECORD following my remarks.

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

The bills, introduced by Mr. JACKSON, were received, read twice by their titles, and referred to the Committee on Interior and Insular Affairs, as follows:

By Mr. JACKSON (by request):

S. 4114. A bill to amend certain laws relating to Indians.

By Mr. JACKSON (for himself, Mr. ALLOTT, and Mr. HANSEN) (by request):

S. 4115. A bill to establish within the Department of the Interior the position of an additional Assistant Secretary of the Interior, and for other purposes.

By Mr. JACKSON (for himself, Mr. ALLOTT, Mr. FANNIN, and Mr. HANSEN) (by request):

S. 4116. A bill to provide for financing the economic development of Indians and Indian organizations, and for other purposes.

The letter, presented by Mr. JACKSON, is as follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 2, 1970.

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

DEAR MR. PRESIDENT: Enclosed are three legislative proposals that are submitted as a part of the legislative package that were discussed by President Nixon in his message to the Congress on Indians on July 8, 1970.

We recommend that each of the proposals be referred to the appropriate committee for consideration and that they be enacted.

We will in the near future submit remaining proposals needed to fully implement the new Indian policy enunciated by the President in his message.

The Office of Management and Budget advises that the enactment of the proposed legislation would be in accord with the program of the President.

Sincerely yours,

WALTER J. HICKEL,
Secretary of the Interior.

S. 4117—INTRODUCTION OF A BILL TO MAKE PUBLIC LAW 480, THE FOOD FOR PEACE PROGRAM, PERMANENT

Mr. MONDALE. Mr. President, I am introducing legislation to make Public Law 480, the important and highly successful food for peace program, permanent.

Programs carried on under this act are now in their 16th year and the basic legislation expires at the end of 1970.

Last month President Nixon forwarded to the Congress, as required by law, a report on activities carried out under Public Law 480 during the period January 1 through December 31, 1969.

The President, in forwarding the report, described the law's scope and benefits in these words:

> The Food for Peace Program enables the United States to pursue its food assistance goals and development objectives in a number of ways: bilaterally, through concessional sales programs and government-administered donations programs; privately, through religious and charitable voluntary agencies such as CARE; multilaterally, through institutions such as the World Food Program.
>
> In addition, local currencies generated through Title I concessional sales and received through repayments of earlier loans continue to provide balance of payments benefits to the United States by permitting expenditures of U.S.-owned currencies rather than dollars in many countries. Such currencies have also been used to finance projects undertaken to increase our commercial sales of agricultural commodities, and thereby helped to develop an increased market for U.S. agricultural products. These projects helped in 1969 to reverse the downward trend of U.S. farm exports in recent years.
>
> The Food for Peace Program enables the enormous technological capability and productive capacity of American agriculture to be utilized to assist low income countries in developing their agricultural sectors, and in feeding their citizens while they still require outside help in doing so. . . .

U.S. farm products shipped under Public Law 480 programs from its inception, July 1954 to December 31, 1969, totaled $18.6 billion, 23 percent of total agricultural exports during that period.

Wheat and flour accounted for half of the exports under Public Law 480 during this 15-year period. Other products which have accounted for $1 billion or more in exports under Public Law 480 are cotton, $2.1 billion; dairy products, $1.5 billion; rice, $1.2 billion; and soybean oil, $1.1 billion. These basic shipments are saving hundreds of thousands of lives in underdeveloped nations as well as helping U.S. balance of payments.

Sales for foreign currencies accounted for almost two-thirds of the total exports under Public Law 480 during the 15-year period, totaling $11.7 billion. Donations through voluntary agencies totaled $2.4, barter totaled $1.7, long-term dollar and convertible currency credit sales totaled $1.6, and government to government donations for disaster relief totaled $1.1 billion during this period.

In recent years sales agreements have increasingly called for dollar rather than local currency settlements as provided in the more recent amendments to the basic legislation. In the 1969 calendar year 39 sales agreements or amendments were signed having a total value of approximately $1 billion, 34 percent of which involved local currency financing, 49 percent local currency convertible to dollars and 17 percent long-term dollar credit.

Aggressive worldwide market development programs have been undertaken under Public Law 480 throughout its 16-year life. U.S. private trade and producer groups have joined with the Government, investing $96 million in market development programs as a supplement to $116 million made available under Public Law 480. In calendar year 1969, private market development funds of $15.1 million exceeded the Government's contribution of $12.5 million.

These funds have been used to sponsor trade mission tours, participation in trade fairs overseas, and publicity and advertising campaigns. Some 70 private U.S. agricultural trade and producer groups have cooperated with the Government in market development projects which have reached 70 different countries. Largely as a result of these market development programs commercial sales of agricultural products agroad have increased from $3.4 billion in 1960 to approximately $5 billion in each of the last few years.

These increased commercial agricultural exports have contributed importantly to an easing of our balance-of-payments problem. Foreign currencies generated through Public Law 480 sales also yield balance-of-payments benefits to United States. They are used in part to pay the upkeep of embassies and defense installations. These uses of local currencies plus interest and principal payments on dollar credit sales under Public Law 480 amounted to $258 million in 1969.

There are some who point to the sharply increased production of food grains in India, Pakistan, the Philippines and other underdeveloped countries in recent years as an indication that Public Law 480 programs are no longer needed. It is true that food shortages in these countries are not as acute as in earlier years. Imports under Public Law 480 provisions may be as urgently needed in many countries as in earlier years. But the gap between food needs in the less-developed countries and food supplies is still far too wide in many countries. I can do no better than to repeat President Nixon's statement in transmitting his 1969 report:

> The Food for Peace Program enables the enormous technological capability and productive capacity of American agriculture to be utilized to assist low-income countries in developing their agricultural sectors, and in feeding their citizens while they still require outside help in doing so.

These programs must be continued until they have fully achieved their goals.

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The bill will be received and appropriately referred.

The bill (S. 4117) to make permanent the provisions of the Agricultural Trade Development Act of 1954, as amended, introduced by Mr. MONDALE was received, read twice by its title and referred to the Committee on Agriculture and Forestry.

ADDITIONAL COSPONSORS OF BILLS

S. 3720

Mr. BAKER. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Kentucky (Mr. COOK) be added as a cosponsor of S. 3720, to preserve nationally televised news and public interest programs.

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

S. 3835

Mr. HUGHES. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Ohio (Mr. SAXBE), the Senator from Colorado (Mr. DOMINICK), and the Senator from Wisconsin (Mr. NELSON) be added as cosponsors of S. 3835, the Comprehensive Alcohol Abuse and Alcoholism Prevention and Rehabilitation Act of 1970.

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

S. 3984

Mr. McGOVERN. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Minnesota (Mr. MONDALE) be added as cosponsors of S. 3984, the American Indian Development Bank Act of 1970.

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

S. 4104

Mr. JAVITS. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Oregon (Mr. HATFIELD) be added as a cosponsor of S. 4104, the School Breakfast Act of 1970.

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

EMPLOYMENT AND TRAINING OPPORTUNITIES ACT OF 1970—AMENDMENTS

AMENDMENT NO. 790

Mr. CRANSTON submitted amendments, intended to be proposed by him, to the bill (S. 3867) to assure opportunities for employment and training to unemployed and underemployed persons, to assist States and local communities in providing needed public services, and for other purposes, which were referred to the Committee on Labor and Public Welfare and ordered to be printed.

AMENDMENT OF CLEAN AIR ACT—AMENDMENTS

AMENDMENTS NOS. 791 AND 792

Mr. NELSON. Mr. President, today I submit two amendments to the Air Quality Improvement Act, S. 3229. The first measure calls for strict inspection of Federal Government automobiles through periodic testing at various mileage intervals and stopping the production of any model that fails to comply with national emission standards for motor vehicles.

The amendment requires automobile manufacturers to comply with a 50,000-mile warranty provision that would give automobile owners legal standing to have their cars, emitting pollutants above national standards, repaired at the expense of the manufacturer.

In addition, the Secretary of Health, Education, and Welfare is authorized to test production-line cars to determine if the cars comply with emission characteristics of their prototypes. Test procedures for prototypes, production line vehicles and automobiles in use would be required to be geared to differing driving and weather patterns throughout the Nation.

The second amendment would authorize $50 million annually to the National Air Pollution Control Administration for the development of prototype low-emission engines. The funds requested by the administration are inadequate. If we want to develop an alternative to the internal combustion engine in this decade, then we will have to move quickly and decisively.

Earlier in the legislative session I introduced S. 3276, the Low-Emission Vehicle Act, which would ban the manufacture and sale of the internal combustion engine if a low-emission motor could be produced. Motor vehicles account for 60 percent of all air pollution and in some cities, such as Washington, D.C., produce up to 90 percent of the air pollution problem.

If the wind takes a holiday, the result can be disastrous. Los Angeles has already established what are called "red alert" days when parents and schools are advised not to allow children out to play strenuously because of the heavy smog. New York City was threatened by disaster in 1966, and Chicago in 1969. In 1952, heavy smog hung over London and was largely responsible for the deaths of 4,000 persons.

We have for too long been breathing the exhaust fumes of a technological society. It is time we introduced legislation for a consumer's society. The first amendment is similar to a proposal offered recently by the United Auto Workers, Environmental Action, National Audubon Society, Zero Population Growth, Sierra Club, Friends of the Earth, and the Wilderness Society.

Mr. President, I ask unanimous consent that the two amendments be printed, referred to the appropriate committee, and be printed in the RECORD at this point.

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

The amendments (Nos. 791 and 792) were referred to the Committee on Public Works, as follows:

AMENDMENT NO. 791

On page 8, between lines 16 and 17, insert the following:

"MOTOR VEHICLE AND MOTOR VEHICLE ENGINE COMPLIANCE TESTING AND CERTIFICATION

"SEC. 207(a) The Secretary shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under this Act. If such vehicle or engine conforms to such regulations, the Secretary shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe.

"(b)(1) In order to determine whether new motor vehicles or new motor vehicles engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Secretary shall test such vehicles or engines. Such tests shall be conducted by the Secretary directly.

"(2)(A) If, based on such tests, the Secretary determines that such vehicles or engines do not conform with the regulations with respect to which the certificate of conformity was issued, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before such date if still in the hands of the manufacturer), and until such time as the Secretary finds that vehicles and engines manufactured by the manufacturer do conform to such regulations. If, during any period of suspension or revocation, the Secretary finds that a vehicle or engine actually conforms to such regulations, he shall issue a certificate of conformity applicable to such vehicle or engine.

"(B)(i) At the request of any manufacturer whose certificate of conformity has been suspended or revoked, the Secretary shall grant the manufacturer a hearing as to whether the tests conducted on the vehicles or engines are appropriate, whether any sampling methods which have been applied are appropriate, or whether the tests have been properly conducted, and make a determination on the record with respect to such suspension or revocation; but suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

"(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the sixtieth day after such determination is made file a petition with the United States court of appeals for the Circuit wherein such manufacturer resides or has his principal place of business, for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his determination, as provided in section 2112 of title 28 of the United States Code. The findings of the Secretary in any public hearing held in accordance with section 554 of title 5 of the United States Code, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

"(C) The Secretary shall establish methods and procedures for making tests under this section and inform the manufacturers with respect thereto. The methods and procedures established by the Secretary shall take account of varying driving and climatological conditions throughout the United States and shall be reasonably calculated to assure compliance with the emissions standards prescribed under Section 202 under these varying conditions.

"(D) Every new motor vehicle or new motor vehicle engine sold by a manufacturer shall be warranted to have systems or devices for the control or reduction of substances

emitted from the vehicle or engine that are substantially of the same construction and performance as systems or devices, on test vehicles or test engines, for which a certificate has been issued to the manufacturer under subsection (a), and the manufacturer shall furnish with each vehicle or engine written instructions for necessary maintenance by the ultimate purchaser. In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under this Act. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Secretary shall prescribe by regulation. The manufacturer shall warrant that the system or devices for the control or reduction of emissions from motor vehicles or motor vehicle engines will meet the standards prescribed under this Act.

"(c) (1) In order to determine whether motor vehicles or motor vehicle engines in use do in fact conform with the regulation prescribed under this Act, the Secretary shall test motor vehicles or engines owned by the United States Government.

"(2) (A) If, based on such tests, the Secretary determines that such vehicles or engines do not conform with the regulations with respect to which the certificate of conformity was issued, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before such date if still in the hands of the manufacturer), and until such time as the Secretary finds that vehicles and engines manufactured by the manufacturer do conform to such regulations. If, during any period of suspension or revocation, the Secretary finds that a vehicle or engine actually conforms to such regulations, he shall issue a certificate of conformity applicable to such vehicle or engine.

"(B) (i) At the request of any manufacturer whose certificate of conformity has been suspended or revoked the Secretary shall grant the manufacturer a hearing as to whether the tests conducted on the vehicles or engines are appropriate, whether any sampling methods which have been applied are appropriate, or whether the tests have been properly conducted, and make a determination on the record with respect to such suspension or revocation; but suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

"(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the sixtieth day after such determination is made file a petition with the United States court of appeals for the circuit wherein such manufacturer resides or has his principal place of business, for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his determination, as provided in section 2112 of title 28 of the United States Code. The findings of the Secretary in any public hearing held in accordance with section 554 of title 5 of the United States Code, if supported by substantial evidence on the record considered as a whole, shall be conclusive."

On pages 8 through 17, redesignate sections 207 through 213 as sections 208 through 214, respectively.

AMENDMENT NO. 792

On page 2, line 3, after "Sec. 103." insert "(a)", and between lines 9 and 10 insert the following:

"(b) Such section 104 (c) is further amended by inserting after the first sentence the following: "In addition there are authorized to be appropriated for the fiscal year ending June 30, 1971, and each of the two succeeding fiscal years, $50,000,000 for the development pursuant to this section of prototypes of alternatives to the internal combustion engine for the purposes of this Act."

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business?

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

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

The bill clerk proceeded to call the roll.

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

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

RECESS

Mr. GRIFFIN. Mr. President, after consultation with the distinguished majority leader, I ask unanimous consent that the Senate stand in recess subject to the call of the chair.

The ACTING PRESIDENT pro tempore (Mr. METCALF). Without objection, it is so ordered.

Thereupon (at 11:56 a.m.), the Senate took a recess subject to the call of the chair.

The Senate reassembled (at 11:59 a.m.), when called to order by the Acting President pro tempore (Mr. ALLEN).

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

Mr. FANNIN. Mr. President, I am in support of the District of Columbia crime bill as reported by the conference committee.

There are a few details I would change if the choice were within my judgment, but the measure taken as a whole does accomplish one mission that has been sorely neglected in this critical period.

It reaches those who would abuse constitutional rights.

How long, Mr. President, are we going to continue our full time and attention to protecting the constitutional rights of those who would yell fire in a crowded theater, while we continue to ignore the victims?

Our forefathers created the greatness of this Nation the moment they stood firmly for individual rights and dignity.

But never was there any suggestion that our citizenship carried no responsibilities.

Never was there any suggestion that those who abuse constitutional rights or violate laws to the injury of others, should not bear the responsibility for that abuse and violation.

We must safeguard the constitutional rights of the individual, but that does not mean we must mollycoddle the criminal, or give his constitutional rights higher privilege than those of the victim.

No nation on this earth does a better job in safeguarding constitutional rights for the criminal.

It is about time we do as well for the criminal's victim—whose constitutional rights have been violated.

Mr. President, at least 29 States, including my own State of Arizona, recognize and approve a limited no-knock exception to preserve evidence and assist police.

The no-knock provision in the District of Columbia crime bill has been one of the controversial items, but it is less tough on the criminal than the law recognized in New York, and it basically follows the doctrine set out in the latest decisions of our U.S. Supreme Court.

Therefore, the District of Columbia crime bill goes no further than prevailing and existing law.

In addition, no-knock authority is not something new being created by this bill in the District of Columbia.

Police, armed with a search warrant, now may break and enter, over the occupant's objection, under Federal law. The "knock and wait" is the time-honored procedure, but since common law times, exigent circumstances have authorized no-knock searches and seizures.

Earlier this month, FBI agents raided 13 locations in the Washington area. They knocked and waited—and the occupants at several locations meanwhile destroyed the evidence while the agents stood at the door.

This is one example in which the no-knock provision, if enacted, would have saved the evidence by allowing police to enter without knocking. The provision also would allow no-knocking if there were supporting evidence the occupants would seek to escape, or were armed and dangerous.

What the no-knock provision in the District of Columbia crime bill does is to fix in the statutes the exceptions allowing no-knock entry, and it requires that police must obtain in advance such permission from the court, just as a search warrant must be obtained.

Thus, it spells out clearly the rules to police, and it safeguards the individual by allowing such police exception only with court permission.

Opponents of the no-knock provision have expressed concern that a court that has granted police a no-knock warrant, upon proper showing, would be loath to suppress evidence challenged at trial.

Rather, it would seem to me, a defendant is safeguarded in two respects. First, at the time of the trial he may challenge the initial showing of police to the court in obtaining the no-knock permission, and, of course, he may still challenge the seizure of the evidence by a motion to suppress.

Again, it would seem to me, the individual benefits by the fact that the court will not consider lightly the request of police to "no-knock." A showing must be made to the court to justify this exception.

Concern has been expressed by opponents of no-knock that the court will have to act as a prophet or soothsayer to guess future circumstances in granting no-knock exceptions. They insist that the circumstances cannot be known in advance.

Again, Mr. President, I say that supporting facts must be given to the court. This permission for an exception to "knock and wait" will not be granted carte blanche.

If a criminal in escaping has shot and killed a police officer, certainly it is a fact that the criminal is armed and dangerous. Who wants to knock at the criminal's door and announce a purpose of arrest—then wait for the door to open?

If a known narcotics peddler is heard, when police on an earlier occasion knock and wait at the door, to be scurrying around and flushing the toilet, should this not be ample reason to believe no-knock entry is necessary to preserve the evidence?

Concern also is expressed by opponents that the no-knock provision will spawn shoot-outs, by the sudden unannounced breaking in of a door "in one's own castle."

Mr. President, one can always conjure up circumstances under any rule where some unfortunate result may occur. No democracy is foolproof, else our Supreme Court would have no work to do.

However, Mr. President, constitutional rights and responsibilities are relative matters. Exercise of rights by one individual may abuse those of another. This is an ill-defined marginal area.

Our opponents to the no-knock provision have no easy solution to the experience recently of the two FBI agents who knocked at the door of the wife of a Washington area bank robber and announced their purpose, waiting. They were greeted by a burst of gunfire. Both were killed. Are we no longer concerned with the rights those agents may have had, or their widows and children?

There must be a balancing of rights. The citizens have a right to be protected.

They want to be secure in their person from those with criminal intent. They have the constitutional right to the pursuit of happiness, with safety.

They want to walk peaceably wherever and whenever they have a constitutional right so to do.

And they want those who violate our laws and do violence, to be brought to justice. This too, is a right in our society, and must be balanced with individual rights.

Assuredly, the right to be secure in one's own castle is as long as our history, and that right is safeguarded by requiring judicial determination.

With court order, the landlord today can have the tenant's household goods taken from the tenant's castle and set out on the street—all proper and constitutional. This right of law has not jeopardized the right of a citizen to be secure in his home.

The courts will safeguard the individual from abuse of the no-knock provision as well.

In a sense, the no-knock determination by the court against an individual does no more injustice to the individual than an indictment. It is a step in the process of justice and nothing more. It does inconvenience the individual—but so does the requirement to report and pay taxes.

Mr. President, the distinguished senior Senator from North Carolina has made a capable and persuasive argument in his opposition to the District of Columbia crime bill, and especially the predetention provision.

I may say in sincerity that I sleep easier knowing that the distinguished Senator is safeguarding the Constitution as he so ably does.

However, pretrial detention is not a new concept. As the distinguished Senator noted in citing statistics of those in jail awaiting trial in May 1970, 10 percent had been waiting for a year or more.

Nor is a speedy trial alone the solution. For whatever reason that motivates them, there are criminals whose record and behavior justifies pretrial detention.

It may be that the defendant is a professional criminal with a long record, it may be that he is a narcotics addict who must support his habit by crime, or he may be bent on building a kitty before anticipated imprisonment.

A little more than a month ago, a District of Columbia police officer, father of four, stopped a suspected car matching the description of the getaway car involved in a robbery minutes earlier. The officer, Ronald R. Watson, was critically wounded when a man in the rear seat opened fire. The officer exchanged fire and killed one of the suspects.

The dead suspect was free on personal bond on a robbery charge with a dangerous weapon only 3 weeks earlier, and he was identified as one of two men who had participated in a liquor store robbery the day before he was stopped by Officer Watson.

Mr. President, I ask unanimous consent to have printed in the RECORD the account of this incident in the June 19, 1970, issue of the Washington Post.

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

WOUNDED OFFICER KILLS HOLDUP SUSPECT

(By Alfred E. Lewis and Martin Weil)

A Washington policeman shot and killed a fleeing robbery suspect at New Jersey Avenue and K Street NW yesterday after the officer had been shot twice by the suspect, police said.

The officer, Ronald R. Watson, 25, of the traffic division, was shot in the neck and chest about 3:15 p.m. after he stopped a Volkswagen that matched the description of the getaway vehicle in a robbery that occurred minutes earlier, police said.

After being hit, Officer Watson fired six shots at two men who ran from the car, police said. They said three of the shots hit and killed Franklin E. Moyler, 23, of 1805 Belmont St. NW who, they said, had shot the officer.

Watson, a District Heights resident and a member of the force for four years, was reported in critical condition at Washington Hospital Center last night. He is married and the father of four.

A second suspect, Richard Frank Newell, 25, of 3531 Jay St. NE, was arrested last night at 7th and S Streets NW, police said. After questioning, police charged him with homicide, and robbery holdup with a gun.

They said he was picked up at 9:30 p.m. by two officers who responded to a call that the owner of a car wanted to report it was stolen. Newell was identified by police as the owner of the Volkswagen involved in the shooting.

Moyler was pronounced dead at Rogers Memorial Hospital at 3:30 p.m. with gunshot wounds in the right shoulder, chest and right arm.

Police said Moyler was free on personal bond after being arrested June 1 on a charge of robbery and carrying a dangerous weapon.

They said he had previously been convicted of robbery and assault on an officer and of assault.

Capsules suspected of being heroin were found in his pockets yesterday, police said. They said $918 was found in the car.

Police said Moyler, who collapsed about 30 feet from the southeast corner of New Jersey and K Streets NW after being shot, had been identified by a witness as one of the two men who earlier yesterday held up the G and B Liquor Store a few blocks away at 300 Massachusetts Ave. NW.

The robbery of the liquor store, in which an undetermined amount of money was taken by two men, one armed, touched off the chase that led to the shottings, police officials said:

This is the account they give:

As the robbers fled the store with the money, Adela Gotkin, co-owner, and one of four persons inside at the time of the robbery, ran from the store in pursuit.

She saw the pair come out of an alley in the 800 block of 4th Street NW in a light tan Volkswagen, with the license plate 697-468.

She returned to the vicinity of the store just in time to flag down three motorcycle officers that had just finished their 7 a.m. to 3 p.m. tours of duty.

Armed with Mrs. Gotkin's description of the getaway vehicle, the officers split up and fanned out through the neighborhood.

One of the three officers was Watson.

Shortly after starting north on 4th Street NW, police said, he caught sight of the alleged getaway vehicle.

At the intersection of New Jersey Avenue and K Street NW he caught up with the car and stopped it in the middle of the street.

Dismounting from his motorcycle, he approached the auto, gun drawn.

He told the driver to turn off the ignition and hand him the keys.

When the driver attempted to pull away, police said, Officer Watson grabbed for the keys.

At that point, police said, the man on the back seat of the car fired three shots at Officer Watson, hitting him twice.

Then, the two men bolted from the auto and ran south on New Jersey Avenue.

Hit in the neck and chest by the suspect's shots, Watson leaned against the left side of the Volkswagen's hood and fired six shots.

Moyler fell about 30 feet from the corner, in the driveway of a service station.

Two bullets hit the window and grille of a taxicab northbound on New Jersey Avenue NW, apparently causing no injury.

A revolver, which police said belonged to the dead suspect, was found in the intersection beside the open door of the abandoned Volkswagen.

Police said that the wounded officer's prospects were improved at the hospital when 23 blood donors responded to a call for six donors of AB negative blood.

Yesterday's incident appears to mark the second year that a Washington police officer shot and killed a man in the line of duty.

The number of such killings declined last year to 6, from 13 in 1968, despite an increase in the size of the force.

After a brief civil disturbance followed one of the 1968 shootings and public outcry fol-

lowed others, one of the city's actions was to issue new guidelines on the use of firearms by police.

The new guidelines state that an officer may fire at a fleeing suspect if the crime involved "an actual or threatened attack which the officer has reasonable cause to believe would result in death of serious injury."

Mr. FANNIN. Mr. President, in another case, the defendant attempted to rob a service station manager, who wrestled the gun from the defendant. In the struggle the gun fired, but no one was injured and the defendant fled. He was arrested a few minutes later.

Four days later, the defendant was released on his own recognizance. Two weeks later, two men robbed a Safeway store. One of the men, brandishing a .45 caliber automatic pistol, was identified as the defendant from photos the next day by a witness to the robbery, though he was not apprehended until 8 months later. On both charges and in separate trials, the defendant was found guilty by juries.

Mr. President, I ask unanimous consent to have printed in the RECORD summaries of five additional criminal cases, which summaries are in the records of the Department of Justice.

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

No. 1—KENNETH H. JACKSON

CRIMINAL NO. 190–68

At about 8:00 A.M. on December 26, 1967, John Myers was sitting in his car in front of the Wholesale Auto Parts Store at 1821 14th St., N.W., waiting for the store to open, when he was approached by a man subsequently identified as Kenneth H. Jackson. Jackson pulled a knife, held it to Myers' throat, and demanded his money. When Jackson attempted to search Myers' pockets, the two men struggled and they were observed by Officers Glen Hilton and Burtell Jefferson who were on routine patrol in the area. The officers arrested Jackson and he was released on personal bond the same day in the Court of General Sessions.

CRIMINAL NO. 514–68

Less than three weeks later at about 7:45 P.M., on January 13, 1968, Jane Doe, a sixteen year-old girl, was walking in the 2400 block of Nichols Avenue, S.E., when she was grabbed off the street by three men, dragged onto the Birney School playground near the corner of Nichols Avenue and Sumner Road, S.E., beaten about the face and head with the fists of her assailants, and raped several times. Miss Doe subsequently identified Kenneth H. Jackson from photographs as one of her attackers. Jackson was rearrested and was again released on personal recognizance on March 1, 1968.

Juries returned verdicts of guilty as to both the rape and robbery charges on November 8, 1968 and December 9, 1968, respectively.

No. 2—DANIEL BETHEL

CRIMINAL NO. 1087–67

At approximately 1:00 A.M., on June 19, 1967, Ellen von Nardroff, 38 years old, was awakened in her home at 1852 Irving Street, N.W., by unknown sounds downstairs. She put on a robe and began to leave her bedroom to ascertain their source when she observed the stairwell light go on and heard the breaking of glass. She stayed in the bedroom and shut the door, placing a chair against it as she heard footsteps ascend the stairs. She was unable to hold the door closed as a man, subsequently identified as Daniel Bethel, forced his way into her room, pushed her down on the bed, unzipped his pants and climbed on top of her, trying to force her legs apart. He was unable to make penetration solely because his victim was using sanitary napkins. He then got off her, asked for her money, and took a black purse containing $40.00. He then escaped.

Three weeks later at approximately 4:25 in the morning on July 10, 1967, Ellen von Nardoff's home was again broken into. Following the first break-in, however, she had purchased a twenty-gauge shotgun for her protection, and this time she and a friend held the intruder, again identified as Bethel, at bay until the arrival of the police. Bethel was subsequently released on his personal recognizance for both offenses on October 26, 1967.

CRIMINAL NO. 423–68

At 10:35 in the morning on February 5, 1968, two men entered Karl's Dry Cleaners at 6228 Third Street, N.W. One of the men brandished a .45 calibre revolver and told the store's owner, Norman Gray, to "give me your money," while the other man, subsequently identified as Bethel, went through Gray's pockets, removing some money and a watch. The two men then escaped in Bethel's car.

Bethel subsequently pleaded guilty to housebreaking and robbery on January 22, 1968, in connection with the two entries into the von Nardoff home. He pleaded guilty to the dry cleaning store robbery on October 4, 1968.

No. 3—NATHANIEL LEE, JR.

CRIMINAL NO. 125–68

At 6:25 P.M. on November 20, 1967, three men entered and held-up a McDonald's Drive-in at 1603 Good Hope Road, S.E. One man was armed with a .22 calibre pistol, another with a .38 calibre pistol and the third with a sawed-off shotgun. After taking an undetermined amount of money the men escaped. Nathaniel Lee, Jr., was subsequently identified by two eye-witnesses from photographs as the subject with the .22 calibre pistol. Lee was arrested on November 28, 1967, and was subsequently released on Personal Recognizance on January 30, 1968.

CRIMINAL NO. 462–68

Less than one month later at 2:05 A.M., on February 24, 1968, Larry Wise, a D. C. Transit Driver, was operating his bus in the vicinity of 15th Street and Stanton Road, S.E., when he felt a hard object in his back and was told: "Close the door and drive on straight, or I will kill you." Wise complied and, upon a further demand, turned over his money, his change carrier and his watch to the assailant, who was subsequently identified as Nathaniel Lee, Jr. Lee left the bus at 14th Place and Stanton Road, S.E., and was apprehended and held by a citizen who observed him running from the bus with the change carrier in his hand.

On November 4, 1968, Lee pleaded guilty to both the McDonald's and the bus robberies.

No. 4—JOHNNY L. PETERSON

CRIMINAL NO. 1520–67

Early in the afternoon of November 6, 1967, Hubert Madison, returning from a lunch break while serving as a juror in the Court of General Sessions, was standing in an elevator in the courthouse when Johnny L. Peterson, a defendant in a criminal case in which Madison was sitting, told Madison that the jurors "had better be right on the inside or they will be right on the outside." Peterson was charged with obstructing justice and was released on personal recognizance on January 26, 1968.

CRIMINAL NO. 651–68

Six weeks later at 5:05 A.M., Leon Hladchuk was removing newspapers from his panel truck in front of 3058 Mount Pleasant Street, N.W., when he was approached by three men, struck in the back of the neck by an unknown object, beaten about the head and face by his assailants, and searched for money. Hladchuk fought off his attackers and called the police. Officers Kenneth Brown and Wendell Huffstutler arrested the three men near the scene of the crime and Hladchuk identified one of them as Johnny L. Peterson.

Peterson was found not guilty solely by reason of insanity on the obstructing justice in a non-jury trial on October 7, 1968. He subsequently pleaded guilty to a lesser included offense of Attempted Robbery in the other case on January 9, 1969.

No. 5—JEROME OLNEY

CRIMINAL NO. 735–68

At 3:10 in the morning on March 2, 1968, Hugo Barlow, a D.C. Transit driver, was operating his bus in the vicinity of 14th Street and Independence Avenue, S.W., when he was approached by a subject subsequently identified as Jerome Olney who threatened Barlow with a knife and demanded his money. Barlow and Olney fought, and Olney was arrested a short distance from the scene after leaving the bus. He was released on personal recognizance later the same morning of his arrest.

CRIMINAL NO. 735–68

Ten days later at approximately 10:45 in the evening of March 12, 1968, James Sullivan, another D.C. Transit driver, was operating his bus in the vicinity of 9th Street and New York Avenue, N.W., when a man pulled a knife and placed it against Sullivan's neck with his right hand while holding his left arm around the victim's neck and demanding his money. Sullivan complied and his assailant, subsequently identified from photographs as Jerome Olney, escaped. Olney was arrested on a warrant two days later.

On August 7, 1968, Olney pleaded guilty to the lesser included offense of assault with a dangerous weapon in the Barlow robbery, and to robbery in the attack on the theft from James Sullivan.

Mr. FANNIN. These cases, Mr. President, illustrate that pretrial detention is necessary to safeguard the rights of this society.

However, it is to be emphasized that under the District of Columbia crime bill, such pretrial detention must be determined by the court, safeguarding all constitutional rights of the individual concerned.

In 1966 the Congress enacted the Bail Reform Act, which has decreased reliance upon money bond as a condition for release. The purpose of the 1966 act was to end the discriminatory practice of high bond that caught the poor but did not deprive the liberty of the defendant who could afford the bond.

However, the 1966 act also deprived the courts of any legal authority to hold potentially dangerous defendants.

The trial judge is faced often with a decision against his better judgment for the safety of society by releasing a dangerous suspect to bail, or in the subterfuge of setting high bond—when the money bond only is to assure the appearance at trial of the defendant and not to pass judgment of his behavior.

Recent studies of the bail practices in the District of Columbia show that 30 percent or more of those charged with criminal offense are currently under detention because of their inability to post bond. The detention rate for felonies is 40 percent.

Some consideration should be permissible on the part of the trial judge in the interest of society in cases involving compulsive, notorious, and incorrigible offenders. And that is the purpose of the pretrial detention provision in the bill.

Pretrial detention, Mr. President, is a fact of life and should not be hidden behind the money bail bond system.

A safeguard is provided in the bill that within 60 days the defendant, under pretrial detention, is to be brought before the judicial officer.

The distinguished senior senator from North Carolina has expressed concern that the defendant still might be detained indefinitely without trial.

In view of the statistics cited by the distinguished Senator showing that four District of Columbia detainees in May 1970 had been awaiting trial for 3 years or more, it would appear that the proposed provision, at its worst, would be an improvement over today's procedure. At the end of 60 days, the defendant will be before the court for judicial determination as to his detention.

We cannot overlook that a major change under the District of Columbia crime bill is the reform of the court system in the District of Columbia, and the addition of more judges to speed the trial process and end the backlog.

Mr. President, serious crimes have been rising here in the Nation's Capital at the alarming rate of 22 percent a year. In the past 5 years, the number of reported felonies in the District has risen 122 percent.

I do not wish to repeat crime statistics in the District of Columbia, Mr. President. But to emphasize the frightening aspect, I wish to note that the number of American soldiers killed in Vietnam in the first 6 months this year was only approximately 10 times the number of homicides committed in the District last year.

It means, Mr. President, that we have a war right here at home, a war of crime.

I am convinced that the District of Columbia crime bill will help reduce this sad record in our Nation's Capital.

And it will accomplish this goal by balancing rights and safeguarding constitutional privileges.

I fear that if we do not take action now to approve these reforms, we will only continue to build to the frightening record of crime in the District.

Back in the Civil War crisis, Abraham Lincoln was attacked by his critics—and even by historians today—for being lax on certain constitutional rights.

Lincoln reminded his critics that he had that sacred document, the Constitution, at the White House and that he was guarding it every moment.

Today, every one of the millions of our citizens are watchful that constitutional rights of the individual are protected. If anything, the atmosphere including that in our judicial system has been to lean over backward in preserving such rights.

Such watchfulness must ever be diligent. And I feel assured the District of Columbia crime bill does nothing to jeopardize those rights. I am concerned that we have been going a long way to forget those rights that have been violated of the victims. We must show more diligence in this direction.

Both the no-knock and the pretrial detention must be determined by the court. This is adequate safeguard.

Defense counsel can move to exclude the evidence if there is an absence of facts to allow the court to grant an exception to the traditional "knock and wait" rule, or if the police fail to get prior court authority to no-knock.

Pretrial detention procedure will place greater pressure for speedy trial, with judicial appearance provided after 60 days.

There are many other merits to the bill, Mr. President. One of these is the provision for mandatory sentence of 5 years for second offenders after conviction of a serious crime with a deadly weapon.

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

Mr. FANNIN. Mr. President, I ask unanimous consent that I be permitted to proceed for not to exceed 5 additional minutes.

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

Mr. FANNIN. Mr. President, I would like to see a mandatory sentence of 5 years for any conviction of a crime of violence with a deadly weapon. This would place the penalty for misconduct in gun possession where it belongs.

We do not need to penalize the innocent with gun registration, which will not stop deadly weapons from getting into the criminal's hands.

The certainty and sureness of punishment to the criminal for carrying a deadly weapon will provide the type of control that society needs to deal with abuse.

Mr. President, I do wish to note that the mandatory minimum penalty provided for second offenders in the District of Columbia Crime bill also is not new. The Omnibus Crime Control and Safe Streets Act of 1968 provided:

> In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than 25 years and notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

I also support the provision that a person is not excused in using force to resist an arrest when such arrest is made by an individual the person has reason to believe is a law enforcement officer, whether or not such arrest is lawful.

Mr. President, opponents to the bill have expressed concern that innocent persons under this provision my fall victim to an impersonator. By this argument, I fail to see that one who would impersonate a police officer would be dissuaded easily by resistance.

Nor do I see any evil in assisting our law enforcement officers in their duties.

We subject our police officers now to unpleasant duty of law enforcement, verbal abuse, stoning, bodily injury, and the presence of danger to their lives in carrying out their duties. Now, the opponents to this provision suggest we should add on to the shoulders of our police officers the right of the individual to use force in resisting arrest, lawful or not.

Mr. President, I do not know how long we can continue to tell our police officers they must bear, without complaint and as a part of their job, lumps on their heads, broken bones, and verbal and physical abuse—whether they are right or wrong.

If they are wrong, they might expect the public to turn its back upon them. But, here we are suggesting to the law enforcement officers, even when you are right, we will not support you—rather, instead, we will stack the deck for the wrongdoer.

We in Congress have shown concern at the demonstrations on our campuses and in our streets. If we continue to go the road we have, if we continue to fail our law enforcement officers in the proper function, I can foresee the day when they will rise up in a mass and protest.

If our police methods need to be improved, if our police officers need to be better trained and better paid, we must meet those needs. But we cannot continue to heap the burdens and responsibility of growing crime upon our police, without supporting and aiding them. Else, someday they will surely react.

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

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

AUTHORIZATION FOR CERTAIN ACTION TO BE TAKEN DURING TODAY'S ADJOURNMENT

Mr. SPONG. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to receive duly enrolled bills from the House of Representatives and that the President pro tempore or the Acting President pro tempore be authorized to sign duly enrolled bills during the adjournment of the Senate until midnight tonight.

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

Mr. SPONG. 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. HUGHES. 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. HUGHES. Mr. President, at this time add my voice to those opposed to the adoption of the conference report on S. 2601, the District of Columbia anti-crime bill.

Like many of my colleagues who are also in opposition to the conference report, I believe that the majority of the provisions in this anticrime bill are of high merit and deserve our full support. Such reforms in the criminal justice system as court reorganization to assure speedier and more competent trials, juvenile law reform, a public defender system, and an improved bail system are urgently needed and long overdue—here in the District and elsewhere in the United States.

However, the provisions that threaten our individual constitutional rights and that run counter to informed modern concepts of corrections and penology are totally unacceptable. I refer particularly to pretrial detention, the expansion of wiretapping authority by police, the provision for no-knock entry of private homes and the lowering from 18 to 16 of the age at which juveniles in certain cases must be tried as adults.

I agree with Senator ERVIN that these and some of the other repressive provisions of the bill constitute a dangerous threat to the fourth, fifth, sixth and eighth amendments to the Constitution.

In our necessary and justifiable zeal to control rising crime in our society, there is a tendency to forget that these basic guarantees in our Bill of Rights protect every innocent and law-abiding citizen in the land—not just the dangerous criminals.

These guarantees also draw the line between our free society and the totalitarian state.

Only in the framework of law can human rights be preserved. However, the purchase of civil order and individual security at the price of justice and freedom is the certain route to the totalitarian state.

One does not have to be a civil libertarian to see the dangers in relaxing our vigilance against repression in our laws. History is full of lessons that prove that a little repression is like a little cancer; it spreads and ultimately destroys the individual rights on which a free society is built.

I am convinced that such provisions as pretrial detention, no-knock entry, and expanded wiretapping are the dangerous beginning of a current trend toward the suppression of our traditional liberties. I also have not been persuaded that they are necessary or would be as effective as pictured by their proponents in the war against crime, to which we are all committed.

I also do not accept for a moment the proposition that we must buy these repressive features or have no anticrime bill at all. As I said earlier, the bulk of the provisions in S. 2601 are sound and urgently needed. The all-or-nothing-at-all notion advanced by the proponents of the bill does not square with my ideas of keeping faith with the people through the legislative process.

I have therefore joined with more than 20 of my colleagues in sponsoring an alternative District of Columbia crime package which retains the good reform provisions of the conference report—court reorganization, bail reform, and the adoption of the interstate compact on juveniles—but eliminates the repressive provisions to which I alluded earlier.

The legal points involved in the District of Columbia anticrime bill have been masterfully handled here on the floor by such distinguished lawyers in the Senate as Senator TYDINGS and Senator ERVIN. Those of us who are nonlawyers in this body are deeply indebted to those members of the bar who have outlined the arguments, pro and con, so lucidly.

We are all aware that the legislation on which we will vote this afternoon is not limited in its significance to the District of Columbia. It will be considered a template for the Nation of long-needed reform in our system of criminal justice. It will have great influence on the legislation and administration of Justice in States and local jurisdictions throughout the land.

With so much at stake, I regret that the most controversial features of the bill, those added by the House, are being considered from a conference report in floor debate, without the benefit of in-depth Senate committee study.

There are some very subtle points involved.

For example, with regard to preventive detention, how long can a man be detained? Is it 60 days—or can it be repeated 60-day periods?

Exactly what is meant by "dangerous" to society? Does it mean that, in the opinion of the magistrate, the individual to be detained is likely to commit a crime if released? Or can it stretch to mean any "socially dangerous behavior," whether criminal or not?

To order detention, the magistrate must find that there is "substantial probability that the person to be detained committed the act."

What constitutes "substantial probability" vis-a-vis the traditional presumption of innocence until proved guilty?

At this late stage in the debate on the District of Columbia anticrime bill, every legal and technical point has been touched upon by colleagues better versed in the law than I am.

It occurs to me that the most useful note I can add is to speak to some of the practical consequences of the repressive aspects of the crime bill as seen by one who has served three terms as Governor of his native State.

The administration of justice, after all, is primarily a State and local responsibility, and I have had some firsthand experience with it.

My distinguished colleague, Senator BYRD of West Virginia, drew an eloquent picture of the imperative need for decisive action to control the disgraceful rise of crime in our National Capital.

It is, of course, a national trend.

According to a recent FBI report, reported crime in the United States was 13 percent higher in the first 3 months of 1970, compared with the same 3 months in 1969.

I believe that all of us—on both sides of this matter—recognize the urgency and share the objective of achieving law and order without sacrificing justice.

The pivotal question is whether or not repressive measures, such as no-knock, preventive detention, and mandatory sentencing, are necessary to make our society law abiding.

And the corollary question is, of course, whether or not the price is too great.

As Governor, I heard from constituents, throughout the years, who demanded that the National Guard be called out for even the most minor civil disturbance.

I believe we are drifting into a trend of thinking in this country that is forgetful of the value of our liberties and how they were won, and that places simplistic faith in force and repression as the only route to achieving law and order.

The truth of the matter is that there is no shortcut to achieving an orderly society.

Threatening oratory, repressive legislation, and the toughest law enforcement with existing public safety facilities are not going to bring us the security from crime that we need and want.

My able colleague from Missouri, Senator EAGLETON, laid this point on the line with reference to the District of Columbia crime bill.

Like most other things we need, the achievement of an orderly society is going to take cash—prudently programed and allocated.

We need more, better trained, and better equipped police. We need upgraded court systems giving speedier trials—and we need to be willing to pay for this reform as well as to legislate it.

We need intensive research into police and corrections systems, and what is being done is not even token.

We need to tend to basic social and economic conditions that are conducive to crime—as has been spelled out by the Eisenhower Commission and numerous other prestigious national study groups whose reports are gathering dust on the shelves.

We need these and many other things that cost money—substantial money—if we are to have an efficient, modern, criminal justice system that will provide the security we want.

According to Lloyd N. Cutler, former executive director of the President's Commission on the Causes and Prevention of Violence, the amount that America invests in the criminal justice system—all police, all courts, all corrections, Federal, State, and local—is less than three-quarters of 1 percent of our national income, and less than 2 percent of all Federal, State, and local tax revenues.

This is barely more than we have been spending on the space program.

Frankly, I think that very few of the people who are justifiably upset by the growth of crime and violence in this country realize how little of our public investment goes for this vital purpose.

In conveying the notion to an expectant public that there is a shortcut to law and order through repressive measures, such as the District of Columbia crime bill contains, we would be doing the Nation a grave disservice.

We will only get security in this land when we are ready to take the massive

measures to overcome the real and basic causes of our insecurity.

Finally, I would point out that the devotion to order in our democratic society does not belong exclusively to those who equate law and order with regimentation and repression.

We need—and must have—security in our homes and streets and places of business for our law-abiding citizens.

But repression is not the answer.

And the price is too great.

It is for these reasons that I urge your support of the alternative District of Columbia crime package which preserves the major reforms contained in the conference report, but with the cancerous threats to our constitutional rights cut out.

ORDER OF BUSINESS

The PRESIDING OFFICER. Is there further morning business?

Mr. DOLE. Mr. President, I ask unanimous consent to proceed for 6 minutes.

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

PRETRIAL DETENTION

Mr. DOLE. Mr. President, many charges have been made with respect to the pretrial detention section of the conference report on S. 2601. My initial reaction to these charges is that they are somewhat short on documentation. If we are to accept and believe them, it would be helpful to have some compelling legal authority at hand.

One charge that is frequently made is that pretrial detention violates the eighth amendment. Opponents of pretrial detention argue that the bail clause in the eighth amendment which states, "excessive bail shall not be required," creates an absolute right to bail in noncapital cases.

Proponents of pretrial detention assert that the eighth amendment prohibits excessive bail whenever bail is set, but that subject to the due process clause of the fifth amendment, Congress may determine that for some serious offenses, bail need not be set as a matter of right.

By themselves, the six relevant words in the eighth amendment are susceptible to either interpretation. Consequently, those of us who are asked to interpret the amendment for ourselves would be greatly aided by citation to authoritative interpretation of the amendment in the past.

The statement of the bill's floor managers provides such authority, which is prefaced with the comment that:

> On the basis of existing authority the conferees could not locate persuasive evidence that a narrowly and fully protected detention alternative violates either the due process clause or the eighth amendment. The prohibitions against excessive bail cannot be read to mandate bail in all cases. . . .

Then the statement cites this authority:

> In *Carlson* v. *Landon*, 342 U.S. 524 (1952), the Supreme Court observed:
>
> "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. Indeed, the very language of the amendment fails to say all arrests must be bailable."
>
> This interpretation was reaffirmed in the recent case of *United States ex rel. Covington* v. *Coparo*, 297 F. Supp. 203 (S.D.N.Y. 1969), in which the Court said:
>
> "Congress could, without running afoul of the Eighth Amendment, . . . provide . . . that persons accused of kidnapping, bank robbery with force and violence, or other serious noncapital crimes are not entitled to bail as a matter of right."

Additional cases can be cited to substantiate this interpretation of the eighth amendment. They include: *Bloss* v. *People of the State of Michigan*, 421 F. 2d 903 (6th Cir., 1970); *United States ex rel Covington* v. *Coparo*, 297 F. Supp. 203 (S.D.N.Y. 1969); *Mastrian* v. *Hedman*, 326 F. 2d 708 (8th Cir.), *Cert. denied*, 376 U.S. 695 (1964); *United States ex rel. Hyde* v. *McMann*, 263 F. 2d 940 (2d Cir.), *Cert. denied, United States ex rel Hyde* v. *Lavallee*, 360 U.S. 937 (1959); *United States ex rel. Fink* v. *Heyd*, 298 F. Supp. 716 (E.D. La. 1968); *Wansley* v. *Wilkerson*, 263 F. Supp. 54 (W.D. Va. 1967); Cf. *Vanderford* v. *Brand*, 126 Ga. 67, 54 S.E. 822 (1906); *People ex rel. Shapiro* v. *Keeper of City Prison*, 290 N.Y. 393, 49 N.E. 2d 498 (1943).

It would appear that proponents of pretrial detention have met their burden of production of authority on this point and that it is time for those on the other side to come forward with equally impressive authority to support their position that "the eighth amendment establishes an absolute right to bail in all noncapital cases." This task should present no difficulty, for the Senator from North Carolina (Mr. ERVIN) has stated repeatedly that—

> Preventive detention is a constitutionally questionable device whose survival depends on a frontal assault of the Eighth Amendment as it has been understood from its enactment. (Emphasis added).

In my judgment, failure to produce an equally impressive list of judicial authority would call for a directed verdict, so to speak, in favor of the bill on this point. Certainly, the legislation is not presumptively unconstitutional.

One additional point opponents of pretrial detention might wish to consider is an exchange which took place in 1965 during Judiciary Committee consideration of Federal bail reform legislation. On page 148 of the published hearings the following is recorded:

> Mr. CREECH. Going back to the Eighth Amendment, to excessive bail and the feeling of some legal authorities that there is a right to bail, do you feel that judges can properly detain a defendant accused of a noncapital offense because he considers the man a danger to the community?
>
> Judge CRAVEN. I will be honest with you. It would be hard to convince me, but if you did convince me that he is really dangerous and that if I let him out he would be likely to kill his wife or mother-in-law, I would not let him out.
>
> Senator ERVIN. I might state on that point, I had a case one time in connection with a suit for false imprisonment of a person who had been detaind on account of insanity. Of course, he did not admit it. And I ran into this proposition that said that on the basis of common law any person has a right to temporarily detain another if there is a likelihood that he will do injury either to himself or to others by violence, until processes of the law can be set in motion for his detainment according to the statute law. And I have no doubt in my mind that if a judge has reasonable grounds for belief that an accused who is before him for the purposes of bail would be likely to commit suicide or be likely to commit a homicide or any violent crime on another, he would have a right to detain him for a reasonable period of time.

The Senator from North Carolina's distinguished record on the bench is well known but something has transpired in the past 5 years to cause him to change an opinion based on experience at virtually every level of his State's judiciary. The logic of his statement seems unimpaired by the passage of time.

At the same time that opponents of pretrial detention are finding authority to support their position, I would be interested to know why they are so certain Congress can authorize the detention of capital defendants but cannot authorize the dtention of noncapital defendants. The six words of the bail clause in the eighth amendment make no distinction between capital defendants and noncapital defendants. Rape is a noncapital offense in the District of Columbia, but a capital offense in the special maritime and territorial jurisdictions of the United States. Why should it be constitutional for the U.S. Government to detain a rape defendant when the offense occurs in a national park or a national cemetery, but unconstitutional to detain him when he commits his offense in the District of Columbia? Why should the State of Virginia, which punishes rape with death, be able to hold a rape suspect without bail while the U.S. Government cannot hold a rape suspect in the District of Columbia? Why was it constitutional in 1966, under the Bail Reform Act, to detain a rape suspect in the District of Columbia when rape was a capital offense here, but unconstitutional for Congress to authorize the same man's detention today?

This question of the Federal Government's power to detain a noncapital defendant is important to the States, because it is generally agreed that the eighth amendment applies to the States through the due process clause of the 14th amendment. I ask unanimous consent to have printed in the RECORD a letter from the Deputy Attorney General to Senator ERVIN on this point at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. DOLE. If the eighth amendment forbids State governments to detain noncapital defendants, then States that abolish the death penalty would be forbidden to hold even the likes of Richard Speck before trial. Murder defendants in New York, where capital punishment has been largely abolished in practice, are held

routinely before trial. Is this unconstitutional?

In the State of Florida, the constitution authorizes the detention before trial of defendants charged with life imprisonment. The same is true in Rhode Island. The model State constitution has such a provision, and it was recently included in the proposed Oregon constitution.

Opponents of pretrial detention must concede, I think, that if their interpretation of the eighth amendment should prevail in court, these State provisions will be held unconstitutional.

Such a prospect appears to me to be highly undesirable and inimicable with the concepts of federalism and the States rights which are so often held up as fundamental precepts of our Union.

Mr. President, I yield the floor.

EXHIBIT 1

OFFICE OF THE DEPUTY
ATTORNEY GENERAL,
Washington, D.C., June 19, 1970.

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: During my testimony before the Senate Subcommittee on Constitutional Rights on May 22, the question was posed whether the "excessive bail" clause of the Eighth Amendment applies to the States through the due process clause of the Fourteenth Amendment. This letter will attempt to answer that question.

Although the Supreme Court has not yet held that the excessive bail clause of the Eighth Amendment applies to the States, the Court has ruled that the "cruel and unusual punishment" clause of the same amendment is incorporated into the Fourteenth Amendment, which applies to the States. In addition, several recent lower court decisions have held that the bail clause of the Eighth Amendment applies to the States. On the basis of this contemporary authority, I am confident the Supreme Court will apply the bail provision to the States when that issue is next presented and that, in the meantime, we should assume the Amendment does apply to state judges in the same way it applies to judges in federal courts. *Ex Parte Watkins*, 32 U.S. 357, 361 (1833).

As you know, the Bill of Rights was drafted in 1789 as a series of limitations upon the power of the federal government, not as a protection of certain rights against action by the States. Consonant with this objective, there are numerous opinions of the Supreme Court holding that the first nine amendments to the Constitution do not apply to the States.

Specifically, in *Collins* v. *Johnston*, 237 U.S. 502, 510–511 (1915), the Court remarked:

"The Eighth Amendment is also invoked, with its prohibition against cruel and unusual punishments; but, as has often been pointed out, this is a limitation upon the Federal Government, not upon the States. *Barron* v. *Mayor of Baltimore*, 7 Pet. 243, 247; *Pervear* v. *Commonwealth*, 5 Wall. 475, 480; *McElvaine* v. *Brush*, 142 U.S. 155, 158; *O'Neil* v. *Vermont*, 144 U.S. 323, 332; *Ensign* v. *Pennsylvania*, 227 U.S. 592, 597."

The Fourteenth Amendment was adopted in 1868. Since the 1930s, the Supreme Court has slowly incorporated the provisions of the Bill of Rights into the Due Process clause of the Fourteenth Amendment, which was designed as a limitation upon the power of the States. Thus, in *Robinson* v. *California*, 370 U.S. 660, 667 (1962), where a California statute made it a criminal offense to "be addicted to the use of narcotics," the Court said:

"We hold that a state law which imprisons a person thus afflicted as a criminal, even though he has never taken any narcotic drug within the State or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment in violation of the Fourteenth Amendment."

Prior to this passage, the Court observed:

". . . [I]n the light of contemporary human knowledge, a law which made a criminal offense of such a disease [namely, mental illness, leprosy, or venereal disease] would doubtless be universally thought to be an *infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments*. . . . We cannot but consider the statute before us as of but one in the same category." 370 U.S. at 666–667 (emphasis added).

In a concurring opinion, Justice Douglas said:

"The command of the Eighth Amendment banning 'cruel and unusual punishments,' stems from the Bill of Rights of 1688. See *Francis* v. *Resweber*, 329 U.S. 459, 463. And it is applicable to the States by reason of the Due Process clause of the Fourteenth Amendment. *Ibid.* 370 U.S. at 675."

Citing the *Robinson* case as authority, a number of lower courts have now concluded that the cruel and unusual punishment clause of the Eighth Amendment applies to the States. For example, in *Jackson* v. *Bishop*, 404 F. 2d 571, 576 (8th Cir. 1969), Judge (now Justice) Blackmun wrote:

"Despite earlier comments to the contrary . . . the Eighth Amendment's guarantee against cruel and unusual punishments seems now to have come to be regarded as directly applicable to the states through the due process clause of the Fourteenth Amendment. Robinson v. California, 370 U.S. 660, 666 . . ."

Likewise, in *Beard* v. *Lee*, 396 F. 2d 749, 751 (5th Cir. 1968), the court said:

"The Eighth Amendment to the Constitution of the United States forbids infliction of cruel and unusual punishments. Through the action of the Fourteenth Amendment it applies to the States. Robinson v. California . . ."

Thus, there is no doubt that at least one clause of the Eighth Amendment applies to the States. In light of other recent court decisions, there appears to be no reason why the "excessive bail" clause should not apply also.

For example, in *Pilkinton* v. *Circuit Court of Howell County, Missouri*, 324 F. 2d 45, 46 (8th Cir. 1963), a bail case, the court said:

"We take it for granted that, contrary to earlier cases . . . the prohibition in the Eighth Amendment against requiring excessive bail must now be regarded as applying to the States, under the Fourteenth Amendment."

This ruling was followed in the subsequent case of *Mastrian* v. *Hedman*, 326 F. 2d 708, 711 (8th Cir. 1964), a decision in which the Supreme Court denied certiorari. 376 U.S. 965 (1964).

In *Henderson* v. *Dutton*, 397 F. 2d 375, 377 (5th Cir. 1968), Chief Judge John R. Brown of the 5th Circuit wrote:

". . . [S]ince Robinson v. State of California . . . the Constitution prohibits the States from inflicting cruel and unusual punishments [3] . . . [3] And undoubtedly excessive bail as well]."

See also *United States ex rel. Covington* v. *Coparo*, 297 F. Supp. 203, 205 (S.D.N.Y. 1969); *United States ex rel. Fink* v. *Heyd*, 287 F. Supp. 716, 717 (E.D. La. 1968); *Wansley* v. *Wilkerson*, 263 F. Supp. 54, 56 (W.D. Va. 1967); *Dembrowski* v. *State*, —Ind.—, 240 N.E. 2d 815, 817 (1968). This is not an exhaustive list.

On the basis of these recent cases, there is little reason to doubt that the "excessive bail" clause of the Eighth Amendment now applies to the States. Moreover, whatever our differing interpretations of the Eighth Amendment may be, we both agree that the Amendment protects a fundamental right. It would be inconsistent to stress the importance of that right but at the same time argue that the right is not sufficiently fundamental to be incorporated into the due process clause of the Fourteenth Amendment.

Consequently, whatever interpretation is placed upon the Eighth Amendment's bail clause as a limitation upon federal power must also be carried over to apply as a limitation upon the power of the several States. In this connection, I am enclosing with this letter a brilliant opinion by Federal District Judge Edward Weinfeld, who held that bail could be denied to a murder suspect although murder is no longer a capital offense in New York.

Sincerely yours,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

[297 F. Supp. 203]

UNITED STATES EX REL. COVINGTON *v.* COPARO
S.D. N.Y. 1969

Edward Weinfeld, District Judge.

The petitioner, held without bail upon an indictment returned by a New York County grand jury charging him with a triple murder in the first degree, seeks his release by way of a federal writ of habeas corpus unless reasonable bail pending trial is fixed either by the State Court or this Court. Petitioner contends he has an absolute right to bail under the Eighth Amendment to the Federal Constitution, since murder in the first degree is no longer a capital crime in New York State (with exceptions not here relevent).[1] The prosecution, in resisting petitioner's application in the State Court for bail,[2] denied such a constitutional right and also opposed the application on the ground that the three decedents named in the indictment were murdered in a dispute over narcotics; that petitioner had a criminal record; that he is a "professional hired killer"; and that if released on bail was unlikely to appear for trial. The denial of bail was affirmed by the Appellate Division without opinion and the Court of Appeals denied leave to appeal. Petitioner having exhausted the state process on this issue, federal habeas corpus is available to test the legality of his detention.[3]

Petitioner assumes that the Eighth Amendment, binding upon the State of New York under the Fourteenth Amendment,[4] requires that bail be granted as a matter of right in all except capital crimes. The Eighth Amendment, however, does not mention, much less distinguish between, capital and other felonies. It provides only that "excessive bail shall not be required * * *." It is true, as petitioner contends, that some courts have construed the Eighth Amendment to guarantee the right to bail in all but capital cases,[5] but such statements must be considered in the context of the Congressional statute governing bail, rather than as a command under the Eighth Amendment.

The Supreme Court has not spoken directly on the precise issue here presented. However, in considering a statutory provision authorizing the Attorney General to hold without bail alien communists under deportation charges, the Court observed that the Eighth Amendment did not confer a right to bail in every criminal prosecution. The Court also noted that it was within Congressional competence to define those classes of cases in which bail shall be allowed.[6] And from the Judiciary Act of 1789 to the present, Congress has always provided that an accused is entitled to bail as a matter of right in a non-capital case, whereas in capital cases bail is a discretionary matter.[7]

Congressional policy thus far has provided that only capital offenses are not bailable as

a matter of right. However, Congress could, without running afoul of the Eighth Amendment, also provide, for example, that persons accused of kidnapping, bank robbery with force and violence, or other serious noncapital crimes are not entitled to bail as a matter of right.[8] This Congressional power, of course, is confined by the due process clause of the Fifth Amendment. Thus, I am of the view that Mr. Justice Burton, in his dissent in Carlson v. Landon, correctly defined the scope of the Eighth Amendment to "prohibit * * * federal bail that is excessive in amount when seen in the light of all traditionally relevant circumstances. Likewise, it must prohibit unreasonable denial of bail."[9]

And as Congress is free, within constitutional limits, to define the classes of crimes which are bailable as a matter of right and those that are not, so, too, may the state legislatures. While the Supreme Court has not passed upon the direct issue, those federal courts which have are in accord that the Eighth and Fourteenth Amendments do not require the state to grant bail in all cases as a matter of right; all have recognized that a state may constitutionally provide that bail be granted in some cases as a matter of right and denied in others, provided that the power is exercised rationally, reasonably and without discrimination.[10] Thus, it is left to the courts to fix the amount of bail in all cases where it is a matter of right and also in those instances where the court exercises its discretion favorably; but, under the Eighth Amendment, where bail is fixed in either instance, it must not be excessive, and further, where bail is not a matter of right, the court may not arbitrarily or unreasonably deny bail.

New York State provides that admission to bail before conviction is a matter of right in misdemeanor cases and a matter of discretion in all other cases—including a non-capital murder charge, the charge against this petitioner.[11] New York's recent elimination of the death penalty upon conviction of murder in the first degree[12] following a course adopted in other states,[13] manifests an enlightened policy which should be deterred by a legislative concern that reduction of the penalty must automatically result in the granting of bail as a matter of constitutional right.[14] The penalty that may be imposed in the event of a conviction should not be the sole determinant on the issue whether bail is a matter of right; other factors, such as the nature of the offense, to mention but one, are also of substantial significance. No matter what the penalty, a murder charge remains a murder charge; a kidnapping charge remains a kidnaping charge, a rape charge remains a rape charge. Essentially, the basic purpose of bail remains whether, in the light of the nature of the charge and other significant factors, an accused will appear for trial and submit to sentence upon conviction.[15]

The state legislature may define types of crimes so that bail is not mandatory in all cases, leaving the determination of whether an accused is a good bail risk for the courts to decide in the exercise of their sound discretion.[16] And if the totality of circumstances is such that a court is of the view that no amount of bail will ensure the defendant's presence for trial, bail may be refused. A court's refusal of bail in an appropriate case does not trespass upon a defendant's federal constitutional rights under the Eighth and Fourteenth Amendments. In those instances where the court, in the exercise of discretion denies bail, the defendant's right to a speedy trial, a guarantee that prevents undue and oppressive incarceration prior to trial,[17] assumes significance. [18]

Petitioner here is charged with a triple murder; the state contends that he is a hired killer. The state could have found a real danger that petitioner, if released on bail, would take flight from the jurisdiction; that no amount of bail would assure his appearance for trial; also that his release might constitute danger to the community. The granting of bail under such circumstances might well amount to "irresponsible judicial action . . ."[19]

The petition is dismissed.

FOOTNOTES

[1] N.Y. Penal Law, McKinney's Consol. Laws, c. 40, § 125.30, subd. 1(a).

[2] Petitioner moved by a habeas corpus proceeding, as required under New York law. United States ex rel. Hyde v. McMann, 263 F.2d 940, 942 (2d Cir.), cert. denied, United States ex rel. Hyde v. La Vallee, 360 U.S. 937, 70 S.Ct. 1462, 3 L.Ed.2d 1549 (1959); People ex rel. Shapiro v. Keeper of City Prison, 290 N.Y. 393, 399, 49 N.E.2d 498 (1943).

[3] Brown v. Fogel, 387 F.2d 692, 694 & n. 1 (4th Cir. 1967), cert. denied, 390 U.S. 1045, 88 S.Ct. 1647, 20 L.Ed.2d 307 (1968); Wansley v. Wilkerson, 263 F.Supp. 54, 56 (W.D.Va. 1967).

[4] Pilkinton v. Circuit Court of Howell County, Missouri, 324 F.2d 45, 46 (8th Cir. 1963); United States ex rel. Fink v. Heyd, 287 F.Supp. 716, 717 (E.D.La. 1968); Wansley v. Wilkerson, 263 F.Supp. 54, 56 (W.D.Va. 1967).

[5] E. g., Trimble v. Stone, 187 F.Supp. 483, 484 (D.D.C.1960).

[6] Carlson v. Landon, 342 U.S. 524, 545, 72 S.Ct. 525, 96 L.Ed. 547 (1952).

[7] Rule 46(a), Fed.R.Crim.P.: "(1) *Before Conviction.* A person arrested for an offense not punishable by death shall be admitted to bail. A person arrested for an offense punishable by death may be admitted to bail by any court or judge authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense." See Stack v. Boyle, 342 U.S. 1, 4 72 S.Ct. 1, 96 L.Ed 3 (1951).

[8] Thus, it would be singular if, after the Supreme Court's invalidation of the death penalty in the Federal Kidnapping Act, 18 U.S.C. § 1201(a) (1), on grounds unrelated to bail considerations, United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968), the Eighth Amendment were to compel the release on bail of all defendants charged under the statute on the ground that their offense was no longer capital.

[9] 342 U.S. 524, 569, 72 S.Ct. 525, 548, 96 L.Ed. 547 (1952); cf. United States v. Motlow, 7 Cir., 10 F.2d 657, 659 (1926) (Butler, Cir. J.).

[10] Mastrian v. Hedman, 326 F.2d 708, 710–711 (8th Cir.) cert. denied, 376 U.S. 965, 84 S.Ct. 1128, 11 L.Ed.2d 982 (1964); United States ex rel. Hyde v. McMann, 263 F.2d 940, 943 (2d Cir.), cert. denied, United States ex rel. Hyde v. LaVallee, 360 U.S. 937, 79 S.Ct. 1462, 3 L.Ed.2d 1549 (1959); United States ex rel. Fink v. Heyd, 287 F.Supp. 716, 717–718 (E.D.La.1968); Wansley v. Wilkerson, 263 F.Supp. 54, 57 (W.D. Va.1967). Cf. People ex rel. Shapiro v. Keeper of City Prison, 290 N.Y. 393, 398, 49 N.E.2d 498 (1943). See also Bitter v. United States, 389 U.S. 15, 16, 88 S.Ct. 6, 19 L.Ed2d 15 (1967); Richman v. California, 85 S.Ct. 8, 13 L. Ed.2d 17, 18–19 (1964) (Douglas, Cir. J.); Carbo v. United States, 82 S.Ct. 662, 7 L.Ed.2d 769, 774 (1962) (Douglas, Cir. J.); Fernandez v. United States, 81 S.Ct. 642, 5 L.Ed.2d 683, 686 (1961) (Harlan, Cir. J.).

[11] N.Y. Code Crim. Proc. §§ 552, 553.

[12] N.Y. Sess. L. 1965, ch. 321, § 1.

[13] Sec. e.g., Alaska Sess.L.1957, ch. 132, § 1; Me.Rev.Stat.Ann. tit. 17, § 2651 (1964; Mich. CompLaws, § 750.316 (1948); Min.Stat., § 619.07 (1961); R.I.Gen.Laws, § 11–23–2 (1956); Vt.Stat.Ann., tit. 13, § 2303 (1968 Supp.); W.Va.Code, § 61–2–2 (1966); Wis. Stat., § 940.01(1) (1961).

[14] See also legislation, pending in the 90th Congress, that would have abolished the death penalty for all federal offenses, S. 1760, H.Rep. 754, 934, 2305, 9865, 10784, 10874, 12547, and amended the Constitution to prohibit imposition of the death penalty by the states, H.J. Res. 633.

[15] Stack v. Boyle, 342 U.S. 1, 4, 72 S.Ct. 1, 96 L.Ed. 3 (1951).

[16] People ex rel. Shapiro v. Keeper of City Prison, 290 N.Y. 393, 49 N.E.2d 498 (1943).

[17] United States v. Ewell, 383 U.S. 116, 120, 86 S.Ct. 773, 776, 15 L.Ed.2d 627 (1966).

[18] This right, of course, applies to the states and "is as fundamental as any of the rights secured by the Sixth Amendment." Klopfer v. North Carolina, 386 U.S. 213, 223, 87 S.Ct. 988, 993, 18 L. Ed.2d 1 (1967).

[19] Rehman v. California, 85 S.Ct. 8, 13 L. Ed.2d 17, 19 (1964) (Douglas, Cir. J.) Carbo v. United States, 82 S.Ct. 662, 7 L.Ed.2d 769, 774 (1962) (Douglas, Cir. J.). Cf. Painten v. Massachusetts, 254 F.Supp. 246, 249 (D.Mass. 1966).

ADDITIONAL STATEMENTS OF SENATORS

REPLY BY UNITED ARAB REPUBLIC TO PRESIDENT'S PEACE PLAN

Mr. TOWER. Mr. President, we are now receiving optimistic responses to President Nixon's diplomatic initiatives in the Middle East. The Washington Post today reported that the United Arab Republic has replied to the peace plan proposed by the President. Al Ahram, the official voice of the Egyptian Government, published a text of the American peace proposal in its yesterday's edition. Although the text of the peace plan was altered in three specific instances to satisfy certain Egyptian requests, we should all be heartened by the simple fact that Egypt has responded to the proposal.

It now seems evident that the President's statement in his recent television interview to the effect that the security of the State of Israel is in the national interest of the United States has been taken quite seriously by the powers that be in both Moscow and Cairo. If Pravda is indeed correct when it states, as it did today, that Egypt is prepared to recognize the existence of Israel as an independent state, then we may soon envision the beginning of serious peace talks on the Arab-Israel conflict. As everyone who has followed this situation knows, recognition of Israel by the major Arab powers ranks first in the list of demands of the Israel Government.

President Nixon and Secretary of State Rogers should be commended for their effort to encourage meaningful negotiations between the conflicting parties. U.S. policy with regards to the Middle East has not changed: We support the maintenance of state sovereignty and national self-determination for all of the nations of that area of the world. From this basic policy premise President Nixon has embarked on this bold diplomatic initiative. He should be supported and commended by all Americans who pray for lasting world peace.

WATER RESOURCE PROJECTS APPROVED BY THE COMMITTEE ON PUBLIC WORKS

Mr. RANDOLPH. Mr. President, I wish to inform Senators and other interested parties of the various water resource

projects approved by the Committee on Public Works on July 16. These projects will aid in flood prevention and they are valuable to the communities where they will be located.

The projects, approved under the Watershed Protection and Flood Prevention Act, together with the estimated Federal cost, include Spadra Creek, Ark., $1,618,000; Upper Petit Jean, Ark., $3,973,000; Headwaters of the Chattooga, Ga., $2,815,000; North Oconee River, Ga., $2,795,000; Lost River, Ind., $4,883,000; St. Mary's River, Md., $1,484,000; Ppper Turtle River, N. Dak., $2,925,000; Pine Valley, Oreg., $1,711,000; Rocky Creek, S.C., $1,833,000; Hog Creek, Tex., $570,000 and Upper Cibolo, Tex., $941,000.

Also approved by the committee, under Section 201 of the Flood Control Act of 1965, was Mobile Harbor, Ala.—Theodore Ship Channel—which has an estimated Federal cost of $7,254,000.

A NEW POSTURE OF ISOLATION

Mr. GOLDWATER. Mr. President, having lived through that period of history represented by the twenties and the thirties, I can remember very easily and very completely the mood of the country. Eliminating the difficulties caused by a depression that went on and on, and eliminating the existence of the Volsted Act, I would say the dominant feeling of that period was one of isolation from the rest of the world. We were not a world power, in any sense of the word, and not a Military Establishment. After World War I, we went downhill as we are doing today; new weapons were not purchased, as is the inclination of a number of Members of Congress today, and we were very firmly placing our head in the sands of stupidity.

Instead of maintaining a strong posture, we maintained a weak one. Instead of being able to warn Hitler that any overt act on his part would bring us into it, we carefully stayed away from either the preparation or the interest. I have always believed that World War II would not have been fought had Hitler realized that America was strong and ready and willing to help its allies.

Now we jump from that period into the present time, in the interim having fought three wars, and we find the American people, urged on by some members of the Foreign Relations Committee and by other Members of Congress, acquiring a posture again of isolation. We are faced with the explosiveness of the Middle East, and yet we are not equipped or willing to do anything about what might happen there. What might happen, in my opinion, is that Russia could well wind up controlling the Suez Canal, the Mediterranean, the Straits of Gibraltar, the Indian Ocean, and the straits leading into the South Pacific. This would mean the end of freedom of the seas, and it would give Russia control of the waters of the world.

In this dangerous time of history, as we approach debate on the military authorization bill, we find quite a contingent of Congressmen presenting to Congress an elaborate, expensive, and thoroughly developed plan to further downgrade the military strength of our country.

Personally, I think we have gone too far in the cuts the administration and the Senate committee have already made, but to take the suggestions made by the group known as "Peace Through Law" would be a risk that free people cannot afford to take. As we move through these dangerous days there are too few voices being raised to point out the dangers and the ultimate results if we proceed as this weakening group would have us proceed.

One of the most consistent of these voices is Joseph Alsop, who writes again in an extremely knowledgeable way, not only about war and foreign policy, but particularly about the danger of military budget cuts. Another writer who has consistently been aware of these dangers is Mr. Richard Wilson.

I ask unanimous consent that two columns by these gentlemen be printed in the RECORD.

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

MORE MILITARY BUDGET CUTS WILL IMPERIL FUTURE OF U.S.

(By Joseph Alsop)

The administration's bitter inner struggle over next year's budget, and more particularly, next year's defense budget, amounts to a secret debate on the future of the United States.

To be sure, it is almost heresy, nowadays, to say that grave dangers can arise from the kind of very deep defense-cuts being planned by Secretary of Defense Melvin Laird.

The same view was taken when Secretary of Defense Louis Johnson was making defense cuts that were just as politically motivated. Almost everyone was deeply shocked when the natural result of Johnson's ruthless depletion of American power turned out to be the Korean War.

Secretary Laird, of course, is hacking away at a far larger budget, but he is also doing so in an infinitely more dangerous period. The near monopoly of nuclear weapons that this country enjoyed in Secretary Johnson's time has of course vanished long since.

With reckless shortsightedness, the five-to-one margin in nuclear-strategic weapons that this country still possessed in President Kennedy's time, has also been allowed to vanish. In intercontinental missiles today, the U.S.-Soviet ratio is in fact 1 to 1.2, and it will be 1 to 1.4 in no more than a year or so.

In short, a continuous deterioration of the balance of power between this country and the Soviet Union, had been permitted for some years. All this happened before Secretary Laird got out his little hatchet for the present round of defense cuts.

Furthermore, Laird is swinging his hatchet when Soviet policy has suddenly become marked by a quite new aggressiveness; and there is also every reason to suspect a constant increase of military influence on the Kremlin's decisions. In short, it is hard to conceive a more hair-raising time to cut the guts out of what remains of the national defense.

To give just one example of the dangers, there is the horror story (for it is no less) of the Sixth Fleet in the Mediterranean. Already, the Sixth Fleet has been permitted to decay to a point that can only be called insane, in view of the present deadly peril to Israel.

The Sixth Fleet today has two carriers, with their aircraft. These are its main striking force. Meanwhile, in addition to the large elements of the Soviet navy in the Mediterranean, the Kremlin can count on Alexandria and probably on Lattakieh in Syria, as bases for any number of aircraft, plus any number of missiles the Soviet defense ministerium chooses to emplace.

Reinforcement of the Sixth Fleet is *still* possible, but only on what the military call a "surge basis," which means that the reinforcement, even by as little as two additional carriers, cannot be maintained for more than about four months. This is because of past reductions in the strength of the U.S. Navy.

This is bad enough. The further reductions under the new program of Laird defense cuts will not only somewhat weaken the Sixth Fleet itself, even though its strength is so clearly inadequate in the changed situation, in addition, it will reduce the Navy's capability of "surge" reinforcement very greatly. In eighteen months or more, if the planned cuts are made, the Sixth Fleet may therefore have to be withdrawn from the Mediterranean!

That will first of all amount to turning the Mediterranean into a Soviet lake. Besides Alexandria and Lattakieh, the Soviets are already secretly using the Algerian base of Mers El Kebir. They are pouring Secret Service money into little Malta, in the hope of securing, at some future time, a pro-Soviet government in this island that was "the unsinkable aircraft carrier" of the Second World War.

Neither the French, nor the Italians, nor anyone else at all, can possibly offer any counterweight to the Soviet navy in the Mediterranean in the future conditions above summarized. Of course, turning the Mediterranean into a Soviet lake means, among other things, passing a sentence of death or subjugation on Israel and its people. But that, one must add, will be only the beginning.

Yet the foregoing is only one of several horror stories arising from the secret debate about this nation's future. It is a very hot debate. At least one of the Joint Chiefs of Staff is already known to have exercised every chief of staff's ultimate privilege. He has asked to present his "reclama"—meaning his warning that the defense cuts are going much too far—to the President in person.

This has not been asked for in a great many years, and it should be enough to indicate the terrible gravity of the issues that are now being argued behind closed doors. Yet the President will probably answer he can do nothing, because of the current insanity of most of the U.S. Senate. And in this, the President may well be right.

DREAMERS TALK WHILE SOVIETS CONTINUE ARMING

(By Richard Wilson)

WASHINGTON.—Will we never learn? Airy assumptions about a detente with Russia are being deflated again. Russia's missile buildup is continuing apace. We guessed wrong on her intentions in the Mideast. We have guessed wrong time and again that Russia might aid in a settlement in the Far East.

We guessed Russia was so preoccupied in her conflict with China that the Kremlin would try no new initiative elsewhere. Wrong again.

It is not a good record and it does not encourage confidence in those people in the State Department, the Defense Department, the Central Intelligence Agency and the White House who evaluate Russia's intentions and capabilities.

Anyone who stuck to the commonsense principle that Russian is continuously expanding, or trying to expand, its power and influence would have had a better record of foresight. If a chair is vacant a Russian will sit in it would be a better rule of thumb

than the complicated analyses on which policy has recently been based. There was a power vacuum in the Middle East and the Russians, following nature's laws, moved into it while the United States was heavily preoccupied with a public clamor against an unpopular war.

Now we have the dismal prospect of a confrontation with the already established Russian military presence in the Mideast while we are trying to beat a retreat from Indochina.

Retreating on one front because the American public wants no more of war and breathing defiance on another is not a very comfortable posture for the Nixon administration. The Cambodian operation, it was thought, might have a secondary effect of showing the Russians that Nixon means business.

But an in-and-out operation with the job half-done, while tactically successful, carries little persuasive power when all the reasons for the half-done job are looked at without rose-colored glasses. One of the reasons the job was half-done was that the Nixon administration couldn't carry the American public along with a longer and more complete operation.

The Senate of the United States bears an uncomfortable responsibility in this respect. It has persistently and over a long period of time sought to undermine the authority of the President to provide for the defense of the United States and conduct military operations.

There have been those in Washington, in the Senate and elsewhere, who have been saying that the Russians were tapering off their missile build-up. Defense Secretary Laird now states Russia is, in fact, continuing to set up long-range missiles at a rapid rate. The Soviet Union has also moved a vast army to the Chinese border areas. It has moved its aircraft pilots and missiles to the Suez. It is continuing to supply arms and munitions in large volume to the North Vietnamese.

And so it is the same old story. While the dreamers in the Senate talk about Russia responding if the United States will only cut back its defense effort and get out of Vietnam on prescribed schedule, the Soviet world-wide military deployment continues unaffected and perhaps hastened. It is carried forward with the confidence that grows from nuclear equality or superiority.

This, the President said last February, is "an inescapable reality of the 1970s . . . the Soviet Union's possession of powerful and sophisticated strategic forces approaching, and in some categories, exceeding ours in numbers and capability." As comparative strength is now projected the United States will have deployed 1,054 intercontinental ballistic missiles at the end of this year, and the Soviet Union will have deployed 1,290, which is a dramatic change from the 934 U.S. to 224 Soviet missiles deployed in 1965.

Russia's growing naval strength is another inescapable reality of the 1970s. And the most inescapable reality of all is that the periodic euphoria in which we indulge does not change for a moment the dedicated purpose of the Soviet Union in shifting the balance of world power to its side.

DR. VERNON E. WILSON BRINGS FINE QUALIFICATIONS TO HSMHA

Mr. EAGLETON. Mr. President, recently Dr. Vernon E. Wilson, formerly dean of the medical school at the University of Missouri and vice president of academic affairs there, was appointed Director of the Health Services and Mental Health Administration of the Department of Health, Education, and Welfare.

No man in the Nation is more eminently qualified to fill this key post in the health field than Vernon Wilson, whom I have known and respected for many years. His appointment is truly a case of Missouri's loss being the Nation's gain. Recently Star, the Sunday magazine of the Kansas City Star, contained a story about Dr. Wilson's career and his thoughts on his new job. I ask unanimous consent that the article entitled "Dr. Vernon Wilson's Capital Investment," written by Phillip S. Brimble, and published in the Kansas City Star of July 12, 1970, be printed in the RECORD.

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

DR. VERNON WILSON'S CAPITAL INVESTMENT

(By Phillip S. Brimble)

When Dr. Vernon E. Wilson left the comparative serenity of Columbia, Mo., this month to take over as head of the federal government's Health Services and Mental Health administration in Washington, he was acutely aware of the challenge that job holds.

As head of that agency, Dr. Wilson will be responsible for an annual budget of 3 billion dollars and 25,000 employees. As one friend put it, "Vernon has made the big time."

Not that Dr. Wilson has not been long acquainted with big plans and challenges, having during the last decade been dean of the University of Missouri medical school, Columbia, co-ordinator of the Missouri Regional Medical program, and, more recently, vice-president of academic affairs at M.U.

While dean of the M.U. medical school, Dr. Wilson was instrumental in expanding its enrollment, faculty and services. At the same time he helped forge several affiliations between the school and other health care agencies around the state, such as the St. Louis Baptist hospital, and the Kansas City General hospital.

He helped strengthen the relationship between the school and the state division of mental diseases and aided in the development of the Mid-Missouri and Western Missouri Mental Health centers.

For several years Dr. Wilson has helped in fashioning the Hospital Hill complex, including pushing for the new state medical school for which state funds were recently approved.

The development of the Missouri Regional Medical program, a federally funded and initiated program to bring the latest in medical techniques to the largest number of physicans, was a product of Dr. Wilson's drive to improve the delivery of medical care in the state.

"Frankly," said a Kansas City physician who has long been acquainted with Dr. Wilson's work, "without Vern's drive and the strength of confidence his fellow workers have had in him, the Missouri Regional Medical program would never have gotten off the ground as fast or as successfully as it did."

"Vern is one of those persons who does things, not for the accolades, but because they need doing. His goals are to meet a need, and he just happens to be working in the health delivery system."

A long-time friend believes Wilson's decision to step up to the national-level federal job was influenced in no small part by the fact that Dr. Clarke Wescoe, former dean at the K.U. Medical Center, and another former K.U. friend, Dr. Franklin Murphy, both have attained national prominence. Dr. Wescoe is an executive with a major drug firm and Dr. Murphy is an executive with the Times-Mirror Publishing company.

"If it's something Vernon doesn't lack, it's confidence in himself," said the long-time friend. "I think Vernon believes he has something to contribute to the national picture, and I think he is right."

Wilson is more modest. In an interview recently, he refused to speculate on what impact he might have in his new job.

"At this stage I'm just trying to get the feel of what is under that (Washington) iceberg," Dr. Wilson said.

"Sure, I've got some God and Motherhood aspirations. But I'd sound foolish saying now what I was going to do when I took over. There are just too many people involved. I believe I should first get acquainted with the staff to get their feelings on some of our health problems.

"I acepted the job because this particular agency has all the authority and support to deal with the gut issues in our health care problems. The agency has the staff to do research in the delivery system. I'll want to look at several ways to improve care and at the same time preserve the values of our health care system."

Asked about his personal politics, Dr. Wilson said: "I'm apolitical. I have no politics. I have purposely stayed out of partisan politics and have always voted my conscience."

Wilson would get an argument about his political leanings from at least one acquaintance who described him as "a superb medical politician. You deal with Vernon on his terms. He has a strict sense of the military, a strict table of organization. He is a capable operator."

Capable, he is. Wilson is known around the state political and medical circles as a man who makes things work. A fence mender and systems builder, Wilson has on different occasions been referred to as a "health czar" and "the gray fox" the latter probably because of his gray crewcut, which makes him appear years younger than 55, and because of his wily, quiet way of getting things done.

Wilson trades on the fact that he is a farm boy with a feel for the common man (He was born on a farm in Kingsley, Iowa). He calls himself a blue-collar man at heart, and, he says, this gives him the understanding, from experience, of the viewpoints of patients from every walk of life.

He is equally well-acquainted with the upper echelons of the national medical hierarchy, being a member of the American Medical association's council on medical education and the A.M.A.'s liaison committee on medical education.

The Wilsons will retain their home in Columbia.

"I have tremendous regret about leaving the University of Missouri," said Dr. Wilson. "My family and I have all kinds of roots and ties throughout the state. I have a tremendous sense of loss about leaving."

One thing worries some of Wilson's friends here. They wonder how Wilson, a man accustomed to rising early, working hard, and retiring early, will adjust to the hours and the pace of the big city.

"Vern's accustomed to going to bed by 9 o'clock and Washington doesn't run on hours like that," said one old friend. "Knowing Vern, one is tempted to wonder which will change, Washington or Wilson."

MATURING PROCESS IN OFFICE OF ECONOMIC OPPORTUNITY

Mr. TOWER. Mr. President, I invite the attention of Senators to a column written by Mr. Nick Thimmesch and copyrighted and distributed in June by Newsday, Inc. The article tells of the maturing process now going on at the Office of Economic Opportunity.

I ask unanimous consent that Mr. Thimmesch's column be printed at this point in the RECORD.

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

SOME TRUTH ABOUT THE GOP PROGRAM

(By Nick Thimmesch)

WASHINGTON.—The Office of Economic Opportunity, a pale horse limping in limbo in 1968, is now running in directions which please Director Donald Rumsfeld, and this makes some people unhappy.

Critics squawk that Rumsfeld, 37, is gutting programs, ignoring idealistic militants and changing the anti-poverty agency's role from that of advocate to enforcer. Rumsfeld doesn't agree.

"Teddy Kennedy and Fred Harris (the Oklahoma Senator) go around saying that President Nixon doesn't like blacks and wants to end the war on poverty," Rumsfeld said in his second floor office in the White House.

"Part of their future seems to be based on saying that everything is rotten in the country. If people would quit wringing their hands and get to work, maybe we'd make even more progress. How can Congressmen say the President is against the poor, when they cut his anti-poverty budget request by $100 million last year?

"Sure, there's unrest, but black people became cynical about promises long before we took office. We've cut the promises. Sometimes I meet with people (in poverty programs) who are hostile because they've heard the criticism of those who over-promised. Those people usually go away saying they have been fed a bunch of baloney about what we're doing."

After a year in office, Rumsfeld has a young staff which he calls "compassionate and tough-minded." The rhetoric is diminished and poverty is looked at with a colder eye. Instead of confrontation with traditional social agencies, Community Action Agencies funded by O.E.O. are encouraged to cooperate with them. Some lawyers in the Legal Services division are dismayed that Rumsfeld wants them to be more conciliatory and less contentious. Community Action agencies, often riddled with waste and controversy, have been told to shape up.

"I told a meeting of CAP agencies in Tennessee," says assistant O.E.O. Director Frank Carlucci, "that I'd shut them down if they didn't manage themselves right. They responded with a standing ovation. We've changed the attitude. O.E.O. is maturing."

O.E.O. is also involved in a "performance contract" experiment by which an educational firm will be paid on the basis on gains made in math and reading skills by backward students most of whom are poor. This is an idea the late Sen. Robert F. Kennedy unsuccessfully pushed several years ago—the government telling educators, "If you don't produce, no more federal money."

There's also a push for economic development by the poor. O.E.O. funded: a catfish farm in Hancock County, Ga; a supermarket and modular housing in Durham, N.C.; furniture and rug manufacture by Mexican-Americans and Indians in New Mexico, along with cattle feeding; and the Bedford-Stuyvesant neighborhood project in Brooklyn.

Other innovations are recruiting VISTA volunteers for specific duties rather than for some vague, idealistic impulse; funding a Kentucky program for midwifes; and making a $2 million grant for health manpower development by John W. Gardner's celebrated Urban Coalition, an outfit which so far has operated mostly on the luncheon circuit.

Despite all the noise about cutbacks in anti-poverty spending, the current budget is the same as 1969, and the administration is asking for an increase of $132 million next year. The current $1.948 billion budget shows big increases in health and nutrition; economic development; and research and evaluation. Administration opponents still sharply criticize the $108 million cut from the Job Corps and the $64 million trimmed from the program to get jobs for youth. Vice-President Agnew recently announced an administration request for an extra $50 million for summer youth employment.

What's happening at O.E.O. is that a Republican administration is seeking to employ a low-key, keep-your-voices lowered, practical approach to solving the program of the poor. Naturally, Democrats who authored and pushed the anti-poverty program are going to squawk. They just don't like the thought of Republicans running such a big program for the poor. Rumsfeld is determined to show them that Democrats have no monopoly on humanitarianism. This kind of competition between Democrats and Republicans is good for the nation.

COURT REFORM AND SPEEDY JUSTICE

Mr. TYDINGS. Mr. President, every knowledgeable authority on the subject of law enforcement recognizes the compelling need to make the criminal courts of our Nation swift, certain and smooth-running vehicles of justice. I know from my own work in law enforcement as the U.S. attorney for Maryland that better courts mean better law enforcement—that speedy justice can mean safer streets. And I think that it is critically important for those of us in Congress who have been entrusted with shaping our Federal courts to press for legislation that gives substance to the important constitutional principles of fair and speedy justice.

The importance of speedy justice cannot be overemphasized. First, fundamental fairness demands that society give a person accused of a crime the opportunity to quickly prove his innocence and clear his name. Second, fast but fair criminal trials are indispensible to society's interest in assuring that its laws are strictly and quickly enforced against the guilty, and that dangerous criminals are quickly removed from our communities and their behavior corrected. In this regard, it is woefully obvious that today's law-and-order crisis can be attributed in ample measure to the fact that in many of our criminal courts, the principle of speedy justice is more theory than fact.

We know that judicial delay obstructs law enforcement in multiple ways. First and most important, delay serves to increase the time during which additional crimes may be committed by criminals who remain at liberty while awaiting their trials.

Next, delay clearly increases a criminal's chances that either he will go scott free or receive a punishment that is not equal to the seriousness of his crime. Delay works to deteriorate evidence, dull the memories of important witnesses and diminish their interest in seeing justice done, as its cost to them in time, effort and anxiety increases. The prosecutor, seeing his case gradually disintegrating and feeling the pressure of an increased workload, often dismisses the case entirely or accepts a plea of guilty to a lesser offense. This helps explain why nearly half of those arrested for crime have the charges against them dismissed, and why the cases of over 90 percent of those not dismissed are resolved by a plea of guilty.

Finally, the inability of our criminal courts to expeditiously try and swiftly punish the criminal offender diminishes the public's confidence in the criminal justice system as a whole. It corrodes the law's deterrent effect by demonstrating that punishment for criminal violation is not swift and certain but slow and faltering. To those who consider careers in criminality, the percentages begin to appear more favorable as the certainty of retribution for criminal misconduct become increasingly less demonstrable.

Mr. President, President Johnson's Commission on Law Enforcement stated that the period between arrest of a person accused of committing a serious crime to the trial should be no more than 4 months. However, the sad fact is that few of our courts are satisfying this timetable.

In the criminal courts of the District of Columbia, on the average over 6 months is consumed between the time a criminal case is filed and disposed of. Moreover, at the end of the 1969 fiscal year, close to 2,500 Federal criminal cases not involving fugitive defendants, or about 20 percent of all criminal cases pending in Federal court, had been awaiting trial for over 1 year. Hundreds more have been pending over 2 years. According to the Judicial Conference of the United States, these delayed cases represent true "judicial emergencies."

Even more disconcerting is the fact that the existing problem of congestion and delay in our Federal criminal courts is being aggravated by the ever-rising level of criminal cases that are beginning to flood the dockets. For fiscal year 1969, the number of criminal cases, not to mention civil cases, rose 9.3 percent over the number of cases filed in fiscal year 1968. Cases involving robbery have jumped from 851 in 1965 to 1,570 cases in 1969. And the number of cases filed in Federal court for assault in fiscal 1965 had jumped by over 50 percent by the end of fiscal 1969.

Mr. President, as we look ahead to new remedies to solve this mounting problem in our criminal courts, we should not be unmindful of some of the meaningful steps we have already taken toward making justice on the Federal level speedy and fair. I am proud of my own role in that effort. In the last 5 years, as chairman of the Subcommittee on Improvements in Judicial Machinery, I have drafted, floor managed, cosponsored, and worked for the enactment of major innovative court reform legislation. Bringing the courts into the modern era after years of neglect is a difficult, slow-moving process, but we have made some progress:

First. The Federal Jury Selection and Service Act, the first major jury reform effort since Jefferson, which made the Federal judicial system much more fair by eliminating the possibility of discrimination in the selection of jurors by requiring that jury selection be made at random from broad-based source lists. I was the principal sponsor of this legislation, chaired the hearings and managed the bill on the floor. The legislation was signed into law on March 27, 1968.

Second. The Federal Magistrates Act, which reformed the first echelon of Federal criminal justice by replacing U.S. commissioners with a magistrate system,

requiring that all U.S. magistrates be attorneys and meet other standards designed to insure impartiality, and empowering the magistrates to try minor criminal offenders when the accused executes a knowledgeable waiver of both his right to trial before a U.S. district court and any right to a jury trial that he may have. Again I was the principal sponsor of the legislation, chaired the hearings, and managed the bill on the floor. The act was signed into law on October 17, 1969.

Third. The Federal Judicial Center Act, which established an institute to study and develop solutions to the problems of court congestion and delay in the Federal courts, and which has been called by the Eisenhower Commission on the Causes and Prevention of Violence one of the bright spots in a generally bleak criminal justice picture. With Senators McCLELLAN and METCALF, I led the Senate effort for the enactment of this legislation. The bill was signed into law on December 20, 1967.

Fourth. The Omnibus judgeship bill of 1967, creating much-needed Federal appellate judgeships to deal with the increasing delay in the Federal appellate process. Before being reported to the floor, this bill was studied carefully by the Subcommittee on Improvements in Judicial Machinery in hearings which I chaired.

Fifth. The omnibus judgeship bill of 1969, which created 61 Federal judgeships to meet the needs of our expanding Federal caseload. In studying this bill the Subcommittee on Improvements in Judicial Machinery made an extensive review of the problems facing the courts. As a result of this review, I recommended, and the subcommittee and Senate accepted, provisions in the bill that would have enabled the courts to experiment with electronic sound recording, provided them with managerial expertise at the operating level, and otherwise assisted them in speeding the judicial process. Unfortunately, these provisions were not accepted by the House of Representatives. I will continue to work for their enactment. The judgeships, however, were created, and the legislation was signed into law on June 2, 1970.

Sixth. The Bail Reform Act of 1966, which was designed to eliminate from the Federal criminal justice system the archaic, discriminatory system of money bail, under which the wealthy were released from prison pending trial while the poor remained behind bars. We are indebted to Senator Ervin's leadership for the enactment of this legislation. I am proud of the support that I gave him. This legislation was signed into law in 1966.

I think each of these measures has contributed toward making our Federal judicial system more fair and efficient. However, with crime increasing every day and further congesting our already badly clogged criminal court dockets, we cannot afford to rest for one moment on the laurels of our actions of the past. We must move ahead to find new solutions to the serious problems affecting our courts.

Mr. President, the District of Columbia Court Reform and Criminal Procedure Act, which the Senate shall vote upon today, represents another important stride toward the creation of a modern and efficient judicial system. The court reform and reorganization sections, which really are the heart and substance of the bill, were designed to make the criminal courts of our Nation's Capital operate with optimum speed and efficiency.

As chairman of the Subcommittee on Improvements in Judicial Machinery, I am very encouraged by the widespread support voiced in the Senate for the important court reform sections of this bill. I believe this support reflects a growing awareness of the fact that court reform, especially major improvements in our criminal courts, is essential to the waging of an effective war against crime. In this regard, I think it is noteworthy that some of my Senate colleagues, such as Senator ERVIN, have gone even one step further, asserting that speedy justice through judicial reform is the solution to the crime problem gripping the Nation.

Mr. President, I am hopeful that those in the Senate who now are addressing themselves to the issue of speedy justice, will translate their words into action and join me in support of a number of court reform proposals now pending before this body.

Among the court reform bills pending in the Senate, in addition to the District of Columbia court reorganization and crime bill, are: S. 3916, a bill to establish court executives at the operating levels of the Federal court system for the purpose of employing their managerial skills to solve the problems of court congestion and trial delay; S. 3289, the National Court Assistance Act, a bill to provide Federal grants and up-to-date information on judicial reform to State and local courts to enable these courts to improve and modernize their own judicial machinery; S. 4066, a bill to empower the Law Enforcement Assistance Administration to assist civil courts as well as criminal courts; S. 1507, a bill calling for mandatory retirement at age 70 for Federal judges and justices to assure that the Federal bench is manned by judges who can carry a full workload; S. 981, a bill to authorize the District Court of Maryland to sit in the Prince George's and Montgomery County area to facilitate justice in cases originating in those counties.

I believe that each of these proposals would enhance the quality, effectiveness and speed of our Nation's criminal justice system. And in the light of current awareness of the need for judicial reform and speedy justice, I again submit these measures to the Senate for consideration and support.

One additional measure designed to improve our courts is deserving of Senate consideration and support. This is S. 3936, the speedy justice bill, introduced by the distinguished senior Senator from North Carolina (Mr. ERVIN). This bill requires each Federal District Court to establish plans for trying criminal cases within 60 days after indictment, so long as this deadline does not interfere with the accused's right to adequate defense and a fair trial. I wish to register my own support for this measure and encourage my Senate colleagues to do likewise.

Mr. President, without diminishing the importance of the principle of speedy justice, I think that it is important for all of us to recognize that speedy trials, as envisioned by S. 3936 and by my own speedy justice proposals, do not represent a complete cure-all for the crime problems. Even if we succeed in implementing a system whereby trials are held in 60 days, society must still protect itself against demonstrably dangerous defendants who could be roaming our streets during that 60-day waiting period. Indeed, if a man is dangerous, he presents a threat to the community even if released for 1 day. In such cases, I believe that public safety demands that an expedited 60-day trial be combined with the pretrial detention of the dangerous defendant.

Mr. President, I am hopeful that the Senate will move ahead and enact the legislation which is critically needed to enable our courts to satisfy the important principle of swift and fair justice.

ANNIVERSARY OF ARRIVAL OF THE MORMONS AT SALT LAKE

Mr. JORDAN of Idaho. Mr. President, the history of the United States is a story of a sturdy, independent people who tamed a wilderness in the settlement of the West. The vision of Horace Greeley to "go west, young man, go west," was caught by hundreds of thousands of Americans as they sought adventure and a new home for themselves and their families. One of the great epics of that movement was the crossing of the plains in 1846 from Nauvoo, Ill., to what is now Salt Lake City, by the Mormon pioneers. Rooted in the doctrines and organization envisioned by Joseph Smith in Fayette, N.Y., 1830, the Church of Jesus Christ of Latter Day Saints, better known as Mormons, has risen from the original six men to the present membership nearing 3 million. Much of their determination and growth must have been caused by enduring the early persecution of the church which moved from New York to Ohio, to Independence, Mo., where they were driven to Illinois, finally settling in a swampy area which they named Nauvoo. Violence followed them there and reached its peak with the murder of Joseph Smith and Hiram Smith, the prophet and the patriarch of the church, at Carthage, Ill.

Brigham Young, president of the Council of Twelve Apostles, was named president to succeed Joseph Smith, and in the dead of winter crossed over the ice of the Missouri River along with the majority of the church to begin their epic march to what is now Utah. That trek, in adverse weather, with barely food and clothing enough to survive, began a crossing longer in distance than that of Moses and all of Israel. The distance which we so freely traverse by plane and car with all the ease and comfort of

highways and lodging was made by this determined people on foot, in wagon, and handcart. A tragically high percentage did not live to reach the great Salt Lake. Arriving at the top of the mountains overlooking the Salt Lake Valley on July 23, 1846, Brigham Young, at the time himself bedridden with sickness, uttered his now famous words: "This is the place," and on July 24 the Mormons had found their home in Salt Lake Valley.

I pay tribute today on this historic anniversary to the courage, determination, and vision of this pioneer people who have had such a profound influence in the settling of the West, including my own State of Idaho, where the celebration of the 24th of July is a sacred tradition.

Idaho's first permanent settlement at Franklin was a group of young Mormons sent by Brigham Young; and today the Latter Day Saints, as they are known, are a major contributor to the stability and progress of the State of Idaho. It is not surprising that Brigham Young, the organizer, the pioneer, the Mormon prophet, the first Governor of Utah, and one of the most controversial figures of his time, is now honored in Statuary Hall of the U.S. Capitol as one of America's foremost pioneers.

My personal relationship with the Mormon people of Idaho in my many years in public office has led me to commend their firm teachings of honesty, loyalty, and public spirit as citizens of the United States of America.

SCHOOL DESEGREGATION—UNANSWERED QUESTIONS

Mr. SPONG. Mr. President, on Monday I expressed regret that the Supreme Court has left many questions unanswered with regard to school desegregation. Yesterday, the Norfolk-Portsmouth Virginian-Pilot published a letter to the editor from Michael B. Wagenheim.

Mr. Wagenheim is a former chairman of the Norfolk School Board, a former president of the Virginia State Bar Association, and one of the most able practitioners of the law in the Commonwealth of Virginia. His observations parallel some of the thought expressed by me on the floor of the Senate on Monday. I ask unanimous consent that the text of his letter to the editor of the Virginian-Pilot, published July 22, 1970, be printed in the RECORD.

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

COURT-CREATED CONFUSION

EDITOR, VIRGINIAN-PILOT:

As a lawyer and former Chairman of the Norfolk School Board, on which I served for about 15 years, I am imbued with a sense of frustration and futility, coupled with apprehension, in attempting to diagnose the attitude of the Federal Courts toward giving our children the best possible education.

Since the Supreme Court's decision in the Brown case some 16 years ago, the public has been treated to some of the most fancy legal footwork and adroit sidestepping in the annals of American jurisprudence. What may have been relatively simple has become confused, and what was already confused has been thrown into utter chaos. A vain effort to reconcile some of the contradictory language in the opinions from the various Federal Courts leads one to the inevitable conclusion that the last of these has achieved the singular distinction of being more confusing than the first.

So here in Norfolk, after 16 years, where do we find ourselves? The U.S. Fourth Circuit Court of Appeals has rejected the Norfolk School Board's desegregation plan, which was approved by District Judge Walter E. Hoffman in a painstaking and scholarly opinion. A new plan must now be devised. The Supreme Court has been reluctant to render any helpful advice, and its previous decisions and rulings have added very little light on the troubled situation.

Compulsory busing simply to force a racial balance does not seem to be the answer. Aside from the financial aspects of the situation, such a disruptive course among small children is hardly calculated to improve the quality of education. Neither blacks nor whites are happy at the prospect of seeing their youngsters carted away from their little friends, neighbors, and playmates to some remote location in a futile effort to enforce a numerical racial balance.

I say let the Supreme Court meet this question head-on in the Charlotte case now on the appeal docket. The baby has been bounced around too often and too long. Parents are disturbed; children are frightened; educators are confused; the City officials are perplexed. Since the Circuit Court of Appeals has said that Norfolk's efforts to carry out a well-defined plan are wrong, the Supreme Court should now speak up in plain, unambiguous and unmistakable language and tell all of us what is right.

If compulsory busing is to become the unfortunate order of the day, let the Court have the courage to say so.

MICHAEL B. WAGENHEIM.

NORFOLK.

RED TERROR IN LITHUANIA, LATVIA, AND ESTONIA

Mr. SMITH of Illinois. Mr. President, June 15, 1940, was a tragic day for the Baltic people who have suffered in Soviet captivity for 30 long years.

On that day Soviet Russia seized Lithuania, Latvia, and Estonia by force of arms and 1 year later these cruel masters began the systematic deportation of Lithuanians, Latvians, and Estonians from their homelands to the desolation of Siberia and the terror of Soviet concentration camps.

This year I was privileged to join with the fine Lithuanian community in Chicago for the opening of their Captive Nations Genocide Day exhibition. It is indeed tragic that after 30 years it is necessary to remind the world that freedom has not yet been restored to the Captive Baltic Nations.

Mr. President, the Lithuanian American Community of the USA, Inc., speaking for the Baltic peoples of Lithuania, Latvia, and Estonia, has submitted a statement entitled "Red Terror in Lithuania, Latvia, and Estonia." This document speaks eloquently for itself.

Mr. President, I commend the statement to the Senate and ask unanimous consent that "Red Terror in Lithuania, Latvia, and Estonia" and House Concurrent Resolution 416 be printed in the RECORD.

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

RED TERROR IN LITHUANIA, LATVIA, AND ESTONIA

(Enslavement of the Baltic States by the Soviets for thirty years)

The Kremlin is fond of saying that Russian imperialism died with the czar. But the fate of the Baltic nations—Lithuania, Latvia and Estonia—shows this to be a cruel fiction. The Communist regime did not come to power in the Baltic States by legal or democratic process. The Soviet Union took over Lithuania, Latvia and Estonia by force of arms. The Soviets invaded and occupied the Baltic States in June of 1940, and the Baltic peoples have been suffering in Russian-Communist slavery for 30 years.

The Balts are proud peoples who have lived peacefully on the shores of the Baltic from time immemorial. For instance, this year marks the 719th anniversary of the formation of the Lithuanian state when Mindaugas the Great unified all Lithuanian principalities into one kingdom in 1251.

The Lithuanians, Latvians and Estonians have suffered for centuries from the "accident of geography." From the West they were invaded by the Teutonic Knights, from the East by the Russians. It took remarkable spiritual and ethnic strength to survive the pressures from both sides. The Balts, it should be kept in mind, are ethnically related *neither to the Germans nor the Russians.*

After the Nazis and Soviets smashed Poland in September of 1939, the Kremlin moved troops into the Baltic republics and annexed them in June of 1940. In one of history's greatest frauds, "elections" were held under Red army guns. The Kremlin then claimed that Lithuania, Latvia and Estonia voted for inclusion in the Soviet empire.

Then began one of the most brutal occupations of all time. Hundreds of thousands of Balts were dragged off to trains and jammed into cars without food or water. Many died from suffocation. The pitiful survivors were dumped out in the Arctic or Siberia. The Baltic peoples have never experienced such an extermination and annihilation of their people in their long history through centuries as during the last three decades. Since June 15, 1940, these three nations have lost more than one fourth of their entire population. The genocidal operations and practices being carried out by the Soviets continue with no end in sight.

Since the very beginning of Soviet Russian occupation, however, the Balts have waged an intensive fight for freedom. During the period between 1940 and 1952 alone, some 30,000 Lithuanian freedom fighters lost their lives in an organized resistance movement against the invaders. The cessation of armed guerrilla warfare in 1952 did not spell the end of the Baltic resistance against Soviet domination. On the contrary, resistance by passive means gained a new impetus.

The Government of the United States of America has refused to recognize the seizure and forced "incorporation" of Lithuania, Latvia and Estonia by the Communists into the Union of Soviet Socialist Republics. Our Government maintains diplomatic relations with the former free Governments of the Baltic States. Since June of 1940, when the Soviet Union took over Lithuania, Latvia and Estonia, all the Presidents of the United States (Franklin D. Roosevelt, Harry S Truman, Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson, and Richard M. Nixon) have stated, restated and confirmed our country's nonrecognition policy of the occupation of the Baltic States by the Kremlin dictators. However, our country has done very little, if anything, to help the suffering Baltic peoples to get rid of the Communist regimes in their countries.

The case of the Baltic States is not a question about the rights of self-rule of Lithu-

ania, Latvia and Estonia, since this is established beyond any reasonable doubt, but the question is how to stop the Soviet crime and restore the freedom and independence of these countries. The Select Committee of the House of Representatives to Investigate the Incorporation of the Baltic States into the U.S.S.R., created by the 83rd Congress, after having held 50 public hearings during which the testimony of 335 persons was taken, made a number of recommendations to our Government pertaining to the whole question of liberation of the Baltic States. According to the findings of this House committee, "no nation, including the Russian Federated Soviet Republic, has ever voluntarily adopted communism." All of them were enslaved by the use of infiltration, subversion, and force. The American foreign policy toward the Communist enslaved nations, the aforesaid House committee stated, must be guided by "the moral and political principles of the American Declaration of Independence." The present generation of Americans, this committee suggested, should recognize that the bonds which many Americans have with enslaved lands of their ancestry are a great asset to the struggle against communism and that, furthermore, the Communist danger should be abolished during the present generation. The only hope of avoiding a new world war, according to this committee, is a "bold, positive political offensive by the United States and the entire free world." The committee included a declaration of the U.S. Congress which states that the eventual liberation and self-determination of nations are "firm and unchanging parts of our policy."

At a time when the Western powers have granted freedom and independence to many nations in Africa, Asia and other parts of the world, we must insist that the Communist colonial empire likewise extends freedom and independence to the peoples of Lithuania, Latvia and Estonia whose lands have been unjustly occupied and whose rightful place among the nations of the world is being denied. Today and not tomorrow is the time to brand the Kremlin dictators as the largest colonial empire in the world. By timidity, we invite further Communist aggression.

Recently the U.S. Congress has made a right step in the right direction by adopting *H. Con. Res. 416* that calls for freedom for Lithuania, Latvia and Estonia. All freedom-loving Americans should urge the President of the United States to implement this legislation by bringing the issue of the liberation of the Baltic States to the United Nations. We should have a single standard for freedom. Its denial in the whole or in part, any place in the world, including the Soviet Union is surely intolerable.

HOUSE CONCURRENT RESOLUTION 416

Whereas the subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations, and is an impediment to the promotion of world peace and cooperation; and

Whereas all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, cultural, and religious development; and

Whereas the Baltic peoples of Estonia, Latvia, and Lithuania have been forcibly deprived of these rights by the Government of the Soviet Union; and

Whereas the Government of the Soviet Union, through a program of deportations and resettlement of peoples, continues in its effort to change the ethnic character of the populations of the Baltic States; and

Whereas it has been the firm and consistent policy of the Government of the United States to support the aspirations of Baltic peoples for self-determination and national independence; and

Whereas there exist many historical, cultural, and family ties between the peoples of the Baltic States and the American people: Be it

Resolved by the House of Representatives (the Senate concurring), That the House of Representatives of the United States urge the President of the United States—

(a) to direct the attention of world opinion at the United Nations and at other appropriate international forums and by such means as he deems appropriate, to the denial of the rights of self-determination for the peoples of Estonia, Lativa, and Lithuania, and

(b) to bring the force of world opinion to bear on behalf of the restoration of these rights to the Baltic peoples.

Passed the House of Representatives June 21, 1965.

Attest:

RALPH R. ROBERTS,
Clerk.

THE HUMAN RIGHTS CONVENTIONS: THE GAP BETWEEN RHETORIC AND ACTION

Mr. PROXMIRE. Mr. President, all of us in public life have had to face many forms of hypocrisy. The gap between words and action is unfortunately a common ingredient in American politics. Even so, Mr. President, I fail to see why we must continually condone the use of hypocritical statements that fail to meet the exigencies of a serious political problem. I speak here, in particular, of the failure of this Chamber to ratify the United Nations Human Rights Conventions. The Conventions on Genocide, Forced Labor, and Equal Rights for Women were submitted to the Senate in the decade or so following World War II. The Genocide Convention was the first of these, submitted by President Truman in 1949. Now, 20 years later, we have the opportunity to demonstrate that we stand, as a nation, by our words.

Unfortunately, there is not too much face left worth saving on this issue. Over 78 member nations have signed the Convention on Genocide. Our absence from this great list is more than merely a conspicuous absence; it is an acute embarrassment for all of us who believe that the United States has the responsibility to provide moral leadership and initiative to all nations—regardless of their system or ideology. Now, more than ever before, we must take a long look at ourselves and our record.

We must realize as a nation that moral issues are indeed involved in our foreign policy and treaty decisions. Therefore, we must carry into our foreign policy and treaty decisions a sense of ethics and morality. We simply cannot divorce the moral from the hard political issues.

I urge the Senate to ratify the Genocide Convention during this session of Congress.

LOYALTY AND PRIDE OF THE PEOPLE IN THEIR COUNTRY

Mr. FANNIN. Mr. President, I am impressed by the deep sense of loyalty and pride of our working people in their country.

Their pride and loyalty in the greatness of the Nation far outweighs their complaints. Problems they have, but they consider these secondary to the fact that there are those who avoid their duty to their country or who are maligners.

Mr. President, I ask unanimous consent to enter in the RECORD an excerpt from a letter to me from Mr. Herbert P. Voight, of Phoenix, Ariz., who so ably expresses his views:

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

As a foreign born American citizen I am often at a loss for the right words and expressions to make my point and have for that reason refrained writing to my Congressman or Senator in the past, although as father of a son who enlisted in the US Airforce 14 years ago at the age of 17 years I should have the privilege before a native father with a son of the same age, which refuses to serve and defend his country.

I am 100% in favor of the way Mr. Nixon is running the war in Vietnam, which he didn't start, except for one thing. He should give orders to bomb Hanoi and Haiphong out of existence, like the allies did with Berlin in the second World War.

* * * * *

After returning home from the war 1918 to East Germany I have been fighting the communists in Germany on and off in the big industrial Cities as a member of the new German Army and found out one thing, you can lick them, but you can't deal or compromise with them. Ever since I came to the United States in 1926 I predicted the rise of Hitler, as well as the decay in this country and couldn't understand, that nothing was done to stop the trend.

The Unions are much too powerful and making slaves out of the skilled workman, who is forced to pay and pay and carry 2 loafers and unskilled workers on his back. Everybody thinks the country owes him or her something. In my book there is a difference between a legitimate Charity Case and a good for nothing drunken bum, who is on Welfare ever since his schooldays ended. Let's take care of our real honest Welfare Cases, no matter what color or religion, but the hippies, drug addicts etc. put on road gangs and let them clean up our countryside, highways and waterways. Our courts better change their ways of interpreting the laws of the country, whether high court or low court, otherwise the honest people will be asking to be put in jail for two reasons, to be safe from the criminals roaming the streets of the cities and to be better fed and have better living conditions than they can afford on the outside.

Postal Reform should have come years ago, but I think now with the Postoffice Employees unionized we can expect slowdowns, walkouts and demoralization more than ever before.

Election of the president of the USA should be kept as is, but voting for 18 year olds should be permitted only to the ones entering the armed services and those willing to serve but being rejected for physical reasons.

As far as federal assistance is concerned to help families to buy a health Insurance, I would be satisfied if the Government would really stop Inflation, before my last few dollars are out the window, which I saved to live on in my old age. We, my wife is an invalid, unoperable, but can't collect Soc. Sec. manage to get along on $126.60 a month plus $700.00 Interests on Savings a year, living in our son's house, while he is overseas.

You think the president has troubles running the Country and the war, well I have a lot more but just the same, I'm willing to fight for this country yet if my health would permit.

THE URBAN CORPS: DEVELOPING A NEW GENERATION OF LEADERSHIP

Mr. TYDINGS. Mr. President, our urban centers find themselves with all of the problems and few of the resources with which to attack them. It is neither easy nor wise to escape this picture of the urban scene, but let us recognize it as the present-past and turn our attention to the needs of the future.

We need a different approach to our urban problems, more comprehensive than in the past. To effectively combat these problems, we need a new generation of practitioners to assist in this restructuring. These must be today's students. Unfortunately, many of our institutions of higher education are still turning out students trained in the theory of narrow traditional disciplines.

For all of these reasons, I firmly endorse the local Urban Corps student-involvement programs that are being developed in Maryland and throughout the Nation. Such locally-developed and locally-controlled programs serve as an interface between the academic community and urban government. Urban Corps interns have the opportunity to relate theory to reality and to apply their energies directly on problems within their field of interest. Such programs provide a practical experience which simply cannot be matched for those students who will comprise the new generation of practitioners.

In the Baltimore region there are now two Urban Corps programs: the Baltimore Urban Corps, developed and managed by the city of Baltimore, and the Baltimore Metropolitan Urban Corps, sponsored by the Regional Planning Council. The Baltimore Urban Corps works with city agencies and is directed by the office of the mayor, while the Metropolitan Urban Corps deals largely with State agencies. The two programs were independently initiated in the early fall of 1969, and will complement each other.

The Urban Corps in the Baltimore area will provide an educational experience for both the student intern and the city government employer—each gaining a better perspective of one another. In addition, such programs bring the academic community closer to the actual workings of urban government which can only help reduce the often-present alienation between the two.

Urban Corps programs across the Nation would not solve all of our urban problems, however, they are a beginning effort geared toward constructive action and change. I'm very encouraged about the establishment of two Urban Corps programs in my home State and applaud the national effort in helping to redirect our domestic priorities.

I ask unanimous consent to have printed in the RECORD a statement about the Urban Corps, a list of programs in operation or being developed, a Saturday Review article, and a New York Times article.

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

AN INTRODUCTION TO THE URBAN CORPS

Our cities are faced with an overwhelming variety of serious and complex problems. It is clear that these problems cannot be resolved with our present resources; new sources of talented and motivated personnel must be found to aid in the solution of the crises of our cities.

Our colleges and universities are also undergoing a thorough re-evaluation of their goals. Students are asking for more "relevance" in their educational experience and for the opportunity to take an active part in shaping the future of the society in which they live. Simultaneously, institutions of higher learning are seeking ways of providing genuine service to the community at large. This growing desire to extend the learning experience beyond the campus gates, to test academic theory against the conditions in the real world present a challenge and an opportunity to both government and higher education.

Urban Corps programs meet that challenge by bringing together the city and the academic community through internships in urban government.

An Urban Corps program has four basic objectives:

1. To provide young men and women with the opportunity to participate first-hand in all aspects of urban government;
2. To provide the community with skilled and motivated manpower willing and able to perform important and meaningful assignments in the public interest;
3. To attract into local government the new talent it so urgently requires; and
4. To bring the unique capabilities and resources of the academic community to bear upon the problems of the city.

URBAN CORPS OPERATIONS

Urban Corps students may be involved in every aspect of Urban government. Assignments have ranged from community development and counseling to medical technology and legal research. Every assignment must contain two critical elements, each in sufficient quantity to render the program effective. These are the value of the assignment to the community, and the value of the experience to the student. If the latter is missing, the program becomes an employment service, while if the former is ignored, a truly significant resource is wasted.

Urban Corps students participate full-time during the summer vacation period, and take part in the program on a part-time basis while classes are in session. Increasingly, colleges are offering their students the opportunity to spend one or more semesters working off-campus in a full-time assignment related to their studies and interests.

An Urban Corps is a local program, locally developed and locally run. Each Urban Corps is based upon the specific needs and priorities of the particular community, and can vary in structure and emphasis to most effectively meet local requirements.

An Urban Corps may be a structural part of the city government, frequently a unit of the chief executive's office. Depending upon local circumstances it may also be joined with other related programs, such as youth opportunity or manpower agencies. Some Urban Corps programs are administered by multi-governmental organizations, such as councils of governments or metropolitan coordinating bodies. In a few instances, special purpose corporations, quasi-governmental or educational, have been formed to provide the most flexible home for Urban Corps.

An Urban Corps is a cooperative effort, with local colleges and universities taking an active part in designing the program to develop its educational value as well as meeting the needs of the city.

Once the program is launched, many communities invite more distant educational institutions to take part in their Urban Corps. This is especially useful for the local student who attends out-of-town college, and yet wants to get involved in his home town when he returns on vacation.

FUNDING AN URBAN CORPS

The uniqueness of the Urban Corps concept rests in large measure upon its economic feasibility.

The Federal College Work-Study Program offers a uniquely solid base for funding an Urban Corps.

Administered by the U.S. Office of Education, the College Work-Study Program provides funds to participating colleges for the employment of qualified students, either in work for the institution itself (for example, in the library or cafeteria), or in work in the public interest for a public agency or private non-profit organizations. It is this latter option under which an Urban Corps may obtain this source of support.

Through the College Work-Study Program, up to eighty percent of the student's compensation is provided by the Federal government, with the remaining twenty percent coming from local sources.

The College Work-Study Program has been substantially funded since its creation in 1965. Current authorizations for the program are in excess of $150-million annually, and authorized levels approach the third of a *billion* mark. More than two thousand colleges, universities and vocational schools (including proprietary institutions) take part in the College Work-Study Program, and hundreds more enroll each year.

Student eligibility for assistance under the College Work-Study Program is based on four elements:

1. He must be enrolled as a full-time student;
2. He must be in good academic standing;
3. He must be a citizen of the United States (or file a notice of intention to become a citizen); and
4. He must demonstrate, to the satisfaction of his college, that he needs the income from such employment in order to continue his higher education.

A great many students from various economic backgrounds must work, during the summer or part-time during the academic year, in order to remain in school, and these young people are often clearly eligible for College Work-Study grants. Naturally, priority is given to those students who demonstrate the greatest need.

The twenty per cent share is derived most often from local funds. This may take the form of money already being utilized for part-time or summer employment of college students, or it may entail modest new appropriations to initiate the program. In some situations, the state assists local municipalities in making the match. The College Work-Study Program is also unique among federal programs in that its matching requirement may be met with *other federal funds* (e.g., Model Cities, Community Action Programs, etc.).

Several communities have been able to obtain significant private sector support for their local Urban Corps. This introduces even further flexibility to the program, allowing for the involvement of highly qualified students who may not be eligible for College Work-Study Program assistance, and for the development of supplemental programming to increase the effectiveness of the Urban Corps as a learning experience.

An Urban Corps can be essentially self-supporting in terms of administrative staffing. The students themselves provide a uniquely capable pool of talented and motivated personnel, filling positions ranging from program developers to payroll auditors. Overhead costs may thus be kept to a bare minimum, while the energy and enthusiasm

of the students tends to keep the program dynamic and responsive.

THE HISTORY OF THE URBAN CORPS

The concept of the Urban Corps was pioneered in New York City by Mayor John V. Lindsay. In 1966 the nation's first Urban Corps took form there, with more than 1,000 students from 52 colleges and universities taking part in that initial effort.

Deputy Mayor Timothy W. Costello, who developed the first program, described the Urban Corps as a way to "bridge the gap between our city and its young people." A College professor himself, he stressed the importance of making the Urban Corps an intellectual as well as vocational experience.

The Urban Corps grew steadily in New York, each year adding more students to its enrollment, until in the summer of 1969 more than 3,000 young people took part in the program. Significantly, the desire of city agencies to use this new resource increased at an even more rapid rate, with latest figures showing more than twice as many requests as available students.

THE URBAN CORPS NATIONAL DEVELOPMENT OFFICE

In the fall of 1968 the Ford Foundation provided funds for the establishment of an *Urban Corps National Development Office* to assist cities in the development of their own local Urban Corps programs. During the summer of 1969, the Urban Corps National Development Office was instrumental in stimulating the development of local Urban Corps in more than fifteen cities from Boston to San Francisco. A subsequent renewal of the Ford grant, together with the active support and encouragement of the U.S. Office of Education and various national organizations (such as the International City Management Association and the President's Council on Youth Opportunity), has permitted the Urban Corps National Development Office to expand its efforts to over a hundred communities throughout the nation interested in establishing local Urban Corps programs. In addition, the National Development Office has begun work with several states towards the creation of state-wide student community involvement programs patterned along the Urban Corps model.

The Urban Corps National Development Office provides technical assistance, documentary materials and on-site consultation, all designed to simplify the process of developing a local Urban Corps. The *Urban Corps National News* provides a semi-monthly review of Urban Corps developments throughout the nation, including legal and legislative changes and examples of innovative programing and funding concepts.

Through the support of the Ford Foundation, the assistance of the Urban Corps National Development Office is available without charge to any governmental entity or institution of higher education.

URBAN CORPS PROGRAMS IN OPERATION OR DEVELOPMENT

MUNICIPAL PROGRAMS

Akron, Ohio
Albuquerque, N.M.
Alexandria, Va.
Atlanta, Ga.
Baltimore, Md.
Battle Creek, Mich.
Birmingham, Ala.
Boston, Mass.
Boulder, Colo.
Bridgeport, Conn.
Buffalo, N.Y.
Canton, Ohio
Cincinnati, Ohio
Cleveland, Ohio
Columbus, Ga.
Columbus, Ohio
Compton, Cal.
Dallas, Texas
Dayton, Ohio
Daytona Beach, Fla.
Denver, Colo.
Des Moines, Iowa
Detroit, Mich.
El Paso, Texas
Eugene, Ore.
Fort Lauderdale, Fla.
Fort Wayne, Ind.
Fresno, Cal.
Galveston, Texas
Garland, Texas
Gary, Ind.
Hampton, Va.
Hartford, Conn.
Honolulu, Hawaii
Houston, Texas
Indianapolis, Ind.
Jackson, Miss.
Kalamazoo, Mich.
Kansas City, Kan.
Littleton, Colo.
Los Angeles, Cal.
Madison, Wisc.
Memphis, Tenn.
Miami, Fla.
Milwaukee, Wisc.
Minneapolis, Minn.
Nashville, Tenn.
New Haven, Conn.
New Orleans, La.
New York, N.Y.
Norfolk, Va.
Oakland, Cal.
Philadelphia, Pa.
Phoenix, Ariz.
Pittsburgh, Pa.
Portland, Ore.
Richmond, Ky.
St. Louis, Mo.
San Antonio, Texas
San Bernardino, Cal.
San Diego, Cal.
San Francisco, Cal.
San Juan, P.R.
Savannah, Ga.
Scottsdale, Ariz.
Seattle, Wash.
South El Monte, Cal.
Syracuse, N.Y.
Tempe, Ariz.
Toledo, Ohio
Trenton, N.J.
Tulsa, Okla.
Washington, D.C.
Winston-Salem, N.C.

COUNTY AND REGIONAL PROGRAMS

Baltimore Regional Urban Corps.
Bridgeport Regional Urban Corps (Conn.).
Los Angeles Regional Urban Corps.
Maricopa County Urban Corps (Ariz.).
Miami-Dade County Urban Corps (Fla.).
N.Y.-N.J.-Conn. Metropolitan Urban Corps.
Syracuse-Onondaga County Urban Corps (N.Y.).

STATE PROGRAMS

Iowa.
Massachusetts.
New Jersey.
Pennsylvania.
Rhode Island.
Vermont.

URBAN CORP GOES NATIONAL

Across the Nation, in cities trapped in chronic crisis and mired in tired bureaucracies, there are tasks undone and programs never carried out for lack of funds and talented personnel. In those same cities are thousands of college students looking for ways to put their academic knowledge to practical use.

This past summer seventeen cities—from Boston to Atlanta to Minneapolis—adopted a program designed to meet the needs of both cities and students. The Urban Corps, as it is called, brings undergraduate and graduate students to work in city government on "internship assignments" in a wide range of fields. In Dayton, Ohio, for example, students worked for the Department of Community Development, the Division of Correction, and the Model Cities Planning Council, among others. In Minneapolis, they served as management and research assistants in city planning, the city attorney's office, the police and the parks departments.

The Urban Corps sees to it that these assignments are substantive activities that require the talents of college students, and not just make-work routine tasks. While there is a National Urban Corps office to provide information and help launch programs, each city develops its own plan and contracts independently with colleges and universities. Some cities prefer to use students only in already existing agencies. Others see the new manpower as an opportunity to develop projects long neglected for lack of time and talent. Minneapolis, for instance, needed a street-theater group to develop plays especially for neighborhood audiences.

The program is financed primarily by federal funds through the College Work-Study Program (CWSP). Through the colleges, the federal government provides 80 per cent of the needed money; the city supplies the other 20 per cent. Most of this goes for students' salaries—between $2.25 and $3.25 an hour. The program is student-administered, keeping overhead negligible and allowing a large project to operate on a minimal budget.

CWSP funds are available only to students who could not otherwise afford to stay in college. In a number of cities, therefore, the Urban Corps is seeking funds from other sources to allow a wider range of students to participate. In Atlanta, the Southern Regional Education Board and Atlanta businessmen helped to expand the program.

Urban Corps programs continue through the school year on a part-time basis, and other cities are expected to pick up the idea this fall. Further information can be obtained from Michael Goldstein, Urban Corps National Development Office, 250 Broadway, New York, New York 10007.—B. B. S.

CITY'S "PEACE CORPS" ENDS A PRODUCTIVE SUMMER

In a humid school auditorium in Harlem recently, a drama student from Queens College was staging his first theatrical production, an elaborate musical with sailors, pirates and monsters played by more than 300 excited youngsters enrolled in a city-run summer day camp.

At about the same time, in a crowded room of a rundown Bronx settlement house, a petite Radcliffe senior majoring in government was speaking before a loud and hostile community meeting as a representative of Borough President Herman Badillo.

At Bellevue Hospital, a Yeshiva College sophomore was expertly photographing patterns in cancer cells with an electron microscope.

These young people were members of the New York Urban Corps, a four-year-old city program that enables more than 3,000 students from 150 colleges and universities to work as "internes" in local government agencies and government-sponsored offices.

A U.S.-AIDED PROGRAM

In the program, which ended last Friday, the students earned an average of $2 to $3 an hour for a 40-hour work week. The Federal Government paid 80 per cent of each student's salary and the city paid 20 per cent. The city allocated $450,000 this year to support the organization, which Mayor Lindsay calls New York's "peace corps."

"Involving young people in the city is a good investment," said 49-year-old Martin Rose, executive director of the Urban Corps. "The city agencies know these students might stay on in city government. There

were 10,000 openings in the city for jobs this summer alone."

Impressed by New York's experience, a dozen cities in the country—including Boston, Atlanta and Detroit—started their own Urban Corps this summer.

The program here was marked by flexibility. Some of its participants worked in the city's slum neighborhoods—organizing the poor on a deteriorating Lower East Side block, providing recreation for youngsters in summer school, helping to train the mentally handicapped in city hospitals. Others were involved in city administrative work. Still others found opportunities to further their specialties in the arts and sciences.

MERRICK HAS IT EASY

When he applied for his Urban Corps job last spring, Greg Antonacci, the Queens College drama student, did not expect to be staging an original musical with a cast of 300 restless youngsters.

"David Merrick has it easy!" he said the other day. "I spent hours just yelling 'React! React!' to kids who stood with their hands folded in the middle of a jellyfish attack. I felt more like Vince Lombardi than a stage director.

"But I learned what I could do. I never thought I had it in me to put on that play and I surprised myself. I got those kids to communicate, and I felt proud of their pride."

In the marble hallways of the Bronx County Courthouse, Sandra Ravich, the Radcliffe senior working for the Borough President's office, had a different reaction, however.

"I don't feel I'm making that much of a contribution," she said. "I'm not sure there's much one person can do. Sometimes I'm pessimistic, sometimes I'm optimistic. I think I'm the one who's benefited from this summer, not necessarily anyone else."

AN ENCOUNTER WITH ANGER

An auburn-haired student from Winthrop, Mass., who had never before been in the Bronx, Miss Ravich worked in the section of the Borough President's office that acts as liaison with the county's local Community Planning Boards.

In this capacity, she attended several community meetings, including one in which a group of angry board members was upset because the City Council had voted to open membership on the board to those living outside the planning district. The board members felt Mr. Badillo's office was to blame.

"We all sat around a big table, and, believe me, at first I felt like crawling under it," said Miss Ravich. "But our office wasn't at fault, and I had to help soften the animosity. I learned a lot that night, more than you learn in a government course at Harvard."

While Miss Ravich saw the city bureaucracy function from the inside, four students were working with the residents of East Seventh Street on the Lower East Side, cleaning up a lot for use as a playground, obtaining intercoms for building entrances.

"You learn what a complex thing a block is," said Paul Andrews, a senior at Manhattan College. "We've got hippies, blacks, Spanish-speaking people, students, radicals, a publisher, a Democratic district leader, musicians, lawyers, a doctor—great human resources on one block that people dismiss as a slum.

"What this summer proved to me is that anything people want has to be done by themselves. Massive government programs aren't the answer."

A LOOK AT FUTURE JOBS

For some students the Urban Corps offered a way to learn more about a future profession. At Bellevue Hospital, Mark Rand, a Yeshiva College sophomore, stepped away from the shiny $40,000 electron microscope in a dark room on the second floor of the Pathology Building.

"I always wanted to be a doctor," Mr. Rand said. "But I never before realized the intensity of training that's required. And the dedication! You have to be a scientist and a day-to-day doctor. It takes a long time to reach that point."

Across the city, at the American Museum of Natural History, Cynthia Goddard, a Sarah Lawrence College junior, studied a book on craftwork in ancient Iran.

An anthropology major, she was doing research for Dr. Walter A. Fairservis Jr., curator of Asian ethnology, who wanted to know what craftwork in Iran was known to be indigenous and what was known to have been imported.

"I love the people here," she said. "They're beautiful. For me, the Urban Corps was a chance to really see firsthand the kind of work I probably will do after college."

CRIME IN THE STREETS

Mr. McINTYRE. Mr. President, at a time when the problem of crime is uppermost in our minds, I want to share a most interesting poetic interpretation of the problem by Mrs. Blanche Clark Nevers of Rye, N.H. I think she has expressed, with a good deal of impact, the uneasiness which many people feel as a result of the growing presence of crime in our Nation. She points up, in a different way, the need to act.

Mr. President, I ask unanimous consent to have Mrs. Nevers' poem printed in the RECORD.

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

CRIME IN THE STREETS

(By Blanche Clark Nevers)

Once upon a happier time we welcomed the dusk,
And the hushed awareness of the almost night.
Small voices chirped a litany in the grassy places;
Shy hand clasped hand and the street embraced our steps and our laughter.

Now fear's tenuous fingers claw the darkness,
And, like alley rats we scurry for cover . . .
Leaving the beauty of the night to desecration!

DRAJA MIKHAILOVICH—YUGOSLAV GUERRILLA LEADER

Mr. SMITH of Illinois. Mr. President, for more than 20 years a determined coalition of Americans and Yugoslavian refugees have struggled against overwhelming odds to clear the name and memory of World War II Yugoslav guerrilla leader Draja Mikhailovich.

After the war Mikhailovich was tried and executed by the Tito government for collaboration with Germany.

The Tucson Daily Citizen recently published an article by Richard Felman, an American flyer who safely escaped from occupied Yugoslavia with the aid of Mikhailovich and his Chetniks. I ask unanimous consent that Major Felman's story be printed in the RECORD.

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

[From the Tucson (Ariz.) Daily Citizen, May 16, 1970]

D. MIKHAILOVICH: FATE WAS MERCILESS TO ME WHEN IT THREW ME INTO THIS MAELSTROM

(By Richard L. Felman)

(EDITOR'S NOTE.—Maj. Richard L. Felman (USAF, Ret.) has lived in Tucson the past two decades. He is a former New Yorker. He remains active in numerous ways in his fight to clear the name of Mikhailovich, recently attracting publicity against the Tito-backed entry of a lavish movie, "The Battle of Neretva," in last month's Oscar Award sweepstakes in the best foreign film category. It did not win.)

To the hundreds of us in uniform, home from history's greatest war (which was still unfinished behind us), there was no more beautiful sight in the world than New York harbor.

Drinking in the sights of New York—from shipside was diversion enough as we waited out the seemingly interminable time for anchoring.

I was hungrier for a newspaper than for a Red Cross coffee-doughnut feed and eagerly grasped a New York Times. On Page two, my whole homecoming jubilation was shattered.

There was a dispatch from Yugoslavia: "Marshall Tito announced his Partisan forces had successfully destroyed the large ammunition dump and a railroad terminal at Gorny Milovits after fighting off superior numbers of German and collaborating Chetnik troops."

Not true! I was on that raid. With the Chetniks. It was a Chetnik raid. There wasn't a Red Star—a Tito emblem—within 50 miles!

On April 6, 1941, the savage hordes of the Nazi juggernaut invaded Yugoslavia. Its popular king, Peter II, was smuggled into London to live the unsatisfactory life of a ruler in exile.

The Yugoslav Army Peter had left behind was poorly equipped, a sitting duck for the then exalted Wehrmacht Panzer divisions. Within a matter of days, Adolf Hitler had, for the moment, another country—proud Yugoslavia—in his pocket of world conquest.

Hitler had the country, true. But not its people. Though King Peter had fled he had left behind a man named Draja Mikhailovich, Peter's Minister of War and Commander-in-Chief of the Yugoslav armed forces.

Mikhailovich quickly assembled his makeshift, slingshot army and retreated to the hills. The first great guerrilla leader of World War II began to make himself known. Reports began sifting through the German occupation lines of his spectacular raids on German garrisons, his acts of sabotage and of constant harassment of the Nazis.

Top German staff officers eventually were to admit that Mikhailovich caused so much embarrassment to the invincible Nazi machine that Hitler had transferred four Panzer divisions from the Russian front to wipe him out at all costs; that the pullout of those same divisions spelled the difference in the balance of power on the Russian front and changed the tide of the war.

Since September, 1939, when Hitler overran Poland, no country or people had been able to offer anything more than token resistance to the onrushing Nazi steamroller.

When Mikhailovich took to the hills, and the exploits of his 300,000 beggarly-looking soldiers began resounding throughout the Allied world, it was as if the first flame of hope had lit up the skies of the free world in signal that the great German Army could, after all, be put down.

Americans viewed Mikailovich and his "Chetniks" as the 20th Century David, brazenly challenging Goliath. Newspapers paid tribute with admiring banners. Hollywood issued a box office cinch with its own version of the brave Chetniks. The May 25, 1942, edition of Time magazine emblazoned a

Draja Mikhailovich profile on its cover. Children dropped "Cowboys and Indians" and played "Chetniks."

I knew this man, this legend.

He and his Chetniks saved my life.

At the end of World War II, there were approximately 600 other American flyers who could say the same. Many of them, to this day, are as embroiled as I in a unique mission: to restore the glory of Mikhailovich which, long before the great war ended, was cloaked in undeserved ignominy by the fickle fortunes of international politics which placed the winning of the war above one man's honor. So we believe.

King Peter has twice bestowed coveted decorations on me, and has similarly honored some of the other Americans who still work to clear the name of their beloved Draja.

On Feb. 4, 1944, I won my wings and second lieutenant's commission. I picked up my 10-man crew at Westover Field, Mass., and a shiny, new B-24 Liberator bomber at Mitchell Field, N.Y.

At Morrison Field, Fla., we received our sealed, secret orders to be opened after takeoff. Nervously, we tore them open the instant we were outside the three-mile limit. "Assignment—98th Bombardment Group, 15th Air Force, Italy."

Trinidad, Brazil, Dakar, Marrakesch, Tunisia and, finally, Lecce, Italy.

We began to see what lay ahead of us our first night in Lecce. A bull session developed with the experienced crews . . . three crews lost that day, two the day before . . . 60 per cent crew turnover due to losses the previous two months . . . the neighboring "Fighting 100" completely wiped out.

We were not to remain rookies long. After a lone, brief orientation flight, our ship, which we had christened Never A Dull Moment, was thrown into Rumania, Germany, Yugoslavia, Northern Italy, Southern France, Austria and Hungary—23 missions in slightly more than one month!

We began to feel invincible, despite our share of fighter attacks, engine fires, emergency landings and other scrapes. After a mission to Munich, we counted 212 flak holes in our beloved ship.

Then came Ploesti.

The pre-dawn briefing officer was saying: "Gentlemen, our target for today is the Astro Romano oil refinery at Ploesti, Rumania . . . most heavily defended target in all of Europe . . . the German machine runs on oil; destroy his oil supplies and his entire system collapses . . . Ploesti supplies 80 per cent of the enemy's oil." Descriptions, photographs, number and location of enemy flak guns, enemy fighter bases pinpointed, where to expect our own fighter escort, etc.

And finally, a strange caution.

If we were forced to bail out over Yugoslavia, the briefing officer was saying, we were instructed to seek out "the guerrilla fighter with the Red Star on his hat."

That was our first word that Mikhailovich was no longer the guerrilla darling of the free world. The Red Stars meant Tito's men.

A new intelligence report had just come in from Yugoslavia, said the briefing officer, that Mikhailovich and his Chetnik guerrillas were "cutting off the ears" of downed Allied airmen and turning them over to the Nazis!

At 0513 hours we were off on Mission No. 24. It was a clear, sunny day as the silver ships soared over the deep blue Adriatic. The sky was full of airplanes, 250 of them, B-24s and B-17s. The coastline of Yugoslavia loomed up. We changed course to avert a flak area. Occasionally a plane would drop out of formation and head home with minor engine trouble, but the mighty air armada moved on.

At the Rumanian border, we picked up our fighter escort. To confuse ground tracking stations, we altered our course a few times. Everything was going very well.

Suddenly, 10 minutes out from the target, all hell broke loose! It seemed as if every one of Ploesti's 325 gun emplacements opened up as one. Bombers all around us were exploding or going down in black smoke. Me-109s were coming at us from every direction. The sky ahead was almost solidly black with flak-burst.

"Dear Lord, we've got 10,000 pounds of dynamite on board . . . keep heading for the target and get unloaded . . . hit me later, Jerry, but not until I unload . . ."

We drop the bombs. The plane jumps 100 feet higher with the emptying of the load. We rack over in the direction of home. We spot a single B-17 Flying Fortress in a lonely pattern and know it for what it is: one the Jerries captured intact and used to send up to fly formation with the Americans, who would think it one of theirs. It was calling off our altitude to Jerry's ground gun batteries.

Forty-five minutes later, there was a welcome lull in the fighting—but not for long. The Messerschmitts swarmed back and were all over us before we knew what had happened. Never A Dull Moment lived up to her name as never before. She was riddled with 30-millimeter shells. Half our tail assembly was shot away. Our aileron controls were out. Our rudder was gone. Huge chunks were torn from the left wing and the fuselage. The interphone was kaput and, for a crowning blow, our gas tanks were punctured.

"ABANDON SHIP!"

From 18,000 feet, I jumped—my first bail-out. The 'chute opened beautifully at the right time. I landed in an open field and made a move to get out of harness. It was only then I realized I had been hit and couldn't move my leg.

At that moment I was surrounded—by about 20 peasants, men, women and children. The bearded men kissed me. The women and children kept an awed distance. No red stars. Chetniks! Instinctively, the words of the briefing officer came to mind. I reached for my ears to protect them.

They didn't want my ears. They raised me on their shoulders and carried me about 500 yards to a group of three cabins and laid me comfortably in a small room.

More villagers came and filed by my bed, wearing friendly visages. They brought fruit, flowers and slivovitz, a Serbian 160-proof plum brandy. Music was played, children danced, toasts were drunk. Some slivovitz was poured over my wound and bandages were put on it.

An elderly peasant provided me with a crude crutch, clasped his hands as though saying grace and beckoned me to follow him. He led me to a small wooden structure nearby, which was the village chapel. We both knelt and prayed.

In the late afternoon, Col. Dragisha Vasich came to welcome me. A man of striking appearance, he was about 65 years old, was neatly dressed and had snow white hair and a trim goatee.

Before the war, he had been Belgrade's most noted editor-publisher. Soon after the invasion, he left his home and business and went into the hills. Mikhailovich had made him the Corps Commander of the area I was in. His wife, a former school teacher, spoke English and, for downed Americans, was an invaluable interpreter.

Vasich told me many things that day. How Chetniks cheered each time they saw American bombers overhead. How his people took to the hills in April, 1941. How Mikhailovich, as King Peter's Minister of War, had gathered a guerrilla force of more than 300,000 men. How they had wreaked havoc with the hated Nazi.

How Moscow-trained Tito suddenly was on the scene, declaring himself the representative of the Yugoslav government. How Tito had been virtually unheard of in the overall war effort until the Big Three conference at Teheran in November, 1943.

Stalin, Vasich explained, seized on the opportunity created by the chaotic conditions of wartime occupation and an absent king, insisting the Allies withdraw their support from Mikhailovich and recognize his man Tito. The wily Russian leader already was planning the bloodless addition of another country under his control after the war.

No official announcement was made, but gradually Allied support to Mikhailovich dropped off. Official communiques started to come out of Tito's headquarters and Mikhailovich was abandoned. But the Chetniks carried on.

Vasich explained the Germans were everywhere. There was a Nazi garrison of 500 troops just two miles away; another of 2,000 at 10 miles.

He assigned a bodyguard to me. I was to sleep at all times fully clothed, ready to move at a moment's notice. Chances of evacuation were virtually nil. Mikhailovich would keep in touch with my welfare at all times.

One by one, all but one of my crew members were found by the Chetniks and reunited with me. In each instance, the welcome was spectacular, with embraces, flowers, music, dancing, slivovitz.

We spent a month roaming the hills with different guerrilla bands. For security reasons, our crew never traveled more than three in the same group. We never stayed at one farmhouse or other location more than two nights consecutively. In that month, I must have covered well over 500 miles. And with me every mile was an indelible vision of my first days in the village.

About three days after we bailed out, Col. Vasich received an ultimatum from the nearest German garrison: turn over the 10 American flyers they had seen bail out or the Germans would wipe out an entire village of 200 women and children.

Most of us wanted to give ourselves up, preferring that, with its promise of possible escape opportunities, to seeing 200 innocent persons annihilated. Chetnik leaders would not hear of it.

It was a proud Yugoslav heritage that life without freedom was worse than death. The sacrificial village would rather spare one American flier who could drop one bomb on the enemy than to be spared itself.

The next day, I watched the burning of the village . . . .

Vasich preferred that we Americans take no part in the Chetnik guerrilla activities but he could hardly hold us back.

One night Mihodrag, the personal bodyguard who never left my side, and I joined a group of six Chetniks and stole down to a railroad yard. A railway worker had brought us news that a supply train was due to leave fully loaded in the morning for Rumania.

While the rest of us stood guard, a 15-year-old Chetnik slipped aboard the coal car and added what looked like more hunks of coal. The additions actually were pieces of coal hollowed out and filled with TNT.

The young Chetnik buried them a certain depth among the pieces of real coal—just deep enough not to hit the locomotive's incinerator until it had crossed the border into Rumania. An explosion in Yugoslavia would have meant wholesale retaliatory slaughter there.

Another method of sabotage we used was covering the axle gears of supply trucks, box cars and other vehicles with finely pulverized gravel. Many miles away and many days later, trucks and trains would "mysteriously" break down.

Meanwhile—always—we discussed plans for evacuation.

We had no means of communication with the Allies. Although Mikhailovich had a shortwave transmitter, he no longer was recognized by the Allies. And we had no pre-

arranged code or frequency on which to transmit.

With an increasing Allied offensive, more and more Americans were parachuting into our midst, along with a smattering of Russian, Italian, French, Canadian and British personnel. A pow-wow of ranking American officers decided an evacuation should be attempted. We decided our only chance was to risk a transmission in the clear and in the blind to 15th Air Force Headquarters at Bari, Italy.

"S.O.S. . . . S.O.S. . . . 150 American crew members in need of rescue . . . many sick and wounded . . . advise . . . S.O.S. . . ."

If ever received, the message sent repeatedly for two days was ignored.

With Mikhailovich persona non grata with Allied headquarters, we had to devise a code that would be believed. We came up with one, extremely complicated—and a bit absurd. But it worked.

It involved such things as the third letter in the hometown of the bartender at the Lecce Officers Club for use of the letter A; for B, the fourth letter in the name on the photograph on the Intelligence officer's desk at Brindisi. God knows how it was ever figured out.

All I know is that three days later, a reply came through: "Standby for aircraft 31 July 2200 hours . . ." just two days away.

The next day, cries of "Draja" rose up from our ranks. Heads turned toward a man approaching, surrounded by scores of laughing children. He went with us to a grazing meadow which could serve, if crudely, as a rescue airstrip. There, 1,000 of his troops put on a review in our honor.

Afterwards, we assembled under a huge tree and Mikhailovich, through an interpreter, spoke to us. He sat on a rock and discussed the state of the war with more than 100 bearded, shabbily dressed soldiers of a foreign country.

He stared into space as he related the Yugoslav's love of freedom to that of the American's. Then he expressed his disappointment that the Allied nations had abandoned him to favor Tito, a bitter irony of war which he saw as a deceitful power play by Stalin.

He was aware, he told us, of false reports Tito had broadcast about him. With moist eyes, he appealed to us "take back the truth to your homeland."

Quickly, then, he turned to the task at hand, getting us safely out of Yugoslavia. Within a day he would have more than 8,000 men surrounding the airstrip. If the enemy should discover the plan, his men could hold them off until all our planes were off the ground.

In parting, I insisted he accept my class ring, which he had previously admired. He took it and pressed upon me the ceremonial dagger he had so long carried at his side.

On Aug. 9, after much planning and many heartbreaking nights of waiting while rescuers tested and probed for a safe way to fly us out, evacuations began. It was a colossal success under the most trying circumstances.

In all, 243 Americans, plus an assortment of other Allied nationalities, were flown to Bari, Italy, in waves of C–47s with hordes of Mustang and Lightning fighter plane escorts.

The war in Europe ended in May, 1945.

On March 25, 1946, Tito announced Mikhailovich had been captured and would be tried as a "war collaborator."

Collaborate with the Nazis? Fantastic! I still have in my possession on a poster I ripped from a tree while traveling through Yugoslavia. It was one of many found all around the countryside and in the villages of Yugoslavia. It says, in part:

Reward—100,000 reichmarks in gold will be awarded to the person bringing in, dead or alive, the leader of the bandits, Draja Mikhailovich . . . By the Supreme Commander of the German troops.

I read anew of Tito's plans to try Mikhailovich as a war criminal and felt that someone had to take steps to clear his name, in behalf of the many Americans whose lives he helped to save and, indeed, in behalf of America itself whose engagement in war, I felt, was definitely shortened by the Chetniks' contributions to the frustration of the German war machine.

I went to every major newspaper plant in New York City, receiving dismissals sometimes curt, sometimes polite.

The Journal-American did not dismiss me. It told my story on page 1.

Immediately, letters of support poured in. Other airmen who had been saved by the forces of Mikhailovich volunteered their services. The Archbishop of the Serbian Orthodox Church in New York City wrote me: "It matters not whether Draja lives or dies . . . the important thing is to clear his name."

On April 3, I told my story over the National Broadcasting Company radio network. Soon afterwards, a few of my former buddies and I formed the Committee To Aid General Mikhailovich. In one week we received more than 300 deposits from airmen who had been with us in Yugoslavia.

On April 28, 1946, 20 of us, plus two Canadians, chartered a plane to Washington to plead not for blind amnesty for Mikhailovich but for a fair trial.

We specifically were not claiming to pass judgment on his guilt or innocence, a matter technically beyond our province; we merely wanted to offer the overwhelming evidence we had in his behalf to be presented at his trial.

The reception committee at the airport was impressive—a turnout of more than 2,000 people and a distinguished welcoming committee that included Senators Taft, LaFollette, Wiley, Revercomb and McClellan, along with Mrs. Alice Roosevelt Longworth and Maj. Gen. E. L. Oliver, father of one of the rescued airmen.

The following day we swarmed over Capitol Hill and pleaded our cause to Senators and representatives. An eloquent plea on the floor of the House of Representatives was made by Mrs. Bolton, Congresswoman from Ohio, and is recorded in the May 1, 1946, edition of the Congressional Record.

Although our request to see President Harry Truman was not granted, our efforts were not without results. Shortly thereafter, the State Department sent an official note to the Government of Yugoslavia.

". . . A number of these individuals (U.S. airmen) and others in the United States who were closely associated with General Mikhailovich possess firsthand evidence which cannot but have a bearing upon the charges of enemy collaboration which the Yugoslav authorities have indicated they will bring against General Mikhailovich.

"The United States Government, in these circumstances, is confident that in the interests of justice the Yugoslav Government will wish to make suitable arrangements whereby the evidence of any such persons who may so desire may be presented in the connection with the trial. . ."

Public indignation was rising. A group of prominent Americans took up the cause, forming the Committee For A Fair Trial for Draja Mikhailovich. Among its members were Sumner Welles, Justice Ferdinand Pecora, William Phillip Simms, Dorothy Thompson, Clare Booth Luce, Norman Thomas, Justice Francis Rivers, Miriam Hopkins.

The list of signatories endorsing the cause included approximately two dozen governors and Congressmen. The executive chairman was Ray Brock, then New York Times foreign correspondent.

The State Department sent a second note to Yugoslavia. A reply came back this time. Stonoej Simitch, Yugoslavian foreign minister, advised that the second note and any subsequent notes "would be ignored." (At the time, Yugoslavia was receiving 90 per cent of her economic subsistence from the United States.)

The committee reacted quickly, forming a Commission Of Inquiry In The Case Of Draja Mikhailovich. To hold the inquiry, four of the most prominent jurists in America were appointed—Arthur Garfield Hayes, chairman; Adolph A. Berle, former Assistant Secretary of State; Charles Poletti, former lieutenant-governor of New York, and Theodore Kiendl.

The Commission convened on May 17, 1946, at the County Lawyers Association Bldg., 14 Vesey St., New York. For a full week the Commission heard the evidence. Its full findings, together with almost 600 pages of testimony, were forwarded to the Government of Yugoslavia for presentation at the trial. The Commission's conclusion:

"We are convinced that the testimony given before us is material on the question of the guilt or innocence of General Mikhailovich as a war criminal and that under standards of justice which have been throughout the years, the exclusion of such testimony from the trial of the charges . . . would be so highly prejudicial as to prevent the possibility of his obtaining a fair trial."

An editorial in the New York Times, May 31, noted that the cause of a fair trial "probably is a lost cause . . . (the Tito government) intends to find (Mikhailovich) guilty of collaboration with the Germans and hang him or shoot him.

"This much has been done, however . . . a record has been made for history. That will be small solace for Mikhalovich as he goes to his death. But it will serve to mitigate, if it does not entirely clear, his memory."

On July 10, 1946, Mikhailovich went under trial as a war collaborator and traitor in a courtroom in Belgrade.

Just before sentence was pronounced, Mikhailovich, looking unutterably weary (and drugged, say some of his defenders), stood before the bench and stated his last public words:

"I wanted nothing for myself . . . I never wanted the old Yugoslavia, but I had a difficult legacy . . . I had against me a competitive organization, the Communist Party, which seeks its aims without compromise . . . I believed I was on the right road . . . But fate was merciless to me when it threw me into this maelstrom. I wanted much, I started much, but the gale of the world carried away me and my work."

On July 17, 1946, a Communist firing squad carried out the sentence of the court.

Is that, then, the end of Draja?

Maybe. Maybe not.

True, the wartime quid pro quo between Tito and Roosevelt, Stalin, Churchill is still functioning.

But so is the Committee To Aid General Mikhailovich.

FARMWORKER POWERLESSNESS AND UNEMPLOYMENT COMPENSATION COVERAGE

Mr. MONDALE. Mr. President, for those who have not yet weighed the import of the long series of hearings and investigations by the Migratory Labor Subcommittee on Migrant and Seasonal Farmworker Powerlessness, perhaps an editorial in a recent Washington Post, July 8, 1970, may be helpful.

The editorial urges immediate House and Senate action on the conference report on H.R. 14705, the Unemployment

Security Amendments of 1970. The major thesis of the editorial is that action on the report is essential to meet the serious problem of unemployment because the bill authorizes additional benefits for the unemployed, and extends benefits to workers not heretofore covered. That report, as I have pointed out previously on the floor of the Senate, eliminates coverage of farmworkers from the bill although such coverage had been included by the Senate Finance Committee and confirmed on the floor by a 42 to 36 vote.

Since the filing of the report, I joined with the Senator from Oklahoma (Mr. HARRIS) and the Senator from New York (Mr. JAVITS) in informing the Senate that perhaps the conference report should be rejected in the hopes that the conference committee would reconsider its action in eliminating coverage for farmworkers.

The Post editorial suggests that insistance on farmworker coverage would endanger the entire measure, and that "the bill should not be allowed to fail for want of these amendments." No reason is given for why farmworkers are expendable. Se la Vei.

Mr. President, I shall not at this time belabor the plight and the poverty of this Nation's farmworkers, particularly those who travel throughout this country in search of work and who work to pick our abundance of food. Our hearings on powerlessness during this Congress have adequately described this situation; the television documentary scheduled for July 16, 1970, at 7:30 p.m. will no doubt shed more light on this problem; and, our subcommittee hearings on July 20 and 21 should further serve to enlighten those who do not understand the tragedies of the farmworker's life.

But I do want the RECORD clearly to show yet another example of how the farmworker is expendable in the minds of some, at least, and that meeting the problems of farmworkers is still not a priority item. For that reason I ask unanimous consent to insert in the RECORD at this point, the editorial from the Washington Post of July 8, 1970.

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

UNEMPLOYMENT: STILL A SERIOUS PROBLEM

If the decline in the seasonally adjusted unemployment rate from 5 per cent in May to 4.7 per cent in June should mark the beginning of a new trend, it would astonish the chart-watchers. Many economists have assumed that unemployment will reach 5½ per cent on the upward curve that has been in evidence in recent months before a turn for the better can be expected. Others who take a darker view of the general economic climate place the figure at 6 per cent or more. However powerful the hope that these forecasts will prove inaccurate, there is very little to cheer about in the Labor Department's June report.

One reason for the statistical decline was a reduction in the number of unemployed women and teen-agers. But since the labor force showed a shrinkage from 85 million in May to 84.1 million in June, the analysts assume that many women and youths have taken themselves out of the category of jobseekers because the outlook was so bleak. When unusual factors of this kind impinge upon the samples taken by the Labor Department, the adjusted seasonal rate for any given month may convey a quite inaccurate impression.

Certainly there is nothing in the report which relieves the urgency of enacting legislation to extend job-training programs and improve unemployment compensation. The continued stalling of Congress on the unemployment compensation bill is especially curious because the House-Senate conference reached agreement two months ago. The bill is important because it would authorize additional benefits for the unemployed when joblessness has remained at a national level of 4.5 per cent for three consecutive months. It would also extend benefits to 4.8 million additional employees and to a possible 436,000 more state and local employees, if state and local governments should give their approval.

It is said that there is some dissatisfaction in the Senate because the conference committee eliminated two amendments, although one was a rider having no direct bearing on unemployment compensation. The other is an amendment bringing workers on large farms under the system. The bill should not be allowed to fail for want of these amendments. Incidentally, the high unemployment in this period of economic recession also enhances the need for enactment of the bill for protection of workers' rights under private pension and welfare plans, which has made very little progress in either house.

BRISTOL BAY OIL SLICK

Mr. TOWER. Mr. President, last spring it was widely reported that an oil slick in Bristol Bay off the coast of Alaska was responsible for the deaths of 86,000 murres, seabirds. Implied in these reports was that oil companies had caused the oil slicks.

Subsequently, a joint investigation was conducted by the U.S. Department of the Interior and the Alaska Department of Fish and Game to determine the cause of death of these birds.

The report of this investigation stated in part:

The evidence suggests that it (the deaths) was a catastrophe of nature—

And that the birds—

probably died from a combination of starvation and exhaustion which was aggravated by a severe storm that prevented them from feeding during a critical few days. . . . None of the murres examined along the beaches were oil-stained. . . . Gas chromatograph and infra-red scan testing revealed no evidence of petroleum products in any of the samples.

Mr. President, often an accusing finger is pointed at companies in the oil industry as the ones causing damage to wildlife through oil spills and leaks. Regrettably, a few accidental leaks have occurred and these leaks have caused ecological disruptions. The oil companies responsible for these leaks do not desire to avoid blame for such accidents when blame is due them.

But, at the same time, they should not receive the blame for calamities to our precious wildlife when the blame is undeserved.

Therefore, I ask unanimous consent that the "Summary Report on Bristol Bay Murre Mortality," dated April 1970, be printed in the RECORD so that those companies which were blamed will be completely exonerated from any responsibility for the deaths of these birds.

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

SUMMARY REPORT ON BRISTOL BAY MURRE MORTALITY, APRIL 1970

At least 86,000 common murres died in Bristol Bay, Alaska during a brief period in late April of this year. Although the cause of death may never be completely resolved to everyone's satisfaction, the evidence suggests that it was a catastrophe of nature. The murres, apparently still weakened after wintering in the Bering Sea, probably died from a combination of starvation and exhaustion which was aggravated by a severe storm that prevented them from feeding during a critical few days.

Post-mortem examinations of murres by pathologists from the Bureau of Sport Fisheries and Wildlife research centers in North Dakota and Maryland, the Arctic Health Research Center in Fairbanks, the National Disease Laboratory in Iowa, and the California Department of Fish and Game in Sacramento found no evidence that pathogenic bacteria or viruses contributed to the mass mortality. Foods were not found in the digestive tracts of these birds. Tests for presence of toxins in the small quantities of fluid found in the intestines were inconclusive.

All specimens were emaciated and had no appreciable deposits in subcutaneous, abdominal and cardiac fat tissue. Thirteen of the dead birds varied in weight from 570 to 786 grams. Although comparable weight data were not available for this same time of the year, the 688-gram average weight of these birds was considerably less than the 972-gram average weight for male common murres and 1022-gram average weight for female common murres from Cape Thompson in northwestern Alaska in late June. The weight loss, lack of body fat and some hemorrhaging of the intestines suggest that the birds died from starvation, although all factors that could contribute to starvation may never be completely resolved.

Severe winds and turbulent seas probably precipitated the die-off that was first reported on April 24 by Ken Manthey of the Alaska Department of Fish and Game. During the two preceding days, winds reached peak velocities of 104 mph at Adak and 84 mph at Cold Bay, and winds gusted at lower velocities during this time at other reporting stations within the Aleutian Islands and along the Alaskan Peninsula. Three murres found on April 24 in the town of Cold Bay by residents were taken to the headquarters of the Izembek National Wildlife Range, but the incident seemed insignificant at the time because severe storms often blow pelagic birds inland.

"Wrecks of seabirds," occurrences where seabirds are driven far inland and are often found dead and dying along the beaches as a result of severe storms, have been reported frequently. Leslie M. Tuck, Canadian Wildlife Service biologist, summarized many observations of "wrecks of murres" in his monograph on their life history. Mass mortalities of thick-billed murres during stormy weather have been recorded over Anadyr in Siberia and at the Pribilof Islands, both in the Bering Sea. The most significant record of "wrecks of murres" is that of Beals and Longworth as reported for Unimak Island in 1941; they wrote:

"Between April 2 and 4 numerous dead and sick murres were along all the beaches. We counted 37 dead birds along 3 miles of beach. The condition was general along the strait, we were told. Oldtimers on Unimak told us that this happens every spring and that some years the beach is black with dead birds. Swimming in close to the waterline many of them appeared to be sick or very weak and hardly able to dive in shallow water. Altogether we saw 38 dead birds and 40 or more very weak ones along 3 miles

of beach. For three days before this, heavy winds and snow blew from the southeast."

Apparently "wrecks of murres" are not uncommon in this region, but seldom have the observers had the mobility of those this year who were able to assess the magnitude of loss.

Unresolved reports of oil sheens seen near the coast and a U.S. Coast Guard report of two Japanese trawlers that sank with 36 men aboard 100 miles west of Unimak Island during the severe storm gave rise to early speculation that the birds were succumbing to diesel fuel or gasoline escaping from the sunken vessels. None of the murres examined along the beach were oil-stained. Only one obviously oil-killed bird, a fulmar, was collected by the crews that combed portions of the beach. Organic extracts from samples of feathers taken from the dead murres and of beach sands were analyzed by chemists of the Federal Water Quality Administration's Portland laboratory. Gas chromatograph and infra-red scan testings revealed no evidence of petroleum products in any of the samples.

Tissues from these murres were tested for pesticides. Both DDE (a metabolite of DDT) and hexychlorobenzine were found in such small quantities, each less than 1 part per million, that they were not regarded as suspect causes of death.

Because almost all affected birds were murres, pollutants seemed to be an improbable cause of death. Observations of pelagic birds in the eastern Bering Sea and Bristol Bay indicate that in winter the murres are the most abundant birds, followed by glaucous-winged gulls and fulmars; and from spring through summer there are increasingly larger numbers of kittiwakes, shearwaters, and puffins. The few dead birds of other species found among the murres were in numbers that would be expected following most storms during April.

Perhaps one of the most unexpected findings from the pathological examinations of these murres was the presence of arsenic, 2.77 parts per million, in liver tissue. The significance of arsenic at this level is not known. However, some of the marine organisms upon which murres feed are reputedly concentrators of this element, and arsenic levels of this magnitude may be normal in healthy murres.

Murres (the "urre" of the word murre is pronounced like the "ur" in the word fur) are found throughout the northern hemisphere. Two species, the common murre and thick-billed murre, are found in the Bering Sea and Bristol Bay area. There is considerable overlap in the distribution of these species, but the thick-billed murre tends to have a more northerly distribution than the common murre. Studies of summer distribution of pelagic birds in Bristol Bay show that common murres are most abundant, but winter populations there may contain proportionately more thick-billed murres. Nesting colonies of murres in Alaska are found along rocky portions of the coast from Cape Lisburne, along the Aleutian Islands, to and including the Alexander Archipelago in southeastern Alaska. Some of the Alaska "bird cities," or nesting colonies, may contain tens of thousands of murres. Following the nesting season, when the pair attempts to raise a single young on a precipitous cliff, the birds return to the sea until next year. Murres feed chiefly on small fish, such as capelin, sculpins and codfish; but invertebrates, such as shrimp, mollusks and sea worms furnish a part of their diet.

Leslie M. Tuck ("The Murres," Canadian Wildlife Service, Ottawa; 1960) summarizes the life history of the murres as follows:

"Murres are relatively large sea-birds, weighing on the average two pounds, with sharply defined bi-coloured plumage. They are highly specialized for catching small fish under water. Specialized development for this purpose includes reduction of the length and area of the wing and so great modification of the bones and muscles of the legs that these birds walk very little and very awkwardly. They nest in large, compact colonies on steep cliffs facing the sea.

"Murres are essentially marine species and approach land only during the breeding season. They obtain most of their food by flying *under* water. They are the only seabirds in the Northern Hemisphere which habitually lay their eggs in exposed situations on bare ledges and rocks. They brood but a single egg and yet they are probably the most abundant sea-birds in the Northern Hemisphere.

"There are two species; the common murre (*Uria aalge*), with some tolerance for warmish water, and the thick-billed murre (*Uria lomvia*), largely restricted to arctic waters. They occupy in the Northern Hemisphere an ecological niche similar to that occupied in the Southern Hemisphere by penguins, which they resemble superficially in coloration and postures.

"The habit of nesting in large colonies (some colonies contain more than one million individuals) has made the species of substantial economic importance in some parts of the Northern Hemisphere. Their eggs, and to a lesser extent the birds themselves, have been traditionally used in the Old World for food, and were so used for a brief and overenthusiastic period in the New World. Recent investigations indicate that there is more nourishment in a murre's egg than in the equivalent volume of a domestic fowl's. The utilization of murres, with some minor exceptions, has been outlawed in the New World for more than half a century. Elsewhere utilization has decreased in some places (e.g., Great Britain), remained the same (e.g., the Faeroes), or increased (e.g., Russia). There is no evidence that murre populations are appreciably less numerous today than they were in historical times.

"Nesting murres require scarcely one square foot of territory per individual. Such compact colonies are possible because the food of murres is almost unlimited in summer. Murres provide a vital link in the ecology of the species which are their food. Their excrement, rich in potash, is important to the growth, and so to the abundance of small marine organisms. Their colonies are in many respects the fertilizing factories of the northern seas.

"A murre colony (loomery or bazaar) is an orderly aggregation of birds. It is basically composed of a core of experienced adults, surrounded on the submarginal fringe sites by less experienced birds or those breeding for the first time. Early in the breeding season, mature murres take part in communal displays in the sea at the base of the cliffs. It is believed that those communal displays not only stimulate the birds to breed but enable them to 'synchronize' their breeding cycles so that the maximum number of young are raised in a comparatively short period.

"The eggs and chicks are subjected to many dangers, not the least of which is the likelihood of being knocked off the narrow ledges. The surviving chicks are led to sea, and to comparative safety, by single adults, not necessarily their parents. In other ways also, murres show communal interest in the welfare of the eggs and chicks of the colony."

ANOTHER LOOPHOLE FOR THE OIL LOBBY

Mr. McINTYRE. Mr. President, I never cease to be amazed at the determination of the Washington lobbyists and defenders of the oil industry to find every possible way of extracting a few more unjustified dollars from the hard-pressed American public.

The American motorist who pays an artificially high price for fuel for his car, the conservationist who sees the priceless value of the American environment cheapened by the reckless drilling and transportation techniques which spill crude oil over our shores and valleys, the New England homeowner who each winter is forced to pay protection money to the oil barons in order to shield his wife and children from the bitter northern cold have been joined by a new target of the oil lobby—the American shareholder.

I am referring specifically to the latest proposal of the Nixon administration to place a charge on stockholders—which will, of course, be passed on to their customers—which will be based on all purchases and sales of shares—except shares in oil and gas interests. Once again the oil lobby has found a friend in the administration to speak in special treatment for the oil industry.

While the precise operation of the administration proposal is highly technical, the effect is that any investor, be he a small investor buying five shares of American Telephone & Telegraph, or a wealthy investor buying 10,000 shares of IBM, will have to contribute toward the costs of the administration's proposed insurance program for cash left in the brokers' care. Buyers or sellers of shares in oil rights, while receiving the very same insurance protection, will not be contributing toward those costs, as the program is initially planned.

Two articles in yesterday's Wall Street Journal indicate the growing interest among large brokerage firms in selling shares in oil drilling funds, which the administration proposes to exempt from the costs, but not the benefits, of the proposed insurance program. I ask unanimous consent that these two pieces be printed at the conclusion of my remarks.

Mr. President, I would remind the Senate that the specific types of funds mentioned in the Wall Street Journal article have been the beneficiaries of a special exemption in the Investment Company Act of 1940 for a generation, during which the operators of some of these funds have managed to develop large-scale methods of getting rich at the expense of unsophisticated investors. Last year the Senate finally voted to remove the special oil exemption; that legislation is now in the House.

And now the oil lobbys have come up with this new exemption. I am disturbed at the policy considerations which would lead the administration to seek special protection for the oil industry. I suppose this is the surface evidence of yet another payoff of the sort which has recently been described on the front pages of the Washington Post.

I think that it is worthy of note that the administration proposal was sent up in response to the leadership of the distinguished junior Senator from Maine (Mr. MUSKIE) in the area of broker insurance. His initial proposal, of course, contained no special giveaways to the oil industry of the sort buried in the fine print of the administration proposal.

Indeed, Senator MUSKIE has already questioned the SEC closely about the rationale of the special treatment for the oil barons which the Nixon administration proposes. I join his questioning, and wish to express my determination to rid any legislation which is finally adopted of this unique treatment for the oil industry fat cats who apparently have reason to believe that they can buy their way into the White House.

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

TAX REPORT: A SPECIAL SUMMARY AND FORECAST OF FEDERAL AND STATE TAX DEVELOPMENTS

Wary investors eye drilling funds as a tax shelter, alternative to sagging stocks.

Last year's tax law axed some shelters but didn't disturb oil and gas drilling funds—through which petroleum developers raise money by selling shares to the public. "Intangible" drilling costs—the hole-boring expenses that usually consume most of the investor's outlay—remain totally deductible from his ordinary income for tax purposes. (The 22% depletion allowance, down from 27½% prior to the 1969 act is applied to oil income once a well is operating.) Hopeful promoters filed $1.1 billion in drilling offerings with the SEC in this year's first half, up from $685 million in the year-before period. A few funds sell out, but many raise less than half their goal.

"Most people are so pessimistic they won't put money into anything," says one gloomy driller. Moreover, in eroding capital gains, the market slump lessens the demand for tax shelters. And some investors are turned off by the jungle of complex provisions many funds comprise. Skepticism steers many laymen toward funds sold by well-known brokers.

Congress, the SEC tone down threats of regulation as drillers consider self-policing moves. The Oil Investment Institute, a newly formed trade group, adopted a list of "business standards" last weekend.

Gloomy stock brokers look for a silver lining in drilling funds.

"Respected investment banking firms will impart a much higher tone to this business," says an official of E. F. Hutton, which plans to sponsor a $4 million offering for Tesoro Petroleum. Goodbody & Co. raised $30 million of a sought $75 million for Husky Oil in recent weeks. Bache, Bear-Stearns, White-Weld, Goldman-Sachs, Donaldson-Lufkin and Burnham also underwrite drillers or study doing so.

Oil experts advise investors to buy funds offering maximum liquidity, tax deductibility as close to 100% as possible, strict limits on additional assessments, and limited partnership arrangements that avoid unlimited liability. Only people in 45% or higher tax brackets who've first consulted their accountant should invest in oil funds, most authorities say.

GUN CONTROL LEGISLATION

Mr. HATFIELD. Mr. President, many Oregonians have written me to express their dismay or distaste for portions—or all—of the 1968 Gun Control Act.

The proper function of gun-control legislation should be to cope with crime and violence while not treading on the rights of those legitmately using guns. This was the intent of Congress in passing the Gun Control Act of 1968. I opposed and voted against the licensing and registration amendments which were proposed at that time and which were not adopted. I did vote for the act on final passage because the act, without those amendments, seemed to meet the following criteria of mine for realistic Federal gun legislation:

First, it provides support to Federal, State, and local law-enforcement officials in their fight against crime and violence;

Second, it makes no restrictions on the use of guns and ammunition for sports, personal protection, or any other lawful activity;

Third, it does not provide for licensing of individual owners of firearms, and

Fourth, it does not discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the act.

The Gun Control Act of 1968, generally speaking, prohibits certain interstate transactions in firearms and ammunition; prohibits sale of firearms and ammunition to persons under 18 and sale of firearms other than shotguns or rifles and ammunition therefor to persons under 21; provides for licensing of firearm and ammunition businesses; prohibits the importation of foreign-made military surplus firearms into the United States; and prohibits gun sales to certain convicts, unlawful drug users or drug addicts, or mental defectives. It does necessitate obtaining by licensed dealers information regarding sales of firearms and ammunition to assure compliance with the act.

The Gun Control Act of 1968 does not prohibit hunting by persons under 18 years of age or by persons of any other age group. Hunting regulations are still a matter of State—not Federal—law. Restrictions on sales of firearms and ammunition are not to be interpreted as restrictions on hunting; information to the contrary which may have been published is incorrect.

At the time, Mr. President, I hoped that this act would assist in fighting crime and violence, and that it would be successful in navigating between the fundamentally opposing interests of freedom of firearm use and regulation of firearm misuse. At the time of passage, I favored a cautious wait-and-see attitude to determine the necessity and/or efficacy of the Gun Control Act of 1968 in general, and to earmark more precisely the specific sufficiencies and inadequacies of the various provisions of the act.

Already Congress has been able to move to eliminate certain portions of the act which were shown as ineffective deterrents to crime. In 1969, I supported an amendment, which ended recordkeeping requirements for shotgun and most rifle ammunition. Passage of this relieved millions of sportsmen from unnecessary harassment and inconvenience. I know that Oregonians who are sportsmen were gratified by this action.

At the present, I am involved in an effort to end another ineffective and burdensome segment of the 1968 act. I am a cosponsor, with Senator MCGEE, of S. 3724, which would remove Federal recordkeeping requirements for .22-caliber rimfire ammunition. This would eliminate the type of gun-control legislation which I believe has proved unnecessary and unwise.

A statement by the Treasury Department illustrates my feelings:

The Department has found that the records required of transactions in sporting type ammunition, i.e., shotgun, rifle and .22 caliber rimfire ammunition, is of little value in law enforcement.

Indeed, the Department knows of no instance where any of the recordkeeping provisions relating to sporting type ammunition has been helpful in law enforcement.

In short, the recordkeeping controls are not effective as a law enforcement tool. They do, however, because of the volume of transactions in sporting ammunition tend to generate criticism from sportsmen and others and detract from the effective enforcement of their provisions of the firearms laws."

S. 3724 is now being considered by the Senate Finance Committee. I intend to work for its adoption.

I am also cosponsoring, with the Senator from Pennsylvania (Mr. SCHWEIKER), an amendment which would protect the legal and lawful activities of the segment of our Nation's sportsmen who handload their ammunition. This amendment is to the explosive control bill and will allow a reasonable amount of smokeless powder and black powder to be exempt from the regulatory provisions of the act. It will retain the effect of deterring criminals from committing crimes without penalizing our law-abiding citizens.

Thus, I stand for a continuous review of the Gun Control Act of 1968 and all other gun laws, and for the swift elimination of those portions of this legislation which prove only an annoyance to decent citizens and are not useful weapons against crime. During this period of review, as in the past, I will vote against further gun-control legislation involving Federal licensing and registration, for it is not the answer to fighting crime.

I ask unanimous consent that my remarks in the Senate on July 15 be printed in the RECORD.

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

[From the CONGRESSIONAL RECORD, July 15, 1970]

"HAND-LOADERS" AND "MUZZLE-LOADERS" IN OREGON

Mr. HATFIELD. Mr. President, recently, I joined the distinguished Senator from Pennsylvania (Mr. SCHWEIKER) as a cosponsor of amendment 728 to S. 3650, a bill designed to strengthen Federal legislation concerning the illegal use, transportation, and possession of explosives. I agree with Senator SCHWEIKER that a new provision in the bill is needed to protect the legal and lawful activities of one segment of our Nation's sportsmen—those who hand-load their ammunition.

I support the goals of the explosive control bill, for I am shocked at recent bombings across the country. The amendment does not conflict with this goal. It does allow, however, continuation of a long-established tradition by those who hand load their ammunition.

In addition, muzzle loaders are able to recreate a sense of history in their activities. In my State, there are five muzzle loading clubs, and I participated at one of their

shoots at Banks, Oreg., while I was Governor. These clubs—the Multnomah Muzzle Loading Rifle Club in Portland, the High Desert Plainsmen, in Bend, the Little Butte Mountain Men, in Medford, the McKenzie Black Powder Club, in Eugene, and the Willamette Longrifles, in Salem—are attracting more Oregonians to their activities. Certainly the explosives control bill is not aimed at these sportsmen.

I believe the amendment does nothing to compromise the bill's goal, while allowing the sportsmen of the country to continue their activities.

THE INDIAN FILM: "A MAN CALLED HORSE"

Mr. McGOVERN. Mr. President, early this spring I was one of the sponsors of the showing of a moving picture depicting the life of the Sioux Indians in the early 19th century. The picture, "A Man Called Horse," has now been released publicly and is being shown throughout the country.

"A Man Called Horse," the recent release of Cinema Center Films, is a film of particular interest to anthropologists concerned with American Indian history and present-day relationships between Indian and non-Indian Americans.

This film depicts a young man of English descent who is captured by an Indian group—the Sioux Indians in the film version—and kept in captivity for a period of time. The young man is slowly socialized to the Indian way of life, his behavior and reactions to his captors-turned-hosts form the essential theme of the film. The film is an interpretive statement about Sioux life circa 1820 presented through the experiences and perceptions of a man who is placed in confrontation with an entirely different way of living. One of the stated explicit aims of the film is to present the details of Indian life as related by observers of the Sioux of that period.

The picture is being released at a time when American Indians have been particularly explicit about their problems in forging an Indian identity in the midst of American life. In recent months there have been several occasions when Indians have stated to anthropological gatherings that more attention should be given to communications about the American Indian heritage expressed in the indigenous languages of the Indian. Indians have further voiced the need of popularizing their history prior to extensive contact with non-Indians, when the Indian was neither an urban misfit nor the product of reservations. Such a history would emphasize neither Indian savagery nor barbarism but the integrity and inherent coherence of an indigenous Indian culture and social organization. It would also underscore the distinctiveness of each Indian nation as a people with its own political conflicts—in this film, the Sioux versus the Shoshone—above and beyond white-Indian struggles. Finally, many Indians have stated the need for accurately documented popular accounts from which the Indian may emerge as a man with a proud past and not just a graft on present-day American culture.

"A Man Called Horse" fulfills some of these criteria. First, it employed among the actors many members of the Rosebud Sioux Tribe in South Dakota. Major portions of the film dialog are conducted in the Sioux language. Second, the film plot centers around a white man's adaptation which succeeds through mutual efforts. This is in sharp contrast to traditional presentations of the unsuccessful Indian against white society. Third, the depiction of the sun vow is not mere sensationalism but is placed within the full context of Indian social and religious requirements. Finally, the conflict between the Sioux and the Shoshone illustrates the history of Indian people prior to the contact with whites.

The film on the whole is a documented, albeit stylized, monument to a way of life which we are urged to understand on its own terms, a way of life which is one of the mainsprings for much that is American Indian today.

Finally, the film is particularly useful as an educational tool. It challenges the viewer to go beyond his notions of Indian barbarism and savagery and to understand religious and social ceremonies within a holistic framework of a working lifestyle. The film can be used in the classroom as a heuristic device in discussing Indian history of the early 19th century: it also illustrates problems that arise when we attempt to create films from historical documents that supplement prose accounts of similar topics. This film has gone a long way from the stereotyped Hollywood western and presents the Indian in a better light. It is an engaging and challenging presentation.

Senators who have a strong interest in American Indian problems will doubtless find this film of interest.

I also ask unanimous consent that a proclamation of the Honorable M. E. Schirmer, the mayor of Sioux Falls, N. Dak., and a proclamation of the Honorable Frank Farrar, the Governor of the State of North Dakota, regarding the film be printed in the RECORD.

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

PROCLAMATION, CITY OF SIOUX FALLS, S. DAK.

Whereas, Sandy Howard has the good fortune to read Dorothy Johnson's story, "A Man Called Horse"; and

Whereas, Sandy Howard had the foresight to purchase the film rights; and

Whereas, Sandy Howard had the vision to foresee a film of honesty and realism; and

Whereas, Sandy Howard assembled a staff to produce a film which presents the American Indian and his customs with fascinating realism:

Now, therefore, I, M. E. Schirmer, Mayor of the City of Sioux Falls, do hereby proclaim Sandy Howard an honorary citizen of the City of Sioux Falls and designate Thursday, April 23, 1970, as Sandy Howard Day in Sioux Falls and call upon all citizens to recognize his achievements in producing "A Man Called Horse" so that the entire world can be appraised of the Sioux Indian culture in the early nineteen hundreds.

In witness whereof, I have hereunto set my hand and caused the Seal of the City of Sioux Falls to be affixed.

Done in the City of Sioux Falls this twenty-second day of April in the Year of Our Lord Nineteen Hundred and Seventy.

M. E. SCHIRMER,
Mayor.

PROCLAMATION

Whereas, the motion picture, "A Man Called Horse" will be premiered Thursday, April 23, at the West Mall Theatre in Sioux Falls, hosted by the University of South Dakota; and

Whereas, the film represents a pioneering production departure in portraying the Indian People of South Dakota in 1825 as historically accurate as possible; and

Whereas, the film includes South Dakotans in the cast and as technical advisors.

Therefore, I, Frank L. Farrar, Governor of the State of South Dakota, urge my fellow South Dakotans to take note of this event which will bring national and international attention to the state.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, in Pierre, the Capital City, this 21st day of April, in the Year of Our Lord, Nineteen Hundred and Seventy.

FRANK L. FARRAR,
Governor.

Attest:

ALMA LARSON,
Secretary of State.

FOREIGN POLICY ADDRESS BY THE VICE PRESIDENT

Mr. ALLOTT. Mr. President, on June 24, in Denver, Colo., the Vice President gave a speech which should be read and pondered by all Americans interested in current debate about our foreign policy, and about the role of the Presidency in foreign affairs.

With regard to the evaluation of the limited operations in Cambodia, the Vice President chides those who made rash early judgments and who have remained wedded to those judgments in the fact of conclusive evidence that the Cambodian operations were successful.

With regard to the important debate about the constitutional powers and responsibilities of the President when acting as Commander in Chief, the Vice President is equally sound. He points out that history, theory, and commonsense are on the side of continuing to respect the President's traditional latitude in this role. Moreover, he detects an element of inconsistency in some of the current attempts to saddle the President with unprecedented and unconstitutional restraints.

Since we obviously are far from finished with debate about these matters, and since the Vice President has made a useful contribution to this ongoing debate, I ask unanimous consent that his address be printed in the RECORD.

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

ADDRESS BY THE VICE PRESIDENT

Tonight I would talk with you about the Presidency as an institution, and of our President as a person of courage and high purpose.

Especially I want us to consider the impact of the long war in Southeast Asia upon the unique and much imitated Presidential form of government and upon the man who bears the tremendous pressures and responsibilities of leadership in that office today.

Since coming into office 17 months ago, the President has made many historic decisions, not a few of these have related to the war in Vietnam—a war which is *not* of his making. None of these decisions has been more difficult than the decision to send American troops into Cambodia. As a member of the

National Security Council, I was present when the President so very thoughtfully measured the dangerous repercussions which the expanded North Vietnamese military activity in Cambodia could have upon our troops and allies in South Vietnam. I saw him wrestle with the various options presented by the situation; the opportunities to wobble and equivocate: I saw him reject the short-run, politically expedient arguments for inaction. I saw him stand up and courageously decide to do what was right for our country, right for history, and most importantly right for our boys fighting in the jungles and rice paddies half a world away.

And so, the time came for the President to announce that American troops were moving into Cambodia in a limited operation to clean out enemy sanctuaries from which Americans had been attacked and killed for five years. At that point, and still today, millions of Americans—a clear majority of Americans—stood with him.

They were Americans of both political parties—patriots who believe that politics stop at the water's edge; that we have but one President at a time; that you back American troops and their Commander-in-Chief when they go into battle.

These Americans—and those who asked their fellow citizens to withhold final judgment on the President's decision—have been proven right.

But, there is a good deal of egg on a good deal of other faces—and it is well deserved.

Let us consider one young Senator who, at the President's announcement, called his decision "madness."

What that Senator rashly called "madness" has turned out to be the most successful military operation of the entire war. We have driven the enemy out of the privileged sanctuaries from which he has outfitted and launched attacks in to South Vietnam. We have disrupted his communications and forced him to flee leaving mountains of war supplies behind—more total supplies, in fact, than we seized during the last entire year of operations within South Vietnam proper.

Lincoln once wrote that they have a right to criticize who have a heart to help. Of what help have these gentlemen who joined in instant and harsh criticism of the President of the United States been to the cause of a just and honorable peace the President is seeking?

One Congressman said that the President's decision was "reckless"; another Senator said, "It was pretty ghastly."

What is reckless, what is ghastly, about capturing and destroying thousands of enemy weapons destined to shell South Vietnamese towns and kill American boys? Mr. Congressman and Mr. Senator—tell us today that it was reckless and ghastly to deny the enemy the use of millions of rounds of ammunition and thousands of rockets and mortars which could have been fired at young Americans.

Another Senator said, "It is now an Indochina War and I see an end to any hope of an early withdrawal."

Will that Senator now come forward and name the country which he blames for expanding the war in Cambodia? Was it the North Vietnamese who attacked neutral Cambodia's little army, encircled its capital and sought to link up sanctuaries into a 600 mile belt of enemy-controlled territory on South Vietnam's flank—or was it the President who responded to that military threat only after repeated warning? Will that Senator now come forward and tell America it was he who was both rash and wrong—and that now, not only will the President's withdrawal program continue, but it also will be sustained in confidence and 50,000 Americans can now surely come home before the 15th of October—and 100,000 more by next spring.

As you read the press and listen to the commentators, you keep hearing this great military success—possibly a victory of watershed proportions as we look to the future—described as a failure by the so-called pundits who are still wedded to their earlier forecasts of disaster. They have painted themselves into a corner and are now either intellectually incapable of evaluating the changed situation or disdainfully unwilling to disavow their past predictions of gloom and doom.

But, of course, it is too much to expect that these men will admit that they were precipitate and wrong—and the President was right.

And where are the Cassandras of the Senate now?

Are they now coming forward to say, perhaps we were wrong; perhaps we spoke too soon; perhaps the operation was indeed a limited one—and has indeed proved a successful one?

No, they are right now trying to forge new chains upon the President's freedom of action—even though the President has clearly demonstrated that he uses his powers responsibly—and use them to protect American lives in Vietnam.

Those who should be apologizing for their irrationalities the morning of May 1 are instead busying themselves trying to hobble the Commander-in-Chief of the Armed Forces—while four hundred thousand of his men remain vulnerable in the field.

Not only are they doing that, but they also are trying to stop us from giving help to other nations who want to defend themselves or to help each other against aggression.

The fact is our United States Senate is today engaged in a constitutional debate of major proportions, derived from amendments designed to undercut the President's authority to conduct this nation's business abroad.

As President of the Senate, I am not permitted to express my views on this issue in that august chamber, so I will air them here.

Historically, we Americans have shown an instinctive distrust of unlimited executive power. We rebelled against royal authority and the Thirteen Colonies began as a loose confederation, without any executive at all. That early experience with group decision-making—where it proved impossible even to raise an army to defend our country—impressed the founding fathers with the necessity of creating an effective executive authority.

A few years later, John Marshall, then a Member of Congress and later a great Chief Justice, commented on the executive role in foreign affairs. "The President is the sole organ of the Nation in its external relations and its sole representative with foreign nations. . . ."

The trend toward increased Presidential authority in foreign policy has steadily evolved as our country has risen to prominence in world affairs. Concurrent with America's growing power and involvement beyond our shores, the pace of events has quickened and communications have become instantaneous. As a result, swiftly moving events may reduce the decision-making process in today's nuclear age to a matter of hours or even minutes. In a complex world of 130-odd sovereign nations, some ruled by dictators uninhibited by popular sentiments or moral constraints, the President of the United States must be able to act quickly and decisively.

Writing in an academic journal in the fall of 1961, one of the favorite Senators of the present neo-isolationist crowd presented the following view on executive authority:

"The source of an effective foreign policy under our system is Presidential power. This proposition, valid in our own time, is certain to become more, rather than less, compelling in the decades ahead . . . It is my contention that for the existing requirements of American foreign policy we have hobbled the President by too niggardly a grant of power."

Now, which Senator do you suppose made those learned comments? Not Senator Dirksen. Not Senator Goldwater. It was Senator Fulbright. But he has conveniently forgotten his lofty words about the compelling need for Presidential pre-eminence in foreign affairs.

The Senate was intended by the framers of the Constitution to be a deliberative body not suited to crisis response. Certainly the five weeks so far consumed with debate on the Cooper-Church amendment illustrate the point. Even a threat a couple of weeks ago by the Senate Majority Leader in effect to cut off government funds unless the Cooper-Church amendment was brought to a vote has not hastened Senate consideration of the measure.

In any event, the Majority Leader's threat is beside the point. The Congressional penchant for endless debate has left it with insufficient time and energy to provide the government with funds. Only one appropriation bill has passed Congress. On June 30th all other government activities will legally run out of operating funds, and the Congress will have to pass an extension of past budgetary authority. The Cooper-Church amendment itself is hooked on the Military Sales Bill which seeks authority to expend funds during FY–70—FY–71. Even if the Senate passes that bill by June 30th, which now seems unlikely, it will be a year late—half the bill's life will already have expired.

The Senate's dilatory attention to the Military Sales Bill is extraordinary in one other way. More than half of the money sought in this bill would go to two friendly states in the Middle East, Iran and Israel. Yet the Senate has delayed this bill by extraneous amendments at the very time it is loudly decrying the growing dangers of an Arab-Israeli confrontation and Soviet penetration in the Middle East. It is simply ridiculous to hold up this important legislation—legislation which would assist Israel to pay old debts on equipment bought more than a year ago—while at the same time petitioning the President to provide Israel with more jet aircraft.

When the Senate gets so tangled up in inconsistencies like this, I am sure the nation gives thanks that we have a man of decisiveness and clear vision as our President.

Let me add one other thought—I think the President and his lovely family have brought a great sense of dignity to the White House. The moral and religious qualities which come so freely and naturally to them are a basic, but nowadays often overlooked, part of our national heritage and experience. It is those moral and religious underpinnings which make the President such a strong advocate of peace.

Despite all the rancorous cries of his critics—those self-appointed psychoanalysts of the *true* meaning of every Administration statement—I ask you to accept the proposition that the President *really* means what he says, that the President is genuine and sincere when he talks of the need for peace. Let's suppose, just for the sake of argument, that the President undertook five major peace initiatives, all in accordance with the unsolicited advice he has received from the Senate, and all in accordance with the enemy's stated preconditions for beginning meaningful peace negotiations. Would that not indicate a sincere desire on the President's part for peace? Would that not indicate that the President is not hidebound and stiff-necked in his attitude toward the enemy?

The truth of the matter is that the American Government has already made six concrete proposals which enemy negotiators, and coincidentally some Senators, have demanded. We have conceded the following

major points in an effort to urge forward meaningful discussions on the only issue which really counts—the issue of peace.

President Johnson stopped the bombing of the North.

President Nixon agreed in principle to the withdrawal of all American troops if the North Vietnamese would follow suit.

He announced the unilateral withdrawal of American troops on a phased basis.

He stated that we seek no bases, no military ties, and that we are willing to agree to a neutral South Vietnam if the people of that country freely so choose.

Despite the fact that South Vietnam has held several elections, President Thieu, with our full support, offered to hold internationally supervised elections in which *all* South Vietnamese factions that renounce violence might participate.

President Nixon indicated that in seeking a settlement we would insist on no rigid diplomatic formula or particular form of guarantees as long as the interests of all major South Vietnamese groups were adequately protected.

To date, a stubborn enemy continues to refuse to negotiate seriously. Instead, Hanoi has added two more preconditions for serious peace talks—that the U.S. leave South Vietnam completely, and that we topple the legally constituted government in Saigon on the way out. With preconditions like that, what would be left to negotiate?

These new demands are obviously unacceptable and most disheartening to the President. Still he has not given up in his quest for peace. We continue to remain at the table in Paris despite the abuse and invective—and despite the lack of progress.

The President's sincere desired for peace is manifest in the many other initiatives begun in the past 17 months. We already are engaged in the second round of strategic arms limitation talks with the Russians. We have signed the nuclear non-proliferation treaty and unilaterally renounced the use of chemical and biological warfare weapons. In visiting Rumania, President Nixon became the first American head of state to travel behind the Iron Curtain.

We have also eased restrictions on travel and trade with Communist China, and although talks have been temporarily postponed, the President did initiate discussions with the Chinese in Warsaw after a break of two years. We have sought to defuse the explosive Middle East situation in a variety of forums, including Four Power talks at the UN, and bilateral consultations with the Soviets.

Not all these efforts have yet borne fruit, but they clearly demonstrate the President's earnest desire to reduce tensions in the world.

But, make no mistake about one thing—the President has no intention of giving away the store. He will not compromise our vital interests in some vague hope of achieving "peace in our time" a la Neville Chamberlain.

The President has insisted that our defenses remain strong. To insure the credibility of our deterrent capability—but without jeopardizing the SALT negotiations—the President has gone ahead with the ABM and MIRV missile systems; to maintain the viability of our many treaty commitments—and thus spread the burden of keeping the peace—the President has refused to cut and run on our allies in South Vietnam.

In my view, the President has shown the world that America is strong, but fair; reliable with our friends, and reasonable toward our opponents—unless their aggressive actions clearly demand a firm response.

Let me observe particularly those qualities of decisiveness and courage that we see in foreign affairs are matched equally in the President's approach to domestic questions. As the President noted in his nationwide address on the economy a week ago, it is a sad, but inescapable truth that a country cannot move from a war time to a peace time economy without some pain and dislocation. Our very successes in Asia are having complicated and troublesome repercussions at home. Moreover, we are paying the piper today for mismanagement of the Federal government during the eight years before President Nixon took office—eight years of fiscal irresponsibility in which the Democrats spent $50 billion more than they took in.

Let me assure you, however, that there is nothing fundamentally wrong with this most powerful economy on earth. The President's perseverance in adhering to the hard but necessary policies of restraint will pay off. We will see an economic upturn before the end of the year.

I am confident that the prophets of doom, who were so wrong about the results of the President's actions in Cambodia, will prove equally wrong in their predictions of imminent depression and economic disaster.

In closing, let me say that I am growing terribly weary of America's noisy detractors. If this is such a terrible place to live, if our government is so oppressive and inept, why is there an endless waiting list of people seeking to immigrate to America, and why doesn't the so-called "brain drain" of Europe's brightest scientists and technicians moving to the US to work, run in the opposite direction.?

Today, we, the people of America, should vow to emphasize what is right, what is decent, what is good about our great country.

And let's begin to show some stronger and more vocal support for our President.

One of the deservedly most distinguished members of the Senate, George Aiken, said after the President's briefing on the Cambodian operation, that despite his own doubts, "If (the President's) strategy is successful and we are able to bring the war to an earlier conclusion and have less losses of our men, then we would have to call him a hero . . . as he would be."

Well, let me say to you tonight that is what I would call it—a decision and action of heroic proportions.

CONGRESSIONAL SUPPORT FOR BIG THICKET NATIONAL PARK: REPRESENTATIVES ECKHARDT AND BUSH PROPOSE REAL BIG THICKET NATIONAL PARKS

Mr. YARBOROUGH. Mr. President, for years I have advocated the preservation of the Big Thicket of southeast Texas. Since 1966, I have had bills pending in the Senate to preserve it as a national park. The establishment of the Big Thicket National Park is one of the highest priorities on my legislative agenda. Over the years it has given me great encouragement when individuals and groups have endorsed and supported my efforts to preserve the Big Thicket.

Today, it gives me particular pleasure to welcome two of my fellow Texas legislators to the ranks of those dedicated to the cause of preserving the Big Thicket as a national park.

On Thursday, July 16, 1970, Representative BOB ECKHARDT, of Houston, Tex., announced that he would introduce a bill to establish a Big Thicket National Park consisting of not more than 185,000 acres. On the same date, Representative GEORGE BUSH, also from Houston, announced the introduction of H.R. 18498, his bill for a Big Thicket National Park of not more than 150,000 acres.

The introduction of these bills to establish a Big Thicket National Park of adequate size is very encouraging and heartening, and I welcome with great enthusiasm this support in the House of Representatives by two south Texas gulf coast Congressmen, representing two political parties.

Mr. President, field hearings were held on S. 4, my bill to establish a Big Thicket National Park of not less than 100,000 acres on June 12, 1970, in Beaumont, Tex. The remarkable thing about the testimony at these hearings was the total unanimity of agreement that portions of the Big Thicket should be preserved. The issue discussed was not whether there should be a Big Thicket National Park. The only controversy dealt with how large the Big Thicket National Park should be. The fact that the discussion focused on this issue was most encouraging to me, and I consider it a tremendous victory in my long and often lonely battle to save the Big Thicket. Everyone who has given serious consideration to my proposal agrees that the Big Thicket should be preserved. Now we are able to discuss and attempt to resolve the issue of how large the Big Thicket National Park should be.

The Big Thicket proposal set forth by Congressman BOB ECKHARDT is most interesting and worthy of consideration. The proposal calls for a park of 185,000 acres. Included within this area are all units of the so-called string of pearls and land along the major rivers and creeks in the area.

The other proposal, which is for a 150,000-acre park, is also deserving of careful study.

Mr. President, either of these proposals could be incorporated into the legislation which I have introduced concerning the Big Thicket National Park. My bill, S. 4, calls for the establishment of a park consisting of land and interests in land of not less than 100,000 acres. Thus, while these two new proposals establish upper acreage limits, mine would establish a minimum of 100,000 acres and could go as high as necessary to incorporate additional lands which are worthy of inclusion in the park.

Since the approach of my bill is to establish a Big Thicket National Park with a minimum size limitation of 100,000 acres and does not establish a maximum limitation, either Representative ECKHARDT's or Representative BUSH's proposal would fit within the broad provisions of my bill, S. 4.

I welcome these proposals. They provide for a park of adequate size, and set forth good suggestions as to what should be included in the Big Thicket National Park.

In my opinion, the Big Thicket National Park should contain all of the so-called string of pearls, those unique individual units designated by the National Park Service as representative of the variety of Big Thicket ecosystems. Representative ECKHARDT's bill does include all of these units, while the other proposal omits some of them. The Big Thicket National Park should also include a Saratoga Unit in Hardin County. This unit will consist of approximately

40,000 acres and is bounded by highway numbers 770, 105, and 326. The park should also include the great hardwood forests of the Neches River bottoms, which would be about 60,000 acres. Connecting all of these units will be corridors along the major rivers and creeks which will tie all of the different park areas together. These areas which I have described would total 160,000 acres or even more, depending upon the width of the connecting corridors along the rivers and creeks.

The Big Thicket is basically a mixed southern hardwoods area. The creation of a national park of adequate size does not pose a serious threat to the lumber interests of the area, which are dependent upon pine forests for the bulk of their production.

The plan of some of the lumber interests is to bulldoze away the beautiful hardwood forests of the Big Thicket in order to plant pine trees in the future. My plan would save some of these hardwood forests.

I submit that the Big Thicket is big enough for a park of adequate size, such as I propose, and will still leave enough land for the bulldozers and tree farmers.

Mr. President, again I wish to welcome my two fellow Texas legislators to the battle for a Big Thicket National Park. Their prosopals would create a real park. Their support is sincerely appreciated. I commend them for their action to help save the Big Thicket. This is the first real legislative assistance in Congress in my long fight for a Big Thicket National Park.

The Big Thicket National Park is gaining strength. It is an idea whose time has come.

S. 3671—A MORE OBJECTIVE INTERPRETATION OF NATIONAL LABOR POLICY

Mr. TOWER. Mr. President, on July 21, the privilege was accorded me of being the leadoff witness before the Separation of Powers Subcommittee, Committee on the Judiciary, on S. 3671, a bill I introduced along with eight other Senators earlier this session.

It has now come to my attention that attempts are being made to paint this bill as antiunion. Nothing could be further from the truth. The bill has absolutely no effect on the substance of labor law. It is jurisdictional only. It does not redefine any unfair labor practices. It does not address itself to the relationships existing between unions, employees, and employers. It does attempt to reaffirm the prerogatives of Congress as the source of national labor policy. It does aim at a more objective interpretation of national labor policy.

Those who claim that S. 3671 is antilabor are tacitly agreeing with the critics of the National Labor Relations Board who have contended that the decisions of the Board are biased. If simply shifting jurisdiction over unfair labor practices to the Federal district courts is antilabor, then that is a reflection either on the Board or on the courts. It is either being claimed that the courts can be expected to be antilabor or that the Board has been prolabor. Since all our experience has been with the Board over the past 35 years, I suggest that the later alternative is closer the truth.

This contention is also supported by testimony which was received by the Separation of Powers Subcommittee in 1968 and by further evidence presented the subcommittee this week in hearings. I shall not go into this mass of evidence now. It is there for all who wish to go into this question.

In my own testimony I address myself to this very matter. Quoting from my statement:

> I hope it will not be said that S. 3671 represents an anti-union bias. I think I speak for the cosponsors of S. 3671, as well as for myself, in saying that collective bargaining was the very natural and necessary outgrowth of a social movement based upon contract. As such, it is an institution symbiotically linked to capitalism. On the individual level, it is the ultimate recognition of a system of private ownership of the means of production.
>
> No, if anything, this legislation is designed to include collective bargaining by making its institutions more responsible to the needs of its members, by creating an atmosphere of mutual respect between labor and management within their natural adversary roles, and—perhaps most importantly—reassert Congressional dominance over the Administrative framework.
>
> I want to point out that S. 3671 does not in any way change substantively our body of labor law. What is defined as an unfair labor practice today will still be an unfair labor practice at such time as this legislation may be signed into law. It simply reassigns jurisdiction.

Mr. President, there may be some who for one reason or another will misinterpret the meaning of S. 3671. I suppose that is a problem as old as politics itself and will be with us as long as political issues are debated.

As one who has expressed many times in the past his support of the union movement and even his desire to be a union member were he in a position to join, I state emphatically that S. 3671 is a bill designed to improve and strengthen the union movement by minimizing their failings and maximizing their value to both employers and members.

PRESIDENT BAILEY OF HAMLINE: A REFRESHING PERSPECTIVE ON THE COLLEGE PRESIDENCY

Mr. MONDALE. Mr. President, conditions on our campuses in recent years have given rise to a feeling that the office of a college president is becoming an increasingly embattled one, with the energies of the president becoming devoted more and more to the preservation of order and the protection of his office.

Although I would never disparage the enormously difficult and often trying responsibilities of a college president in these times, I feel that this image is both distorted and probably destructive of our efforts to restore calm and reason to our campuses.

In this light, I was delighted by a short article in the St. Paul Dispatch written by the president of Hamline University, Dr. Richard P. Bailey.

I commend this statement to all Senators as an example of a president and a campus where reason and respect have prevailed, and where a president and a student body are able to look upon one another with admiration, respect, and warm friendship. I ask unanimous consent that it be printed in the RECORD.

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

[From the St. Paul (Minn.) Dispatch, June 30, 1970]

THE STUDENTS NEXT DOOR

(By Dr. Richard P. Bailey)

Everyone knows where Hamline's president lives—over there in that big white house with the pillars and the balcony. There are no fences, no alarms, no special police protection, and I own no guns. There is a dog but she barks only at squirrels and bites only dog biscuits. My wife is small and about as threatening as a faculty tea.

I am a sitting duck, exposed, identified, unprotected and vulnerable.

My nearest neighbors are 750 college students, far removed from home and parents. Physically I am closer to more Hamline students more of the time than any other member of faculty or staff. Few citizens in the nation of my generation have a similar residential opportunity; fewer still might want it. It seems a precarious position indeed given the tendency toward violence and disrespect we read about so prevalent among campus youth.

I would like to bask in an heroic role. But that would be dishonest and would bring hoots of derision from my 750 neighbors. The truth is that I feel safer, and probably am, than 99.44 per cent of my fellow citizens who live amid less youthful neighbors.

I have never been threatened, pillaged, derided or molested.

My sleep, alas, has often been disrupted. This spring my zestful neighbors were occasionally noisy and playful well beyond my normal 10:30 time for retiring. They sing, they play hide-go-seek, they explode what sound like firecrackers, they turn the volume of their hi-fi's up to decibels beyond middle-age tolerance, and they move over the campus from here to there and back with joyous sociability after dark. They beep the horns of their cars and squeal their tires.

One night I was awakened at 1:30 by the noise of a touch football game developing on the street just below my bedroom window.

"That's too much," I thought and I pulled on my trousers and assumed by "authoritative air" to express my presidential petulance in person. The game was being joined by other players even as I dressed. They had all finished studying for exams and were enjoying a recreational break before bedtime. Their schedule was not the same as mine. Did that make mine better? I decided not. Removing my "authoritative air" and my trousers I went back to sleep before the game ended.

Certainly they ask favors of me as would any neighbor. They run cords in my windows to light their outdoor dances, they borrow firewood to burn in their lounge fireplaces, they ask me to support their drives and campaigns, they have snowball fights in my yard, they strip my mountain ash tree of its fall berries for chemistry experiments, and once they borrowed my front door. But they also sing Christmas carols to my family, and perform sorority initiation stunts for my admiring 11-year-old.

Never have they been destructive in any way. Never have they purposely annoyed me. Never have they shown any of the disrespect for authority about which you have read so much.

On commencement evening this year as I was retiring I heard the beeping of a horn out on the street below my open window. I

looked out and someone I must identify as a departing Hamline graduate called out:

"So long, Rick!"

It had been a long day and commencement had been momentarily disrupted, you remember, by non-Hamline young radicals. I needed no more youthful demagoguery. My "authoritative air" began to form. . . .

But this was youthful friendship being offered—all of my friends call me Rick.

"So long, Piper," I called as the car and its unknown occupant sped away into the night. And to myself I whispered, "and God bless and keep you, young friend and Hamline—and 2,300 other colleges and universities and this our beloved country—and our neighbors who live beyond the borders of campus and nation."

MR. CHET HUNTLEY

Mr. ALLOTT. Mr. President, let us pause a moment and ponder the hazards of life experienced by Mr. Chet Huntley recently.

It is well known that Mr. Huntley, who is about to leave his position with the National Broadcasting Co., recently gave an interview to Life magazine. This interview quoted Mr. Huntley as saying some very harsh things about the present administration, and specifically about the President and the Vice President.

Now comes Mr. Huntley to say—of all things—that he has not been treated fairly by the media. He has confided to the Bozeman, Mont., Chronicle that he was misquoted by Life.

Mr. President, it is not entirely clear why Mr. Huntley thought the Bozeman Chronicle was the best place to deny the accuracy of an interview which was published in a magazine read by scores of millions of Americans. But be that as it may, it is even more curious that there is only one part of the Life interview which Mr. Huntley does not disavow.

This is the part where Mr. Huntley says some very hostile things about the Vice President. Of course what has mediaman Huntley upset about the Vice President is that the Vice President has said that the media is often unfair.

Evidently Mr. Huntley thinks Life is unfair to him, and it is fair for him to attack Life, but it is unfair of the Vice President to join Mr. Huntley in complaining about the media, so it is fair for Mr. Huntley to denounce the Vice President.

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

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

HUNTLEY FINDS LIFE HAS ITS DRAWBACKS

BOZEMAN, MONT., July 21 (AP)—Chet Huntley of the Huntley-Brinkley news telecast says Life magazine incorrectly quoted him as saying it "frightens me" that Richard M. Nixon is president.

In a letter to the Bozeman Chronicle Huntley declared Monday that he actually said he "worried about all presidents of the United States—whether they will stay healthy, whether they can stand the strain, their power, the decisions they make, and our tendency to make monarchs out of them."

In New York, a Life spokesman said, "After reading the account of what he said, Mr. Huntley may have regretted saying it. But there is no question about the accuracy of what was reported. Mr. (Thomas) Thompson's (the Life reporter) notes are available if Mr. Huntley wants to see them."

Huntley, 58, retires from the telecast after the Friday night show and will devote full time to developing a Montana recreational complex.

The newscaster also disowned another quote in the Life interview: "The shallowness of the man—President Nixon—overwhelms me."

In disclaiming that quote, Huntley said he had ventured the judgment that the 1968 campaign, as waged by all candidates, was shallow and that the President's rationale for Cambodia was thin.

"But that was transformed into the statement that I think Mr. Nixon was shallow," Huntley said.

Huntley also denied having said he had "poured Scotch" for President Johnson.

"Well, so it goes," concluded Huntley. "The only reasonably accurate quote was the one about the Eastern Establishment."

In that passage the newscaster was quoted as saying "Spiro Agnew is appealing to the most base of elements" and that the networks had "almost created" Agnew through intensive news coverage.

THE CONGRESS AND THE WAR

Mr. McGOVERN. Mr. President, the constitutional considerations discussed in connection with Senate debate on the Church-Cooper amendment will doubtless occupy our attention again when the McGovern-Hatfield amendment to the military procurement authorization bill becomes the pending business.

That amendment, which would set a definite timetable for withdrawal of U.S. forces from Vietnam, does not seek to make any retrospective declarations on the constitutionality or legality of the war. It does not in any sense pose a legal challenge to the actions of President Johnson or President Nixon in the pursuit of the policies they have deemed appropriate. This is a matter over which there is room for substantial dispute, and many of us have strong feelings on the matter. But we should emphasize that our amendment does not seek to adjudicate the past; that it rather charts a course for the future.

In connection with our discussion, however, I do think it is pertinent to note the fashion in which constitutional issues are being drawn in court tests pending now. I refer specifically to two New York cases, Orlando against Laird in the U.S. District Court for the Eastern District of New York and *Berk* v. *Laird*, Docket No. 35007 in the U.S. Court of Appeals for the Second Circuit.

In the former case, the district court, in denying a preliminary injunction against enforcement of orders that would send the plaintiff to Indochina, concluded that Congress has ratified the war through many legislative acts and particularly through appropriations. It said:

The huge appropriations annually voted to sustain the expanding combat activity cannot be read out of being as extorted by the exigencies created by presidential seizures of combat initiatives. . . . The power of the purse was lodged in the House and the appropriation power was expressly limited when exercised to raise and support armies as part of the conscious constitutional scheme for controlling the Executive's resort to combat activities. Specific appropriation statutes here, as the Government's brief points out, leave no uncertainty about Congressional will and purpose.

The Court said further:

Political expediency may have counseled the Congress's choice of the particular forms and modes by which it has united with the presidency in prosecuting the Vietnam combat activities, but the reality of the collaborative action of the executive and the legislative required by the Constitution has been present from the earliest stages.

In Berk a preliminary injunction was also denied and that decision has been affirmed on appeal. It is interesting to note, however, that the court of appeals remanded the case for further proceedings, calling upon the plaintiff to show first that he does not present an unmanageable political question. If that obstacle is surmounted there apparently will be an inquiry on the question whether congressional action has or has not fallen short of a determinable standard of authorization for the Vietnam war.

On a pending motion to dismiss, it is the Government's contention, in line with the holding in the Orlando case, that appropriations for the war have amounted to authorization. It argues:

The law is clear that "Congress may . . . do by ratification what it might have authorized. . . . And ratification may be effected through appropriation acts . . . (where) appropriation . . . plainly shows a purpose to bestow the precise authority claimed." *Ex parte Endo*, 323 U.S. 283, 303, n.24 (1944 Douglas, J.).

It seems to me that these arguments and holdings have a direct bearing on the amendment. As I read them they say that approval of the appropriations used for the prosecution of a war is equivalent, in practical effect, to a declaration of war.

Mr. President, I have voted for most of the military appropriations bills which have been used for the war in Vietnam. At the same time, going back to 1963, I have firmly opposed our escalating involvement in that conflict. There has been no period of time in which I would have supported a declaration of war in Vietnam. I am sure I have not been unique in the Senate in feeling an obligation to provide full support to the young Americans who have been dispatched to Vietnam, while at the same time believing that they should be brought home.

But it may be that we cannot have it both ways. Regardless of how we construe our votes on appropriations, it appears that the courts, if they reach the question, are likely to treat them as legislative approval for prosecution of the war.

The McGovern-Hatfield amendment to end the war, does no more, therefore, than place directly before the Senate a decision which it has made indirectly each year since the war began. It is a decision we cannot escape, because what the courts are really telling us is that the power to authorize war is not delegable; that we are exercising it even though we may think we are only providing funds to support the troops placed in the field by the President.

Congress not only has the power to review and approve or disapprove the com-

mitment of troops to battle; we have a positive obligation to do so.

It will not do, therefore, for any of us to say that we believe the presence of American manpower in Vietnam should be ended within a certain time but we want the President to do it. Voting the funds is not a neutral act. If we fail to limit their use it will be read as a statement by the Congress that the war should continue.

CANCER DETECTION MUST NOT BE STOPPED

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the Senator from New Jersey (Mr. WILLIAMS) entitled, "Cancer Detection Must Not Be Stopped."

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

CANCER DETECTION MUST NOT BE STOPPED

(Statement by Senator Williams)

Mr. WILLIAMS of New Jersey. Mr. President, the Administration has admitted that by December 31, 1970 it will eliminate funds promoting a program that detects uterine and cervical cancer, which is particularly prevalent among women from disadvantaged neighborhoods. Funds are also being cut that provide training of laboratory technicians to screen results of these examinations and tests.

The test, commonly known as the PAP smear test, is the most accurate method for identifying this cancer—a cancer that can be cured if detection is made early in its progress.

Precious lives will be lost if public knowledge of this testing program is not enhanced. It is doubly tragic because the program has had such widespread success. The public education process will have to be started anew when it is felt enough funds are available to resume saving these lives. It is impossible to understand how we can turn our backs on those who could be saved now.

Mr. President, I protest most strenuously this very dangerous cut in funds. This program saves lives. It is saving them right now. To discontinue public awareness-education is unconscionable.

An article by William E. Howard appeared in the Newark Star-Ledger of July 12th. The author discloses the particulars of this cancellation and comments on the tragic irony of cutting funds that save lives.

NIXON SHUTS OFF PROMOTIONAL FUNDS FOR PAP TESTS

(By William E. Howard)

WASHINGTON.—The Nixon Administration has quietly dropped a medical program to promote the detection of uterine cancer, especially among poor women.

Herbert P. Dunning, administrator of the Public Health Service's cancer control project, confirmed that funds had been cut off as of July 1. He said the $6.1 million annually in grants to encourage the taking of PAP smear tests had been diverted to "other" medical programs.

Also phased out, he said, was a $1.2 million program to train more laboratory technologists in how to screen PAP smears microscopically for cancer cells. Such technicians are in short supply.

Ironically, the dual programs are being abandoned at a time when federal health officials have been telling Congress that far too few American women are availing themselves to the PAP test. Although the test was proven out 30 years ago, and has been widely publicized by the American Cancer Society and the government, federal officials estimate only 20 million out of 60 million women have it done annually.

An American Cancer Society survey earlier this year showed 53 per cent of the adult female population had the test performed at least once. This is a substantial increase over 1961, when only 30 per cent said they had undergone the test. But it still leaves millions unprotected.

Dr. Carl G. Baker, director of the National Cancer Institute, recently told a House subcommittee he felt use of the test was "distressingly low" and that "an insufficient effort" was being made to promote it in ghetto areas where it is needed.

Medical studies have shown women from poor or "disadvantaged" backgrounds to be more prone to cancer of the cervix and the uterus. Doctors relate the disease to having a child early in life.

Dunning said his recently dropped PAP test project had been conducted primarily in inner city areas and had been successful.

"I think we did perform a great service to 2 million women," he said in an interview.

Once detected, uterine cancer usually can be treated successfully by surgery. It is a question of removing it before the cancer spreads to other organs.

The Cancer Society and many physicians advise having the test at least once a year. Some doctors order patients on birth control pills to have it twice a year.

But Dunning said there is some controversy about the protection afforded by annual checkups, noting that "60 million tests a year really are impractical." He said the natural course of the disease shows that it remains localized for some time, perhaps several years. Hence, he said some doctors believe a woman could be adequately protected with a test at two to three-year intervals.

"The chances are, with the lower frequency of tests, we are protecting more than 25 per cent of American women now and the number is increasing," he said.

Dunning said his program began in 1963 as a demonstration project and has been administered regionally by the Public Health Service in grants to hospitals and clinics.

AN EXAMPLE OF POOR POSTAL MANAGEMENT; WEST TEXAS MAIL SERVICE DWINDLES

Mr. YARBOROUGH. Mr. President, I recently received a letter from Mr. B. E. Loyd, the president of Muleshoe State Bank of Muleshoe, Tex., in which he outlines some of the difficulties the people of this west Texas community are having with the mail service. As Mr. Loyd pointed out in his letter, in a town with a population of 5,225 people, it takes 3 days for a letter to be delivered from one place in the town to another, and it is taking 5 to 6 days for a letter from Muleshoe to be delivered to another point in Texas.

This type of mismanagement is inexcusable. However, instead of trying to correct problems such as those described in Mr. Loyd's letter, the administration would rather dismantle the Post Office and turn it into a corporation which would be managed by the same people who cannot effectively manage the Post Office in its present form.

No one denies that there are problems in the Post Office that need solving, however, rather than face the hard task of reforming the Post Office, the administration forces are going to destroy it. Will the present Postmaster be able to administer a postal corporation with better results than he had administered the Post Office? I submit that he will not be able to do so. The passage of the postal reorganization bill may prove to be the worst piece of legislation in the history of this Nation.

Mr. President, I ask unanimous consent that Mr. B. E. Loyd's letter be printed in the RECORD.

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

MULESHOE STATE BANK,
Muleshoe, Tex., July 8, 1970.

Hon. RALPH YARBOROUGH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR YARBOROUGH: I am sure that you are aware that we are having considerable difficulty with our mail situation in Muleshoe. It is taking 3 days to get a letter delivered from one business to another here in Muleshoe and taking 5 and 6 days for mail to be delivered to other points in Texas where we used to get mail delivered in 2 to 3 days.

I cannot believe that the Post Office Department can save money by having all the mail sent from Muleshoe to Lubbock to be sorted and then returned to Muleshoe.

We would appreciate very much your checking into this and if anything could be done to help the situation we would be most grateful. Thanking you for your attention in this matter, I remain

Yours sincerely,

B. E. LOYD,
President.

THE INDIAN AS A FELLOW HUMAN BEING

Mr. MONDALE. Mr. President, one of the principal findings of the Senate Indian Education Subcommittee was that the existence of myths and stereotypes about Indians was a significant factor in the public's refusal to accept the Indian as a fellow human being.

The subcommittee recommended that school curriculums must change to reflect the true history and culture of Indians, rather than contribute to the propagation of damaging, derogatory—and untrue—stereotypes.

I do not know how many school officials and teachers have taken that recommendation to heart, but I fear the number is far too small. I think we can get some sense of the problem by looking at the answers given by suburban Minneapolis elementary schoolchildren when they were asked what they knew about Indians.

Their responses: They kill white men. They take scalps. They tell lies and fibs. They are mean. They have funny names. They eat all raw meat.

These were the kinds of answers a University of Minnesota survey team found.

In response to this survey the university is preparing an Indian education college-credit course for viewing on statewide educational television. It is being designed to assist teachers in the preparation of curriculum units. Similar curriculum units will also be sent to districts throughout the State.

This is a significant response to a major problem, and I applaud the university's efforts in this area. I ask unani-

mous consent that a Minneapolis Tribune editorial of July 3, 1970, regarding the university survey and proposed TV course, be printed in the RECORD.

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

THE INDIANS AS SEEN IN SUBURBS

What do white suburban grade school students think about Indians? Indians mean big trouble. They killed white men. They take scalps. They tell lies and fibs. They are mean. They have funny names. They eat all raw meat. These attitudes, ironically, were expressed by students at Indian Mounds Elementary School in Bloomington.

The students were asked to write "What I Know About Indians" in a one-page essay as part of a survey by the University of Minnesota's Training Center for Community Programs. The survey produced 643 essays from eight grade schools in Bloomington.

The results, reported recently by the training center, are not all as negative as the expressions by some of the students at Indian Mounds. Pupils at Indian Mounds and other schools also mentioned the injustices inflicted by whites on Indian people, referred to Indians in a positive manner, and expressed admiration for Indians. "We didn't treat them as we ought to," wrote a sixth-grader at Brookside School.

But the generalizations in the essays were negative enough, said the authors of the report, to validate the conclusions of a recent U.S. Senate Indian Education subcommittee study. The subcommittee contended that the public schools present a picture of American and inaccurate. In Bloomington, said the uni- Indians that tends to be uncomplimentary versity report, the students showed a depressing lack of facts about the present condition of Indians. The survey also indicated that some teachers were inclined to single out and overemphasize certain "facts" to the exclusion of the broader picture of past and present Indian life styles.

Although the survey was conducted in Bloomington, the results should not be construed as a specific indictment of that school district. Similar results likely could be found in most school districts of the state. Old textbooks containing distorted references to Indians are still in use. A balanced treatment of Indian history often has not been integrated into the curriculum. Not enough contemporary material on Indians is available to teachers.

As a result of the Bloomington survey, the university plans to offer a nine-credit Indian-education college course on educational television stations throughout the state next fall. The purpose of the course will be to give teachers the tools to develop curriculum units for their classrooms. At the same time, the university will be sending a series of curriculum units, produced by teachers, to all school districts in the state.

These and other efforts should help to prevent what the university report terms "a new round in the old cycle of myth creation and maintenance about the American Indian." But, as the report also points out, the schools can't do it all. Distorted perceptions of the Indian in the white family, peer group and media all help to explain why a Brookside fourth grader wrote, "If I saw an Indian, I'd be scared stiff."

ONE OF NATION'S OUTSTANDING EDUCATORS TO RETIRE

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the Senator from New Jersey (Mr. WILLIAMS) entitled, "One of Nation's Outstanding Educators To Retire."

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

ONE OF NATION'S OUTSTANDING EDUCATORS TO RETIRE

(Statement by Senator WILLIAMS of New Jersey)

Mr. WILLIAMS of New Jersey. Mr. President, I wish to salute one of our Nation's outstanding educators, Dr. Mason Gross. Dr. Gross has announced that he plans to retire after 11 years as president of Rutgers University, the State University of New Jersey.

During his tenure as president, he has guided Rutgers through a period of tremendous growth. But his dedication has not been to growth alone. His overriding goal has been the quality and, most importantly, the relevancy of education.

Dr. Gross has been a precursor; he has set the patterns. When he assumed the role of President, he urged creation of a curricula in Asian and African studies. Today, such studies are commonplace but this was not the situation 11 years ago.

That speech set a pattern which did not vary. Dr. Gross has remained in the forefront of the most innovative educators in America.

To cite all of his accomplishments, would require a major volume.

However, I should like to mention that it was Mason Gross who established the first urban-oriented college in America, the Livingston College of Rutgers University. And it was Dr. Gross who opened the doors of university education to the disadvantaged.

As is true generally of university presidents, Dr. Gross has had his share of problems. And he has met them forthrightly and with success.

Perhaps the finest tribute that could be paid to Mason Gross is to realize that in an age when young people say "Don't trust anyone over 30," he was not only trusted but respected by his students.

While Dr. Gross is retiring as President of Rutgers, I have no doubt that he will continue to lend his great ability and dedication to the cause of quality education in America.

In the meantime, I think the people of New Jersey join in thanking Dr. Gross for a job well done.

How well he served is reflected in editorials which have appeared in New Jersey newspapers.

DR. GROSS SETS DATE

Like most college presidents, Mason W. Gross has not escaped controversy and conflict in this era when educational institutions are undergoing violent upheaval.

Now, after what will be 25 years with the university, including 12 years as president, he plans to step down from his Rutgers post in September 1971, by which time he will be 60 years old and eligible for retirement.

Few will blame Dr. Gross for seeking a quieter and more contemplative life. Although he declares his decision to retire was not influenced by recent events, certainly his view of the burdens he has carried must have undergone changes as the pressures mounted, and along with them, the inevitable criticism.

The dispute with Gov. Cahill over combining Rutgers Medical School with the New Jersey College of Medicine and Dentistry was only the latest of a series of conflicts. Rutgers and its administration have also been targets of criticism, some of it justified and some not, over the Urban University Program and the way it was launched, over discontinuance of ROTC, over student takeovers and other disorders, and over relations with the Legislature and other Trenton officials.

Nevertheless, the tall, scholarly and professorial figure of Dr. Gross has been a popular one on the Rutgers campuses and unquestionably he argued well the case for greater understanding of students' viewpoints and for accommodations allowing youth a larger role in university affairs. He has been a pioneer in pushing for increased focus on the needs of students from disadvantaged groups and in trying to make Rutgers more responsive to the needs of a changing society.

At the same time, Dr. Gross has been a dedicated leader in guiding Rutgers through an 11-year period of unprecedented expansion while it was developing its newly found role as the state university. In the process, it increased its national stature.

For those achievements, and for bearing the recent awesomely difficult burdens with his usual courtliness and grace, Dr. Gross merits gratitude and thanks.

A SUBSTANTIAL LOSS

Dr. Mason Welch Gross at the moment is probably better known to most New Jersey residents for the last two years of his long and distinguished tenure as Rutgers University president than for the previous nine in which the institution had grown appreciably and taken on academic stature.

Controversy has a way of making a celebrity of a person. It was something that Dr. Gross neither sought nor wanted. He was a college president who like numerous colleagues in other universities was caught up in the vortex of violent social change, a mood that was and is deeply rooted in the nation's institutions of higher learning.

Rutgers has been disrupted by demonstrations and protests, but hardly in the clamorous and virulent dimensions that afflicted other universities. And despite the criticism of legislators, Dr. Gross was able to deal with these incidents in most instances with an admirable degree of restraint and understanding.

The period of stress on the Rutgers campus in a fuller, positive sense, was a stern test of the university's administration under Dr. Gross' guidance. And it is apparent that the school not only has survived but has grown with the experience.

The brief tumultuous period in the school's history may currently tend to obscure Dr. Gross' substantial contributions to the school's academic maturity and substance.

But controversy and differences are part of an institution's changing role in a society that is undergoing radical social change. It was apparent that Dr. Gross was acutely cognizant of the new and greater responsibility that American academe has had to assume in this transition. Open enrollment, a program that dramatically broadened educational opportunities for economically disenfranchised students from urban areas, was a major innovation instituted at Rutgers under Dr. Gross' administration.

Any appraisal of his tenure at Rutgers must include his unrelenting and courageous resistance to political incursion of the state university, an issue on which Dr. Gross and legislators have locked horns on a number of occasions. His most recent experience in this area was his opposition to the legislative passage of a measure that would transfer control of the school's two-year medical school to a new statewide medical education board.

This newspaper favored the revamped medical education program initiated by Gov. Cahill to improve the delivery of health care for the whole state, but it recognized that these differences stemmed from genuine conflicts on fundamental issues. Dr. Gross' primary concern was to develop the university's medical school into a four year institution under Rutgers' control; we subscribed to the thinking behind the governor's proposal to integrate medical education because it was addressed to the more urgent problem of meeting health care needs in fullest dimension with available resources.

None of this diminishes the enormous influence he brought to bear during his 11-

year incumbency in which Rutgers has achieved impressive growth, from a relatively small college to a large, multi-campus university that has gained increasing respect in the academic community. His retirement represents a substantial loss in New Jersey higher learning, but even more so for the state university.

ENVIRONMENTAL BILL OF RIGHTS

Mr. MONDALE. Mr. President, since Earth Day, there has been a great deal of talk about the cleaning of our environment and making it livable for future generations. Numerous ideas, many of them sound, have been put forth as suggestions for accomplishing this enormous task.

Yet some of the most basic, yet beautiful thoughts on saving our already ravaged earth, came from Barbara Wadsworth, Richard Perdue, Elizabeth Moran, and the students of Carolyn Roth, biology teacher, North High School in Minneapolis, Minn.

They call it the "Environmental Bill of Rights."

I ask unanimous consent that this effort be printed in the RECORD along with the names of the students who signed the document.

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

ENVIRONMENTAL BILL OF RIGHTS

We, being of sound mind and body, do hereby submit these suggestions, while there is still air to breathe, for an environmental Bill of Rights.

(a) No man shall have the right to pollute another man's property without his consent. Nor shall a man be able to pollute his own property in such a way as to endanger his neighbor's property.

(b) The government shall not have the right to infringe on any man's right to a pure environment, (pure environment being of clean water, air free from major pollutants, land free from corrosive misuse.)

(c) Man shall not be permitted to endanger earth's natural species to the point of extinction.

Phillip E. Demry, Susan Heimkes, Mary Madson, Megan Jones, Edwin B. Mudge, Burnadette Pettiford, Billie Bolden, Brian Babb, Becky Shostrom, and Marilyn Magnuson.

Steve Smith, Sandra Demry, Carol Temple, Simon Bank, Mike Allen, Jim Thompson, Charles Williams, Suzy Burke, Terry Minard, and Karl Hanson.

Steven Peterson, R. Jacobson, Carolyn Carter, Rose Ann Genich, Jane Lang, Bud Brophy, Barb Gilmer, Sandi Gilmer, Debby Anderson, and Debbie Comeau.

Gary Pribyl, Suzanne Murschell, Kenn Masica, Charles Varone, Gary Caviness, Tara Lockwood, Richard Z. Woldorsky, David Steen, Greg Olson, and Kathy Voller.

Lyle Geimendinger, Anita Uruina, Marti Lawrence, Lester Hall, Bill Tollifson, Phillip McElhaney, Larry Shackle, Terry Letourneau, John Duyer, and Barb Wadsworth.

Ray Turner, Gary Gibbs, Linda Heimendinger, Elizabeth Moran, Susan Hartfiel, Elizabeth Dahl, Nancy Stachowski, Roxanne Schmidt, Forrest Little, and Cathy Johnson.

Mary Huseby, Kim Hutchins, Pam Hunter, Richard Hunter, J. Jones, Joan Campion, Rocky Yurch, Peter M. Nikiel, Alan Dupary, and Michael Bellfield.

William Patterson, Joanne Davis, Gerri Johnson, Dave Schmidt, Todd Stenson, Ida Johnson, Jerry Lease, David Baltus, Elizabeth Gordon, Pam Lindquist, Dave Nelson, Lois Edwards, and Richie Campbell.

PUERTO RICO CONSTITUTION DAY

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the Senator from New Jersey (Mr. WILLIAMS) on Puerto Rico Constitution Day.

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

PUERTO RICO CONSTITUTION DAY

Mr. WILLIAMS of New Jersey. Mr. President, July 25th is a day to honor and salute the people of Puerto Rico, for it was 18 years ago that this small nation achieved Commonwealth status.

The long journey toward self-government, however, was not an easy one. During more than 400 years of its existence—from discovery until United States control in 1898—Puerto Rico was ruled by approximately 140 Spanish governors.

Although not always mistreated, the Puerto Ricans were denied the privilege of self-rule. Even after the United States assumed control following the Spanish-American conflict, Puerto Rican political power did not become predominate. It was not until 1917 that an act of Congress created there the start of a self-governing and free-trading society.

The next several years lead the way to great social change and economic improvement. Governmental dominance was soon channeled through political organizations, guiding Puerto Rico to its first democratic election in 1948, wherein Luis Manoz Marin was elected governor. And on July 25, 1952, climaxing many years of continued determination, a democratic constitution was adopted. Significantly created was a legislative body that has enacted and provided enforcement for all laws, a process that still prevails on this modern and progressive island.

Mr. President, for all Puerto Ricans, Constitution Day is a reminder of the sturdy foundation of their present democratic system. To acknowledge and praise the accomplishments of these people, we in the United States honor the traditions to which all free men aspire.

IS FREEDOM DYING IN AMERICA?

Mr. MUSKIE. Mr. President, Look magazine for July 14 contains an article, written by the noted historian Henry Steele Commager, which is extremely relevant to the debate on the pending bill.

The article is entitled "Is Freedom Dying in America?" In it, the author discusses emerging threats to the freedoms and values enshrined in our Bill of Rights.

One particularly noteworthy passage reads as follows:

Let us turn then to practical and particular issues and ask, in each case, what are and will be the consequences of policies that repress freedom, discourage independence and impair justice in American society, and what are, and will be, the consequences of applying to politics and society those standards and habits of free inquiry that we apply as a matter of course to scientific inquiry?

Consider the erosion of due process of law—that complex of rules and safeguards built up over the centuries to make sure that every man will have a fair trial. Remember that it is designed not only for the protection of desperate characters charged with monstrous crimes; it is designed for every litigant. Nor is due process merely for the benefit of the accused. As Justice Robert H. Jackson said, "It is the best insurance for the Government itself against those blunders which leave lasting stains on a system of justice. . . ."

And why is it necessary to guarantee a fair trial for all—for those accused of treason, for those who champion unpopular causes in a disorderly fashion, for those who assert their social and political rights against community prejudices, as well as for corporations, labor unions and churches? It is, of course, necessary so that justice will be done. Justice is the end, the aim, of government. It is implicitly the end of all governments; it is quite explicitly the end of the United States Government, for it was "in order to . . . establish justice" that the Constitution was ordained.

Trials are held not in order to obtain convictions; they are held to find justice. And over the centuries, we have learned by experience that unless we conduct trials by rule and suffuse them with the spirit of fair play, justice will not be done. The argument that the scrupulous observance of technicalities of due process slows up or frustrates speedy convictions is, of course, correct, if all you want is convictions. But why not go all the way and restore the use of torture? That got confessions and convictions! Every argument in favor of abating due process in order to get convictions applies with equal force to the use of the third degree and the restoration of torture. It is important to remember that nation after nation abandoned torture (the Americans never had it), not merely because it was barbarous, but because, though it wrung confessions from its victims, it did not get justice. It implicated the innocent with the guilty, it outraged the moral sense of the community. Due process proved both more humane and infinitely more efficient.

Or consider the problem of wiretapping. That in many cases wiretapping "works" is clear enough, but so do other things prohibited by civilized society, such as torture or the invasion of the home. But "electronic surveillance," said Justice William J. Brennan, Jr., "strikes deeper than at the ancient feeling that a man's home is his castle; it strikes at freedom of communication, a postulate of our kind of society. . . . Freedom of speech is undermined where people fear to speak unconstrainedly in what they suppose to be the privacy of home or office."

I ask unanimous consent that the entire article be printed in the RECORD.

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

IS FREEDOM DYING IN AMERICA?

"There are certain words,
Our own and others', we're used to—words we've used,
Heard, had to recite, forgotten,
Rubbed shiny in the pocket, left home for keepsakes,
Inherited, stuck away in the back-drawer,
In the locked trunk, at the back of the quiet mind.
Liberty, equally, fraternity,
To none will we sell, refuse or deny, right or justice.
We hold these truths to be self-evident.
I am merely saying—what if these words pass?
What if they pass and are gone and are no more . . . ?
It took long to buy these words.
It took a long time to buy them and much pain."

—Stephen Vincent Benét.

"Those, who would give up essential liberty to purchase a little temporary safety," said Benjamin Franklin, two centuries ago, "deserve neither liberty nor safety."

Today we are busy doing what Franklin warned us against. Animated by impatience, anger and fear, we are giving up essential liberties, not for safety, but for the appearance of safety. We are corroding due process and the rule of law not for Order, but for the semblance of order. We will find that when we have given up liberty, we will not have safety, and that when we have given up justice, we will not have order.

"We in this nation appear headed for a new period of repression," Mayor John V. Lindsay of New York recently warned us. We are in fact already in it.

Not since the days when Sen. Joseph McCarthy bestrode the political stage, fomenting suspicion and hatred, betraying the Bill of Rights, bringing Congress and the State Department into disrepute, have we experienced anything like the current offensive against the exercise of freedom in America. If repression is not yet as blatant or as flamboyant as it was during the McCarthy years, it is in many respects more pervasive and more formidable. For it comes to us now with official sanction and is imposed upon us by officials sworn to uphold the law: the Attorney General, the FBI, state and local officials, the police, and even judges. In Georgia and California, in Lamar, S.C., and Jackson, Miss., and Kent, Ohio, the attacks are overt and dramatic; on the higher levels of the national administration, it is a process of erosion, the erosion of what Thomas Jefferson called "the sacred soil of liberty." Those in high office do not openly proclaim their disillusionment with the principles of freedom, but they confess it by their conduct, while the people acquiesce in their own disinheritance by abandoning the "eternal viligiance" that is the price of liberty.

There is nothing more ominous than this popular indifference toward the loss of liberty, unless it is the failure to understand what is at stake. Two centuries ago, Edmund Burke said of Americans that they "snuff the approach of tyranny in every tainted breeze." Now, their senses are blunted. The evidence of public-opinion polls is persuasive that a substantial part of the American people no longer know or cherish the Bill of Rights. They are, it appears, quite prepared to silence criticism of governmental policies if such criticism is thought—*by the Government*—damaging to the national interest. They are prepared to censor newspaper and television reporting if such reports are considered—*by the Government*—damaging to the national interest! As those in authority inevitably think whatever policies they pursue, whatever laws they enforce, whatever wars they fight, are in the national interest, this attitude is a formula for the ending of all criticism, which is another way of saying for the ending of democracy.

Corruption of language is often a first sign of a deeper malaise of mind and spirit, and it is ominous that invasions of liberty are carried on, today, in the name of constitutionalism, and the impairment of due process, in the name of Law and Order. Here it takes the form of a challenge to the great principle of the separation of powers, and there to the equally great principle of the superiority of the civil to the military authority. Here it is the intimidation of the press and television by threats both subtle and blatant, there of resort to the odious doctrine of "intent" to punish anti-war demonstrators. Here it is the use of the dangerous weapon of censorship, overt and covert, to silence troublesome criticism, there the abuse of the power of punishment by contempt of court. The thrust is everywhere the same and so too the animus behind it: to equate dissent with lawlessness and nonconformity with treason. The purpose of those who are prepared to sweep aside our ancient guarantees of freedom is to blot out those great problems that glare upon us from every horizon, and pretend that if we refuse to acknowledge them, they will somehow go away. It is to argue that discontent is not an honest expression of genuine grievances but of willfulness, or perversity, or perhaps of the crime of being young, and that if it can only be stifled, we can restore harmony to our distracted society.

Men like Vice President Spiro T. Agnew simplistically equate opposition to official policies with effete intellectualism, and cater to the sullen suspicion of intellectuals, always latent in any society, to silence that opposition. Frightened people everywhere, alarmed by lawlessness and violence in their communities, and impatient with the notion that we cannot really end violence until we deal with its causes, call loudly for tougher laws, tougher cops and tougher courts or—as in big cities like New York or small towns like Lamar—simply take authority into their own hands and respond with vigilante tactics. Impatient people, persuaded that the law is too slow and too indulgent, and that order is imperiled by judicial insistence on due process, are prepared to sweep aside centuries of progress toward the rule of law in order to punish those they regard as enemies of society. Timid men who have no confidence in the processes of democracy or in the potentialities of education are ready to abandon for a police state the experiment that Lincoln called "the last best hope of earth."

The pattern of repression is, alas, all too familiar. Most ominous is the erosion of due process of law, perhaps the noblest concept in the long history of law and one so important that it can be equated with civilization, for it is the very synonym for justice. It is difficult to remember a period in our own history in which due process has achieved more victories in the courts and suffered more setbacks in the arena of politics and public opinion than in the last decade. While the Warren Court steadily enlarged the scope and strengthened the thrust of this historic concept, to make it an effective instrument for creating a more just society, the political and the law-enforcement agencies have displayed mounting antagonism to the principle itself and resistance to its application. The desegregation decision of 1954 has been sabotaged by both the Federal and local governments—a sabotage dramatized by the recent decision of the Justice Department to support tax exemption for private schools organized to frustrate desegregation.

There are many other examples. Pending legislation, including the Organized Crime Control Act of 1969, provides for "preventive detention" in seeming violation of the constitutional guarantee of presumption of innocence; limits the right of the accused to examine evidence illegally obtained; permits police to batter their way into a private house without notice (the no-knock provision); and provides sentences of up to 30 years for "dangerous special offenders." And the government itself, from local police to the Attorney General, persists in what Justice Holmes called the "dirty business" of wiretapping and bugging to obtain evidence for convictions, though this is a clear violation of the right of protection against self-incrimination.

Equally flagrant is the attack on First Amendment freedoms—freedom of speech, press, petition and assembly—an attack that takes the form of intimidation and harassment rather than of overt repudiation. The President and the Vice President have joined in a crusade designed to force great newspapers like the New York *Times* and the Washington *Post* to moderate their criticism of Administration policies, and to frighten the television networks into scaling down their coverage of events that the Government finds embarrassing; a position that rests on the curious principle that the real crime is not official misconduct but the portrayal of that misconduct. Mr. Agnew, indeed, has gone so far as to call on governors to drive the news purveyed by "bizarre extremists" from newspapers and television sets; it is an admonition that, if taken literally, would deny newspaper and TV coverage to Mr. Agnew himself. All this is coupled with widespread harassment of the young, directed superficially at little more than hairstyle, dress or manners—but directed in fact to their opinions, or perhaps to their youthfulness. And throughout the country, government officials are busy compiling dossiers on almost all citizens prominent enough to come to their attention.

Government itself is engaged increasingly in violating what President Dwight D. Eisenhower chose as the motto for the Columbia University bicentenary: "Man's right to knowledge and the free use thereof." The USIA proscribes books that criticize American foreign policy at the same time that it launches a positive program of celebrating the Nixon Administration and the conduct of the Vietnam war through films and a library of "safe" books selected by well-vetted experts. The Federal Government spends millions of dollars presenting its version of history and politics to the American people. The Pentagon alone spends $47 million a year on public relations and maintains hundreds of lobbyists to deal with Congress, and the Defense Department floods schools and clubs and veterans organizations with films designed to win support for the war.

Meantime, the growing arrogance of the military and its eager intervention in areas long supposed to be exclusively civilian gravely threaten the principle of the superiority of the civil to the military power. Military considerations are advanced to justify the revival of the shabby practices of the McCarthy era—security clearances for civilians working in all establishments that have contracts with Defense—a category that includes laboratories, educational institutions and research organizations. What the standards are that may be expected to dictate security "clearance" is suggested by Vice President Agnew's proposals to "separate the [protest leaders] from our society—with no more regret than we should feel over discarding rotten apples from a barrel." That is, of course, precisely the philosophy that animated the Nazi. Military considerations, too, are permitted to dictate polices of secrecy that extend even to censorship of the *Congressional Record*, thus denying to congressmen, as to the American people, information they need to make decisions on foreign policy. Secrecy embraces, not unnaturally, facts about the conduct of the war; Attorney General Mitchell, it was reported, hoped to keep the Cambodian caper secret from Congress and the people until it was a *fait accompli*. So, too, the CIA, in theory merely an information-gathering agency, covers its far-flung operations in some 60 countries with a cloak of secrecy so thick that even Congress cannot penetrate it. The Army itself, entering the civilian arena, further endangers freedom of assembly and of speech by employing something like a thousand agents to mingle in student and other assemblies and report to the Army what they see and hear. This is, however, merely a tiny part of the some $3 billion that our Government spends every year in various types of espionage—more every year than the total cost of the Federal Government from its foundation in 1789 to the beginning of the Civil War in 1861!

It would be an exaggeration to say that the United States is a garrison state, but none to say that it is in danger of becoming one.

The purpose of this broad attack on Amer-

ican freedoms is to silence criticism of Government and of the war, and to encourage the attitude that the Government knows best and must be allowed a free hand, an attitude Americans have thought odious ever since the days of George III. It is to brand the universities as a fountainhead of subversion and thus weaken them as a force in public life. It is to restore "balance" to the judiciary and thereby reverse some of the great achievements of the 16 years of the Warren Court and to reassure the Bourbons, North and South, who are alarmed at the spectacle of judicial liberalism. It is to return to a "strict" interpretation of the power of states over racial relations and civil liberties—a euphemism for the nullification of those liberties.

The philosophy behind all this, doubtless unconscious, is that government belongs to the President and the Vice President; that they are the masters, and the people, the subjects. A century ago, Walt Whitman warned of "the never-ending audacity of elected persons"; what would he say if he were living today? Do we need to proclaim once more the most elementary principle of our constitutional system: that in the United States, the people are the masters and all officials are servants—officials in the White House, in the Cabinet, in the Congress, in the state executive and legislative chambers; officials, too, in uniform, whether of the national guard or of the police?

Those who are responsible for the campaign to restrict freedom and hamstring the Bill of Rights delude themselves that if they can but have their way, they will return the country to stability and order. They are mistaken. They are mistaken not merely because they are in fact hostile to freedom, but because they don't understand the relation of freedom to the things they prize most—to security, to order, to law.

What is that relationship?

For 2,500 years, civilized men have yearned and struggled for freedom from tyranny—the tyranny of depotic government and superstition and ignorance. What explains this long devotion to the idea and practice of freedom? How does it happen that all Western societies so exalt freedom that they have come to equate it with civilization itself?

Freedom has won its exalted place in philosophy and policy quite simply because, over the centuries, we have come to see that it is a necessity; a necessity for justice, a necessity for progress, a necessity for survival.

How familiar the argument that we must learn to reconcile the rival claims of freedom and order. But they do not really need to be reconciled; they were never at odds. They are not alternatives, they are two sides to the same coin, indissolubly welded together. The community—society or nation—has an interest in the rights of the individual because without the exercise of those rights, the community itself will decay and collapse. The individual has an interest in the stability of the community of which he is a part because without security, his rights are useless. No community can long prosper without nourishing the exercise of individual liberties for, as John Stuart Mill wrote a century ago. "A State which dwarfs its men, in order that they may be more docile instruments in its hands . . . will find that with small men no great thing can really be accomplished." And no individual can fulfill his genius without supporting the just authority of the state, for in a condition of anarchy, neither dignity nor freedom can prosper.

The function of freedom is not merely to protect and exalt the individual, vital as that is to the health of society. Put quite simply, we foster freedom in order to avoid error and discover truth; so far, we have found no other way to achieve this objective. So, too, with dissent. We do not indulge dissent for sentimental reasons; we encourage it because we have learned that we cannot live without it. A nation that silences dissent, whether by force, intimidation, the withholding of information or a foggy intellectual climate, invites disaster. A nation that penalizes criticism is left with passive acquiescence in error. A nation that discourages originality is left with minds that are unimaginative and dull. And with stunted minds, as with stunted men, no great thing can be accomplished.

It is for this reason that history celebrates not the victors who successfully silenced dissent but their victims who fought to speak the truth as they saw it. It is the bust of Socrates that stands in the schoolroom, not the busts of those who condemned him to death for "corrupting the youth." It is Savonarola we honor, not the Pope who had him burned there in the great Piazza in Florence. It is Tom Paine we honor, not the English judge who outlawed him for writing the *Rights of Man*.

Our own history, too, is one of rebellion against authority. We remember Roger Williams, who championed toleration, not John Cotton, who drove him from the Bay Colony; we celebrate Thomas Jefferson, whose motto was "Rebellion to tyrants is obedience to God," not Lord North; we read Henry Thoreau on civil disobedience, rather than those messages of President Polk that earned him the title "Polk the Mendacious"; it is John Brown's soul that goes marching on, not that of the judge who condemned him to death at Charles Town.

Why is this? It is not merely because of the nobility of character of these martyrs. Some were not particularly noble. It is because we can see now that they gave their lives to defend the interests of humanity, and that they, not those who punished them, were the true benefactors of humanity.

But it is not just the past that needed freedom for critics, nonconformists and dissenters. We, too, are assailed by problems that seem insoluble; we, too, need new ideas. Happily, ours is not a closed system—not yet, anyway. We have a long history of experimentation in politics, social relations and science. We experiment in astrophysics because we want to land on the moon; we experiment in biology because we want to find the secret of life; we experiment in medicine because we want to cure cancer; and in all of these areas, and a hundred others, we make progress. If we are to survive and flourish, we must approach politics, law and social institutions in the same spirit that we approach science. We know that we have not found final truth in physics or biology. Why do we suppose that we have found final truth in politics or law? And just as scientists welcome new truth wherever they find it, even in the most disreputable places, so statesmen, jurists and educators must be prepared to welcome new ideas and new truths from whatever sources they come, however alien their appearance, however revolutionary their implications.

"There can be no difference anywhere," said the philosopher William James, "that doesn't make a difference elsewhere—no difference in abstract truth that doesn't express itself in a difference in concrete fact. . . ."

Let us turn then to practical and particular issues and ask, in each case, what are and will be the consequences of policies that repress freedom, discourage independence and impair justice in American society, and what are, and will be, the consequences of applying to politics and society those standards and habits of free inquiry that we apply as a matter of course to scientific inquiry?

Consider the erosion of due process of law—that complex of rules and safeguards built up over the centuries to make sure that every man will have a fair trial. Remember that it is designed not only for the protection of desperate characters charged with monstrous crimes; it is designed for every litigant. Nor is due process merely for the benefit of the accused. As Justice Robert H. Jackson said, "It is the best insurance for the Government itself against those blunders which leave lasting stains on a system of justice. . . ."

And why is it necessary to guarantee a fair trial for all—for those accused of treason, for those who champion unpopular causes in a disorderly fashion, for those who assert their social and political rights against community prejudices, as well as for corporations, labor unions and churches? It is, of course, necessary so that justice will be done. Justice is the end, the aim, of government. It is implicitly the end of all governments; it is quite explicitly the end of the United States Government, for it was "in order to . . . establish justice" that the Constitution was ordained.

Trials are held not in order to obtain convictions; they are held to find justice. And over the centuries, we have learned by experience that unless we conduct trials by rule and suffuse them with the spirit of fair play, justice will not be done. The argument that the scrupulous observance of technicalities of due process slows up or frustrates speedy convictions is, of course, correct, if all you want is convictions. But why not go all the way and restore the use of torture? That got confessions and convictions! Every argument in favor of abating due process in order to get convictions applies with equal force to the use of the third degree and the restoration of torture. It is important to remember that nation after nation abandoned torture (the Americans never had it), not merely because it was barbarous, but because, though it wrung confessions from its victims, it did not get justice. It implicated the innocent with the guilty, it outraged the moral sense of the community. Due process proved both more humane and infinitely more efficient.

Or consider the problem of wiretapping. That in many cases wiretapping "works" is clear enough, but so do other things prohibited by civilized society, such as torture or the invasion of the home. But "electronic surveillance," said Justice William J. Brennan, Jr., "strikes deeper than at the ancient feeling that a man's home is his castle; it strikes at freedom of communication, a postulate of our kind of society . . . . Freedom of speech is undermined where people fear to speak unconstrainedly in what they suppose to be the privacy of home or office."

Perhaps the most odious violation of justice is the maintenance of a double standard: one justice for blacks and another for whites, one for the rich and another for the poor, one for those who hold "radical" ideas, and another for those who are conservative and respectable. Yet we have daily before our eyes just such a double standard of justice. The "Chicago Seven," who crossed state lines with "intent" to stir up a riot, have received heavy jail sentences, but no convictions have been returned against the Chicago police who participated in that riot. Black Panthers are on trial for their lives for alleged murders, but policemen involved in wantonly attacking a Black Panther headquarters and killing two blacks have been punished by demotion.

Turn to the role and function of freedom in our society—freedom of speech and of the press—and the consequences of laying restrictions upon these freedoms. The consequence is, of course, that society will be deprived of the inestimable advantage of inquiry, criticism, exposure and dissent. If the press is not permitted to perform its traditional function of presenting the whole news, the American people will go uninformed. If television is dissuaded from showing controversial films, the people will be denied the

opportunity to know what is going on. If teachers and scholars are discouraged from inquiring into the truth of history or politics or anthropology, future generations may never acquire those habits of intellectual independence essential to the working of democracy. An enlightened citizenry is necessary for self-government. If facts are withheld, or distorted, how can the people be enlightened, how can self-government work?

The real question in all this is what kind of society do we want? Do we want a police society where none are free of surveillance by their government? Or do we want a society where ordinary people can go about their business without the eye of Big Brother upon them?

The Founding Fathers feared secrecy in government not merely because it was a vote of no-confidence in the intelligence and virtue of the people but on the practical ground that all governments conceal their mistakes behind the shield of secrecy; that if they are permitted to get away with this in little things, they will do it in big things—like the Bay of Pigs or the invasion of Cambodia.

And if you interfere with academic freedom in order to silence criticism, or critics, you do not rid the university of subversion. It is not ideas that are subversive, it is the lack of ideas. What you do is to silence or get rid of those men who have ideas, leaving the institution to those who have no ideas, or have not the courage to express those that they have. Are such men as these what we want to direct the education of the young and advance the cause of learning?

The conclusive argument against secrecy in scientific research is that it will in the end give us bad science. First-rate scientists will not so gravely violate their integrity as to confine their findings to one government or one society, for the first loyalty of science is to scientific truth. "The Sciences," said Edward Jenner of smallpox fame, "are never at war." We have only to consider the implications of secrecy in the realm of medicine: What would we think of doctors favoring secrecy in cancer research on the grounds of "national interest"?

The argument against proscribing books, which might normally be in our overseas libraries, because they are critical of Administration policies is not that it will hurt authors or publishers. No. It is quite simply that if the kind of people who believe in proscription are allowed to control our libraries, these will cease to be centers of learning and become the instruments of party. The argument against withholding visas from foreign scholars whose ideas may be considered subversive is not that this will inconvenience them. It is that we deny ourselves the benefit of what they have to say. Suppose President Andrew Jackson had denied entry to Alexis de Tocqueville on the ground that he was an aristocrat and might therefore be a subversive influence on our democracy? We would have lost the greatest book ever written about America.

There is one final consideration. Government, as Justice Louis D. Brandeis observed half a century ago, "is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example." If government tries to solve its problems by resort to large-scale violence, its citizens will assume that violence is the normal way to solve problems. If government itself violates the law, it brings the law into contempt, and breeds anarchy. If government masks its operations, foreign and domestic, in a cloak of secrecy, it encourages the creation of a closed, not an open, society. If government shows itself impatient with due process, it must expect that its people will come to scorn the slow procedures of orderly debate and negotiation and turn to the easy solutions of force. If government embraces the principle that the end justifies the means, it radiates approval of a doctrine so odious that it will in the end destroy the whole of society. If government shows, by its habitual conduct, that it rejects the claims of freedom and of justice, freedom and justice will cease to be the ends of our society.

Eighty years ago, Lord Bryce wrote of the American people that "the masses of the people are wiser, fairer and more temperate in any matter to which they can be induced to bend their minds, than most European philosophers have believed possible for the masses of the people to be."

Is this still true? If the American people can indeed be persuaded to "bend their minds" to the great questions of the preservation of freedom, it may still prove true. If they cannot, we may be witnessing, even now, a dissolution of the fabric of freedom that may portend the dissolution of the Republic.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, 5 minutes prior to the vote today on the pending District of Columbia conference report, the Sergeant at Arms be directed to clear the floor and the lobbies of all staff personnel except the staffs of the Secretary of the Senate, the Sergeant at Arms, the secretary for the majority, the secretary for the minority, their assistants, the aides to the leadership on both sides of the aisle, staff personnel associated with the manager of the conference report, and the personnel of the two policy committees, and that such personnel remain off the floor and from the lobbies until the vote is announced, at which time they may be permitted to return to the Chamber.

I further ask unanimous consent that the Sergeant at Arms be instructed to inform those aides, when they do come on the floor, that they are to take seats in the rear of the Chamber and stay seated, or leave the Chamber.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered, and the Sergeant at Arms is so instructed.

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 (Mr. EAGLETON). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, is there further morning business?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the unfinished business.

The PRESIDING OFFICER. The business will be stated by title for the information of the Senate.

The 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.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the conference report.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

Who yields time?

Mr. TYDINGS. Mr. President, I yield 8 minutes to the distinguished Senator from Nebraska (Mr. HRUSKA).

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 8 minutes.

Mr. HRUSKA. Mr. President, on July 11, 1969, the Department of Justice sent to the Congress legislation providing for a comprehensive reorganization of the inefficient and antiquated system of criminal justice in the District of Columbia.

There was no dissent at that time, nor is there dissent today, from the position that this proposed reorganization is long overdue and vitally necessary. Indeed, the President of the United States issued a message only 11 days after he assumed office on January 20, 1969, calling for such a reorganization and reform of the criminal justice system in the Nation's Capital.

Today, more than 18 months after the Presidential message and over a year after the introduction of the necessary legislation, the court reform and reorganization are needed more than ever. For the existing system of criminal justice is simply incapable of coping with the local crime problem.

How else can we explain the fact that despite the enormous increase of crime in recent years, the number of felony indictments returned in the District in 1969 was the same as it was 20 years ago? How else can we explain the average 9 month delay in bringing a felony case to trial? How else can we explain the fact that on March 31 of this year, there was a pending backlog in the juvenile court of 6,300 cases?

The conference report of the District of Columbia Court Reform and Criminal Procedure Act of 1970 provides the thorough, basic reorganization needed to remedy these intolerable deficiencies in the existing system. This legislation, the product of extensive hearings, debate and a lengthy Senate-House conference, contains a number of major improvements: First, it provides a major restructuring of the court system, centralizing all local, non-Federal matters in one court. For the first time in its history, the city of Washington has been given a true judicial branch of local government. The number of judges of

this court are significantly increased. To attract more highly qualified lawyers to these positions, their pay and tenure are increased. To protect the system against judges whose behavior threatens the fair and efficient administration of justice, an independent commission of judges, lawyers, and laymen is empowered, after hearing, to remove or suspend judges.

A second, major innovation of this legislation is its provision for a family division within the new court structure. This family division has jurisdiction over paternity suits which, consistent with the modern approach, are made civil matters rather than quasi-criminal.

It also has jurisdiction over intrafamily offenses. Today, for many intrafamily offenses between husband and wife, parent and child, the only court remedy is criminal prosecution and jail. The conference report offers the alternative of a civil action directed at the issuance of a protective order—an equity decree aimed at solving and seeking solutions to the underlying family problem. This will relieve the criminal calendar of cases which are essentially domestic relations matters and also provide real assistance to those who come to the courts seeking help.

The family division will also have jurisdiction over all matters relating to juveniles. In this regard, the conference report contains a comprehensive revision of the code of juvenile procedure, the first such comprehensive revision since 1938. The revised code contains all the due process procedures required by recent Supreme Court cases and indeed goes well beyond these minimum requirements. It specifies the detailed requirements for notice of charges, notice of and the right to counsel and provision for counsel for those unable to afford counsel, prompt hearings on the need to keep a child in custody, factfinding and dispositional hearings with distinct standards of proof and standards for admissibility of evidence, and periodic court review of dispositional orders. These improved procedures will help reduce the present disastrous backlog of 6,300 cases.

A third major innovation of the conference report is its provision for a full-fledged public defender system. The present Legal Aid Agency is only a pilot project. This legislation authorizes the public defender to represent up to 60 percent of adult and juvenile defendants who are unable to obtain adequate representation. This will decrease the heavy burden on the private bar of this city and provide these defendants with skilled, experienced counsel. Representation will be afforded defendants not only in criminal cases, but also in cases involving revocation of probation or parole, civil commitment and release on mental health grounds, civil commitment of drug addicts, and civil commitment of chronic alcoholics. The net effect of this noteworthy provision is to guarantee all persons, however poor, the right to skilled counsel when they are faced with loss of liberty.

The fourth major contribution of the conference report is its comprehensive revision of the code of criminal procedure for the District of Columbia. If the new District of Columbia courts, which will have jurisdiction over all local felony violations, are to provide an efficient, prompt, and fair administration of justice, it is vitally important that they be equipped with a progressive, effective criminal procedure. The present provisions in the District of Columbia Code which relate to criminal procedure are scattered throughout the Code. Many are hopelessly outmoded. Indeed, absent from the District of Columbia Code are a number of provisions for years considered basic to a modern code of criminal procedure. For example, the present District of Columbia Code contains no provision providing a procedure for collateral attack of a criminal conviction. The proposed District of Columbia Code remedies this defect. The present District of Columbia Code does not even contain a provision prohibiting conspiracy. The proposed District of Columbia Code remedies this defect. Antequated procedures for obtaining arrest and search warrants, now covered in various titles in the District of Columbia Code, are modernized and consolidated in one title of the District of Columbia Code.

With all these major innovations and significant improvements in the administration of justice in the Nation's Capital, one would have expected, Mr. President, the speediest possible enactment of this legislation. Each day of delay results in a further deterioration of the administration of justice in our Nation's Capital. Yet, as I have already observed, more than one year and a half has elapsed since the President first called for this legislation.

Why the delay? Why has Congress not enacted this legislation? The answer is clear: opposition to a few provisions of the bill, provisions which critics claim constitute a radical departure from existing law and unreasonably made the citizens of the District serve as a guinea pig for the rest of the Nation. Mr. President, let us examine these isolated provisions singled out for opposition to determine if this criticism is valid.

Opponents criticize the omission of trial by jury for juveniles. How do these critics explain the fact that approximately 40 States do not provide jury trial for juveniles and every single model code of juvenile law has no jury trial?

Opponents also criticize the fact that 16- and 17-year-olds charged by the U.S. Attorney with murder, forcible rape, armed robbery and first degree burglary, offenses punishable by death, life imprisonment, or 30 years imprisonment, are to be treated as adults. How do these critics, Mr. President, explain the fact that over half the States have similar laws reducing the age for juveniles charged with serious crimes such as these.

The opponents of the bill criticize its no-knock provisions as unconstitutional. How then do they explain the fact that no-knock entries have been authorized in the limited circumstances provided for by the bill since the common law in England? How do they explain the passage of legislation in five States which contains less restrictive standards than those in the conference report?

Mr. President, yesterday, I had printed in the RECORD a table showing that 30 States of this Union, either by express statute or by definite case law decision, have no-knock provisions which are in active and constant use within their borders.

How do the opponents explain the fact that the constitutionality of this legislation was unanimously upheld by the highest court in the State of New York? How do they explain the fact that in that case the Supreme Court in 1966 denied certiorari? How do they explain the fact that the District of Columbia Bar Association supports the conference report no-knock provisions? When legislation requires police to obtain prior judicial approval, whereas under present law the police have complete discretion to make a no-knock entry, how do critics explain that this warrant procedure violates the fourth amendment?

The opponents of the bill criticize the wiretapping provisions of the bill. How do they explain, Mr. President, the fact that Congress, in 1968, specifically authorized the States to enact such provisions? How do they explain the fact that the proposed legislation provides more safeguards than those in the Federal legislation? How do they explain the fact that other States have adopted similar legislation? How do they explain the fact that the District of Columbia Bar Association supports this provision for local wiretapping authority?

The opponents criticize the provision making insanity in criminal cases an affirmative defense. How do they explain the fact, Mr. President, that over half the States follow this rule. If this is such a radical departure from existing law, how do these critics explain the fact that this is the rule used for centuries in England?

The opponents criticize the one proposed mandatory sentence of 5 years for a second armed crime of violence. How do they explain the fact that this is the same penalty provided for by the Congress in the Federal Gun Control Act of 1968 and that, therefore, this provision only makes the local law consistent with the Federal law.

Finally, Mr. President, the opponents criticize most strenuously the provision of permitting pretrial detention of dangerous defendants charged with specified categories of serious felonies for a maximum of 60 days. How do these critics explain the fact that all major countries in the world today authorize pretrial detention of dangerous defendants, including those countries which have as great a concern for individual liberties as we do, such as England, Canada, Australia, and the Scandanavian countries? How do these critics explain the fact that England, the source of our law and jurisprudence, has by statute authorized pretrial detention for certain felonies since 1275 and as recently as 1967 authorized pretrial detention on grounds of dangerousness for persons charged only with misdemeanors?

How, Mr. President, do these critics explain the fact that today in the United States every State detains dangerous defendants prior to trial through the hypocrisy of setting high money bail, a procedure which discriminates between rich and poor? How do these critics explain the fact that this detention is not limited to 60 days but can last for months and even years? How do these critics, Mr. President explain the fact that the Bail Reform Act of 1966 permits pretrial detention on the grounds of dangerousness for defendants charged with capital crimes—with no time limit? Since when, Mr. President, is a husband charged with first degree murder of his wife, who can be detained, more dangerous to society than a narcotics addict-robber, a professional burglar, or a psychopathic rapist? How do these critics explain or justify this absurd distinction? How do the critics explain the fact that pretrial detention has been recommended by the President's Commission on Crime for the District of Columbia, two successive committees of the Judicial Council to study the operation of the Bail Reform Act of 1966 in the District of Columbia, and Senator TYDINGS' commission to study armed crimes of violence in the District of Columbia? Do the opponents, Mr. President, prefer continuation of the detention of dangerous defendants through the hypocritical use of money bond or do they prefer the honest, limited detention permitted by the conference report?

The truth of the matter, Mr. President, is that opponents of the conference report have never satisfactorily answered any of the questions thus posed. The reason for their failure to do so is obvious. The provisions they criticize are not radical departures from existing law. To the contrary, they are based on the practice or law of the majority of States or on legislation recently enacted by the Congress. Particularly with respect to the provisions for pretrial detention and no-knock, they represent improvements and reform of existing practice and procedure. Most of them have the affirmative support of the organized bar of the District of Columbia and committees of the local Judicial Council of the United States. Not one of the provisions singled out for criticism by opponents of the bill are opposed by the bar or these committees. They do not detract from this legislation; indeed, they strengthen it and make the need for its passage even more imperative.

In view of the widespread support for these provisions, in view of the reforms and improvements they make in existing law and practice, in view of the enormous need of the Nation's Capital for the benefits of this legislation, I strongly urge my fellow Senators to vote in favor of the conference report.

The PRESIDING OFFICER (Mr. EAGLETON). The time of the Senator from Nebraska has expired.

Mr. TYDINGS. Mr. President, I yield 2 additional minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 2 additional minutes.

Mr. HRUSKA. Mr. President, in closing, let me say that this afternoon the Senate will be called upon to vote the District of Columbia crime bill up or down. Those are our two choices; there is no other. The vote last week by the other body to approve the conference report discharged its conferees and dissolved the conference. Should the Senate now vote nay this bill is dead for this session. The House of Representatives stands strongly behind the conference version of the bill; its vote of 332 to 64 to approve the measure proves that. Should the Senate now attempt to pass an emasculated version of this bill, it is the judgment of this Senator that the House will amend that bill until it again resembles the conference bill or the even stronger House version of the District of Columbia crime bill. I do not believe that it is the will of the Senate that the District have no crime bill from the 91st Congress.

This bill, if approved this afternoon, will be the first piece of crime legislation to emerge from this Congress. It will provide the President with his first opportunity to fulfill his pledge to stop the rising tide of crime in this Nation. Few will forget, I am certain, the strong support this pledge gained in the 1968 campaign. The Senate has a good record on crime legislation. Most of the administration's proposals have been approved by the Senate and now await action by the other body. Let us not falter; let us not mar that admirable record.

Each of the controversial sections of the bill has been previously approved in one form or another by the Senate, with the exception of preventive detention. Indeed, one of these sections, "no knock" has been voted on and approved by this body three times since last December. By approving this bill today we break no new ground. There exists solid precedent in State and Federal practice today for each of these provisions. Juvenile jurisdiction, electronic surveillance, preventive detention, no knock are each well thought-out, constitutional, strictly limited weapons in the war on crime. Along with the reorganization of the court system of this city which S. 2601 will authorize, the Congress needs to give the judges, the police and the prosecutors the tools necessary to obtain victory over this deadly serious problem. To do one without the other is not to do the job. It is akin to providing troops but denying them arms.

S. 2601 is a monumental bill. The conference version is almost 250 pages long. It will take a great deal of time to implement all of its provisions. Much time has already been lost during the year this bill has been under consideration by the Congress. We cannot afford to wait any longer for court reform and modernization of the criminal code for this city. To vote nay on this bill is to delay for another year or two any progress in this area for the Nation's Capital. We cannot afford, if we are serious in our desire to end crime in this Nation, to wait a single day. I urge each of my colleagues to vote for this conference bill.

The PRESIDING OFFICER. Who yields time?

PRIVILEGE OF THE FLOOR

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that during the vote two staff members attached to the subcommittee of the able and distinguished Senator from North Carolina (Mr. ERVIN), Lawrence Baskir and Glenn Ketner, be permitted on the floor of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time? The time is divided equally and is running.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally charged against both sides.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ERVIN. Mr. President, I yield myself such time as I may use.

Mr. President, Senators and Representatives are by nature and profession political animals. As a consequence they are buffeted by many temptations to take action which at the moment seems to be politically profitable.

We live today in a state of emergency. Crime is rampant and rising. There are demands for drastic legislation to deal with crime.

Since the last presidential campaign was based on the law and order issue in part, I myself have been beset by temptation. But I shall not succumb. I sincerely pray that none of my colleagues will be beset by the same temptation. The siren voice of that old devil, political expediency, has been whispering in my ear, "You had better vote for the District of Columbia crime bill because it is a law and order bill, and it is not politically sagacious or politically profitable for Senators to vote against a law and order bill such as the District of Columbia crime conference report, even to preserve the individual liberties of our people."

I trust that none of my brethren has been subjected to this temptation of the old political devil. I confess that I have been subjected to it.

I have listened to some arguments made which were evidently inspired by this old political devil that say, "Senators had better vote for law and order because that is what is politically expedient at this moment."

It might be of help to some of my colleagues to tell them why I have been able to resist the temptation posed by this political devil which invites all of us who hold political office to consider expediency when it is politically advantageous to do so.

Several years ago I had the privilege of sitting in a joint session of the Senate and the House of Representatives in the House Chamber and hearing one of our original astronauts, Col. John Glenn, make a speech.

During the course of his speech, Col-

onel Glenn made a remark which convinced me that in one respect, at least, the heart of Colonel Glenn and my heart beat in unison. Colonel Glenn said with the eloquence of simplicity, "I still get a thrill when the flag goes by."

When I look at Old Glory, I note that it is red and white and blue. To me, the red in Old Glory symbolizes the blood, the sweat, the tears, and the prayers of all those men and women, both great and small, who have made America free.

To me the white in Old Glory symbolizes the purity of the motives of those who drafted the Constitution to keep America free.

To me the blue in Old Glory symbolizes the obligation which rests upon all of us to be true and to be true blue, if you may, to the sacrifices of those men and those women who made America free and to the handiwork of those who drafted our Constitution to keep America free.

Unfortunately for America the Constitution is an inanimate document in writing. It cannot enforce its own precepts. It depends upon people and especially upon public officials who love it to do that.

If those who occupy high office in this Nation do not love the Constitution enough to take such action as is necessary to make its precepts living principles of government in our land, the rights which the Constitution undertakes to create, the responsibilities which the Constitution undertakes to impose, and the freedoms which the Constitution undertakes to secure become naught except meaningless words on a useless scrap of paper.

If Congress, the President, and the Supreme Court do not faithfully observe the principles enshrined in that written document we call the Constitution, neither our Nation nor any single human being within its farflung borders has any security against anarchy on the one hand and tyranny on the other.

The most courageous and the most intelligent decision the Supreme Court has ever handed down is *Ex parte Milligan*, 71 U.S. 3. It took great courage for the Supreme Court to hand this decision down in the troublous times that prevailed at the time of its rendition. It was at the end of the War Between the States when emotions ran high, and despite this fact the Supreme Court held in Ex parte Milligan that the individual freedoms created by the Constitution wrapped within their protection a man charged with what is perhaps the most heinous of all crimes, disloyalty to his country. This decision is remarkable not only for the time it was rendered, but also because it contains the opinion of the Court and the arguments advanced by the lawyers who appeared for Milligan, who had been sentenced to death by a military tribunal, although he was a civilian, and who had been denied the right of indictment by a grand jury and the right of trial by a petit jury in a civil court.

I mention the fact that the report of this case contains the argument of counsel because it proves, as I have always maintained, that back of every great decision of any great judge stands the argument of a great counsel. If I could be a benevolent dictator of the United States I would require every Senator, and every Representative, as well as every President to read this opinion and the argument of Jeremiah S. Black at frequent intervals.

The argument of Jeremiah S. Black explains exactly how the Constitution came into existence as a written instrument for the Government of this Nation. The great opinion of Justice David Davis explains in unmistakable fashion why the Constitution of the United States was written.

During the course of his argument Jeremiah S. Black had this to say:

> If the men who fought out our Revolutionary contest, when they came to frame a government for themselves and their posterity, had failed to insert a provision making the trial by jury perpetual and universal, they would have proved themselves recreant to the principles of that liberty of which they professed to be the special champions. But they were guilty of no such thing. They not only took care of the trial by jury, but they regulated every step to be taken in a criminal trial. They knew very well that no people could be free under a government which had the power to punish without restraint. Hamilton expressed, in the Federalist, the universal sentiment of his time, when he said, that the arbitrary power of conviction and punishment for pretended offenses, had been the great engine of despotism in all ages and all countries. The existence of such a power is incompatible with freedom.
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> But our fathers were not absurd enough to put unlimited power in the hands of the ruler and take away the protection of law from the rights of individuals. It was not thus that they meant "to secure the blessings of liberty to themselves and their posterity." They determined that not one drop of the blood which had been shed on the other side of the Atlantic, during seven centuries of contest with arbitrary power, should sink into the ground; but the fruits of every popular victory should be garnered up in this new government. Of all the great rights already won they threw not an atom away. They went over *Magna Charta*, the *Petition of Right*, the *Bill of Rights*, and the rules of the *common law*, and whatever was found there to favor individual liberty they carefully inserted in their own system, improved by clearer expression, strengthened by heavier sanctions, and extended by a more universal application. They put all those provisions into the organic law, so that neither tyranny in the executive, nor party rage in the legislature, could change them without destroying the government itself.

Mr. President, that is the statement of Jeremiah S. Black which portrays in a most lucid manner exactly how the Constitution came into being as a written instrument.

We have the reverse process here in the formulation of the District of Columbia omnibus crime bill. I digress to suggest that it ought to be called the "ominous crime bill."

The drafters of the bill searched through the Constitution and through the constitutional history of this Nation and through the traditions of our people to find the basic rights which will prevent the police officers of the District of Columbia and the courts from practicing tyranny on the people of the District and then proceeded to draft a bill to circumvent or nullify those rights.

"Oh," we may say, "we are just voting on a bill for the District of Columbia." But the Attorney General has made it very emphatic that it is the purpose of the Department of Justice to hold this bill up as a model for all of the States of the Union to follow. And so Senators might well recognize that when they cast their votes, they are voting for a bill which the Attorney General of the United States hopes to have imposed upon their constituents, as well as upon the people of the District of Columbia.

In his great opinion in Ex parte Milligan, Justice David Davis held that Milligan, even though he was charged, in substance, with disloyalty to his country, was entitled to the benefit of constitutional provisions which say that no person can be made to answer for a capital or an otherwise infamous crime except upon an indictment by the grand jury, and that no person can be convicted of a crime except upon the verdict of a petit jury.

Justice Davis had this to say in a statement which explains exactly why the Constitution of the United States was written. It was suggested by Jeremiah Black in his argument that the purpose was to prevent tyranny on the part of the executive branch of the Government and party rage on the part of the legislature, and he was right in so stating. But Justice Davis said this in elaboration on this point:

> For even these provisions (that is, the provisions for indictment by grand jury and trial by petit jury) expressed in such plain English words that it would seem the ingenuity of man could not deny them, are now, after the lapse of more than 70 years, sought to be avoided. Those great and good men foresaw that troublous times would arise when rulers and people would become restive under restraint and seek by sharp and decisive measures to accomplish ends deemed just and proper, and that the principles of constitutional liberty would be imperiled unless established by irrepealable law. The history of the world had taught them that what had been done in the past might be attempted in the future.
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> the hands of government.
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> The Constitution of the United States is a law for rulers and people equally in war and in peace and covers with the shield of its protection all classes of men, at all times, under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false, for the government within the Constitution has all the powers granted to it which are necessary to preserve its existence.

The Constitution was intended to cover, as Justice Davis said, all classes of men, at all times, and under all circumstances. And yet we have the proposal now pending before the Senate that these words of Justice Davis be nullified and that the people who are so unfortunate as to reside in the District of Columbia be denied rights which the Constitution intended to protect all American citizens, of all classes, of all creeds,

and of all races, against oppression at the hands of government.

We are told that it is necessary for us to throw provisions of the Constitution into the judicial garbage pail in order to cope with crime in the District of Columbia. I repeat what I have heretofore stated on the floor of the Senate—that the answer to this argument was most effectively made in 1783 in the House of Commons by William Pitt who, on another occasion, opposed a proposal that those charged with collecting a tax on cider be given no-knock powers similar to those which this bill proposes to impose upon the people of the District of Columbia. William Pitt said:

> Necessity is the plea for every infringement of human liberty. It is the argument of tyrants. It is the creed of slaves.

I deny that there is any necessity for a bill containing the provisions to which we object.

We are told that all that the bill does is to codify what is now law. I challenge that statement. They tell us that the bill embodies what the law was in England. We rebelled against England, in part, because England tried to impose no-knock warrants upon the people of Boston. We wrote a Constitution to get away from some English law, and we enacted some statutory laws to accomplish the like purpose.

A few months after George Washington took his first oath of office as President of the United States, Congress enacted the Judiciary Act of 1789, and declared, as a policy of this Government, that every person charged with a Federal crime, other than a capital Federal crime, should have an absolute right to bail pending his trial.

"Oh," we are told, "some judges disobeyed this law, some judges were guilty of hypocrisy in setting bail too high to keep a man in prison." And so it is proposed that we give some kind of sanctity to the hypocrisy of judges by allowing them to imprison men without any bail whatever. The proposal is that this 181-year-old right be destroyed for any person charged with a noncapital Federal crime in the District of Columbia if a judicial officer predicts that he is dangerous to others or the community.

In the ultimate analysis, preventive detention implies that judges are to be converted into prophets, and are to have the power to put men in jail and thus deny them a reasonable opportunity to prepare their cases for trial, in case the judges fear that they might commit some future crime if they are released on bail.

We have obtained much good from the laws of England, but some of the things England offered us we have outlawed. But we did obtain from England the principle that the proud boast of our law is that every man's home is his castle. It is proposed here that we abolish that boast, that we destroy that concept for the District of Columbia; and the Attorney General of the United States, who advocates that, says that we should do so in all of the 50 States of this Union. It is worthy of repetition that when the officers of the British Crown attempted to abolish this principle and to harass the colonists of Massachusetts with general warrants similar to no-knock warrants, the people of Massachusetts rebelled against England and demanded independence from a nation which practiced such tyranny.

I do not care how much sophistry is engaged in on the Senate floor. This bill would authorize the issuance of a no-knock search warrant, which would empower an officer to knock down the doors of the dwelling houses of the people of the District of Columbia if he is willing to make a prophecy—a false prophecy, I say, because he cannot possibly know whether that prophecy will come true. But if he is willing to make a false prophecy at the time he applies for a no-knock search warrant that he knows that specified conditions will exist at the future moment when he undertakes to execute the no-knock search warrant, the bill provides that he can get such a warrant and can knock down the door of a man's house, or otherwise enter it in the manner in which burglars enter private dwellings.

There are also provisions in this bill which would authorize the prosecution and punishment of persons called habitual offenders without a bill of indictment from a grand jury, even when they are to be tried for infamous offenses or are to be subjected to infamous punishments. There are provisions in this bill which declare that habitual offenders shall be tried by the judge without a jury, in violation of two distinct provisions of the Constitution of the United States guaranteeing the right of trial by petit jury.

I could point out other unwise provisions in this bill, such as provisions for mandatory sentences. We elevate men to the high office of judge, and then propose to pass a bill that forbids them to exercise their intelligence in passing sentences, and prohibits them from taking into consideration either the circumstances of the offense or the character or record of the offender at the time they impose the sentence decreed by the legislature.

I do not believe that things of this kind are necessary. Indeed, I know they are not. This bill is based upon prophecy. Preventive detention is based upon the theory that the judge shall prophesy whether a man will commit a future crime if he is released on bail. No-knock warrants are to be issued on the supposition that an officer can prophesy what will happen in the future when he undertakes to execute it.

The proponents of the conference report even undertake to prophesy that the House of Representatives will accept no other measure than this particular bill. I find myself mentally incapable of accepting such prophecy. I do not think that the Members of the House of Representatives are a bunch of prima donnas who say, "We will not allow the Senate of the United States to exercise its judgment or intelligence in this area, and will not agree to any kind of legislation to protect the people of the District of Columbia against crime except that embodied in this particular bill."

Mr. President, I have stated that I was able to resist the temptation which that old devil, political expediency, presented to me to vote for this bill despite its inequities and its unconstitutional provisions. I learned a little poem a long time ago that has been of great help to me in times of stress:

> I have to live with myself, and so
> I want to be fit for myself to know.
> * * * * *
> I don't want to stand, at the setting sun
> And hate myself for the things I've done.

I have spent my life in the law, and I have come to venerate our Constitution. I have come to abhor tyranny. I have come to love fairplay and justice.

If I were to vote for the adoption of this conference report, I would do something which would make me hate myself at the setting of the sun, because I know that this bill is honeycombed with unwise, unjust, and unconstitutional provisions. I shall not attempt to analyze the bill completely. I have done so before in large measure.

This morning the Washington Post published a lead editorial entitled, "How High a Price for a Crime Bill." That editorial said exactly what my colleagues who are associated with me and I have been saying during the debate. The Washington Post editorial declares this conference report is too high a price to pay for this bill; that the Senate should reject the conference report; and then pass the sound provisions of the conference report which are set forth in these other two bills which my colleagues and I have introduced.

All Senators who love the Constitution and fairplay, ought to join us in voting down this conference report and in calling up these measures for passage immediately, and in thus sending them to the House of Representatives. And I predict—though I do not claim to be a prophet—that the House of Representatives will forthwith pass them.

The distinguished Senator from Maryland put into the RECORD several days ago a decision I wrote when I was a member of the North Carolina Supreme Court. I ask unanimous consent to have printed in the RECORD, not only this editorial from the Washington Post, but also my dissenting opinion and the other opinions in another North Carolina case, *State* v. *Bridges*, which is reported in 231 N.C. 163.

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

[From the Washington Post, July 23, 1970]

HOW HIGH A PRICE FOR A CRIME BILL

Ever since the administration unveiled its anti-crime program for the District of Columbia more than a year ago, it has been clear that the cost of getting the right tools for the job would be high. The things that the District needs most—court reorganization, juvenile law reform, a working bail system, a public defender—were tied then and are tied now to a host of piggy-back riders which either conflict with enlightened thinking on crime control or infringe upon fundamental civil liberties. The question before the Senate today as it votes on the grab-bag crime bill is whether its worst features are not too heavy a price to pay for the necessary and useful tools that it also contains.

In our judgment, the toll exacted against individual rights and modern penology by the bill as it now stands is too great for the Senate to accept without a fight. A Senate that really wants to do something about crime will defeat the conference report, adopt the cleaned-up versions of the least controversial aspects of that report, get to work immediately on the most controversial matters, and put the burden back on the House of Representatives for responsible, effective crime control legislation.

The trouble with the crime bill as it emerged from conference rests not in its major provisions, most of which are admirable, but in the jokers, the pet theories, tossed in by the Department of Justice and the House District Committee. Senator Tydings labored mightily in conference to strip those jokers out and in many instances he was successful. But he fell short of the goal. In exchange for things they desperately need in the fight against crime, the residents of the District are required by this bill to diminish their individual privacy, the sanctity of their homes, the safeguards provided for their children, and the flexibility allowed their judges in trying to reform their criminals.

If this were the only impact of this legislation, the Senate might be able to hold its nose and send the bill along to the President. After all, it would only affect 800,000 or so people who are plagued with crime and why should they mind a few infringements on their rights and a few misguided provisions? But that is not the only consideration involved in this bill. Those members of Congress who normally shuck their responsibilities as legislators for this city because District bills don't matter back home ought to realize that this bill does matter back home. When the administration first proposed this legislation, it hailed its work as a model for the nation. And if Congress now blesses this particular form of preventive detention, this broad scale authorization of wiretapping, this curtailment of juvenile court, this use of mandatory sentences, and this no-knock provision, it is encouraging state legislatures to follow its lead. In that sense, a vote to apply these provisions in the so-called showcase capital is a vote to apply them sooner or later, in Phoenix and Tallahassee, in Keokuk and Kalamazoo.

What, then, is wrong with this bill? Let us begin with its handling of juveniles. Quite properly, the bill makes it easier for 15, 16 and 17-year-olds to be handled as adults, requiring principally that the juvenile judge determine that there is no reasonable prospect of rehabilitating them in specialized juvenile facilities before turning them over to adult courts. But the bill disregards this standard for *every* 16- and 17-year-old charged with first-degree murder, rape, first degree burglary, armed robbery, or assault to commit those crimes. They are, the bill says, adults, regardless of their prior records, their chances for rehabilitation if handled as juveniles, or their mental condition. Their classmates, if charged with second degree murder, second degree burglary, unarmed robbery, or plain assault, are not adults. Is this equal justice? Is it even-handed application of the principle that juveniles ought to be given the best possible, not the worst possible, chance for rehabilitation? Of course not. (This kind of provision conflicts with the federal government's own model juvenile act, the Uniform Juvenile Court Act, most state laws, the recommendations, of the D.C. Crime Commission, the District government and the Department of Public Welfare.)

That is just one example. There are others. The bill holds out to juveniles the promise of speedy proceedings and does little to ensure them. It takes away a juvenile's right to a jury trial. It authorizes preventive detention for juveniles not only when the judge decides the child needs it but unless the judge specifically decides the child does not need it. It lowers the standard of proof needed to find a child "neglected" or "in need of supervision," thus making it easier to take these non-crime-committing children into custody.

We will touch only briefly on other parts of this legislation.

Wiretapping: This bill authorizes taps not only in limited fields like national security and organized crime but also when a person is believed to have committed arson, blackmail, bribery, burglary, destruction of property, gambling, grand larceny, kidnaping, murder, obstruction of justice, receiving stolen property, robbery, extortion, or drug law violations.

Mandatory prison terms: In the face of recommendations to the contrary by the National Crime Commission, the American Bar Association, the American Law Institute and a tentative new code of federal criminal laws, this bill imposes mandatory prison terms in certain instances.

Recidivists: This bill shortcuts, perhaps unconstitutionally, the procedures used in most states which have such statutes for use against three-time offenders.

Searches: The difference between the interpretations placed on the "no-knock" provision of this bill in the House debate and the Senate debate is so great that it is hard to believe anyone knows what it means.

Preventive detention: We think a bill to permit some form of detention or closer supervision of dangerous suspects in certain situations can be written. But this is not it; the language is too broad and the possibilities for abuse too great.

These, then, are some of the reasons why we believe the costs of this particular crime bill outweigh the benefits it would bestow. They are sufficient for the Senate to be justified in defeating the conference report and following the course urged by Senator Ervin. The proponents of this bill argue that if it is killed there will be no District crime bill this year. But this need not be so. Faced with a cleaned-up version of its own legislation, the House would have to decide whether it wants a decent crime bill or a campaign issue. And the administration would be faced with the same choice.

It is hard, of course, for a senator to vote against an anti-crime bill just now. The voters are eager for action and such a vote is subject to easy demagogic attack and gross misinterpretation. But the solution is simple in legislative terms and the principles are clear. The costs of this particular anti-crime bill are too high—too high in terms of backward-looking penology, too high in terms of individual freedom.

[Supreme Court of North Carolina]

STATE v. BRIDGES, No. 436

Nov. 30, 1949

John Robert Bridges, alias Jack Bridges, was convicted in the Superior Court, Wake County, W. H. S. Burgwyn, Special Judge, of murder in the first degree, and he appealed.

The Supreme Court, Stacy, C. J. affirmed the judgment and held that the charge did not constitute reversible error.

Ervin and Seawell, JJ., dissented.

1. CRIMINAL LAW—822(1)

Charge in homicide prosecution would be viewed contextually to determine whether rights of defendant were prejudiced.

2. CRIMINAL LAW—1173(2)

In murder prosecution, charge that it was for jury to determine whether defendant was guilty of murder in first degree or of murder in second degree, following admonition that defendant was surrounded by presumption of innocence up to rendition of a verdict against him, was not reversible error, as failing to permit an acquittal in case of finding that defendant had committed no crime.

3. HOMICIDE—309(2)

Acquiescence in statement of trial court by defendant and counsel that trial judge understood that jury should not render any less verdict than that of murder in second degree manifested intent to eliminate any question of manslaughter, and did not intend to change defendant's plea of not guilty or to relieve trial court of any duty which law imposed on him with respect to charge to jury.

Criminal prosecution on indictment charging the defendant with the murder of one Keston Norris Privette.

The record discloses that on February 7, 1949, the defendant lured the deceased from his home, bludgeoned him over the head with the stock of a rifle, and buried him, while still alive, in a shallow hole or grave which the defendant previously had prepared for the purpose. He died from suffocation. The defendant and the wife of the deceased then fled to the State of Georgia. While under arrest in that State, the defendant made a confession to the officers in which he freely admitted the atrociousness of the crime and the sordid details of his illicit relations with the youthful wife of the deceased. Under this confession, which is not now challenged, a clear case of premeditated and deliberate murder is fully made out.

While the defendant entered a plea of not guilty, the case was argued to the jury on the opposing contentions, first by the State that a verdict of murder in the first degree should be returned against the defendant, and, secondly, by the defendant that a verdict of murder in the second degree would meet the ends of justice.

In opening his charge to the jury, the trial court instructed them that they were to pass upon the "guilt or innocence of the prisoner" and to say by their verdict the degree of guilt the prisoner has incurred by reason of the homicide in question, "or to say by your verdict that he is not guilty of any crime", as you may find the facts to be from the evidence in the case and under the rule of law which the court will undertake to give you for your guidance.

Then when the court came to consider the different degrees of an unlawful homicide, he addressed the following inquiry to the defendant and his counsel:

"I do not understand—and if I misunderstand I wish now to be corrected—that the defendant contends, either in his own proper person or through counsel, that this jury should render any less verdict than that of murder in the second degree: Is that correct, gentlemen?

"Mr. Holding: That is correct.

"Mr. Ehringhaus: That is correct, sir.

"The defendant bowed his head in affirmation.

"Let the record so show."

Later in the charge, the jury was again admonished that the defendant "comes into court surrounded and clothed with a presumption of innocence which remains around and about him throughout the entire case unless and until the State has satisfied you, the jury, of his guilt beyond a reasonable doubt."

Finally, the court concluded his charge to the jury as follows: "Take the case and say whether or not you find the defendant guilty of murder in the first degree and, if so, whether or not you desire to recommend life imprisonment, or if you find him guilty of murder in the second degree." Exception.

Verdict: Guilty of murder in the first degree.

Judgment: Death by asphyxiation.

The defendant appeals, assigning errors.

Attorney-General Harry M. McMullan and

Assistant Attorneys General T. W. Bruton and Ralph M. Moody for the State.

J. C. B. Ehringhaus, Jr., and Clem B. Holding, Raleigh, for defendant.

Stacy, Chief Justice.

The defendant has been convicted of murder in the first degree, without any recommendation from the jury, and sentenced to die as the law commands in such case. He appeals, giving as his principal reason the failure of the court, in his final instruction to the jury, to permt an acquittal in case of a finding that the defendant had committed no crime. For this position, the defendant relies upon the following cases: State v. Howell, 218 N.C. 280, 10 S.E. 2d 815; State v. Redman, 217 N.C. 483, 8 S.E. 2d 623; State v. Maxwell 215 N.C. 32, 1 S.E. 2d 125; State v. Hill, 141 N.C. 769, 53 S.E. 311; State v. Dixon, 75 N.C. 275. He stresses the Howell and Maxwell cases as being quite pertinent and directly in point.

[1, 2] Viewing the charge contextually, as required by many decisions, we are constrained to hold that it sufficiently meets the objection which the defendant now makes. State v. Truelove, 224 N.C. 147, 29 S.E. 2d 460; State v. Grass, 223 N.C. 31, 25 S.E. 2d 193; State v. Harris, 223 N.C. 697, 28 S.E. 2d 232; State v. Ellis, 203 N.C. 836, 167 S.E. 67.

It is true, a more formal statement of the position would have been in order, but throughout the charge, the jury was admonished that a presumption of innocence surrounded the defendant which remained with him up to the rendition of an adverse verdict against him. Considering the charge as a whole or in its entirety, we think it will do. While it might have been more specific and direct on the point at issue, we are disposed to uphold the trial in the light of the record.

[3] The meaning properly to be ascribed to the responses made by the defendant and his counsel to the court's inquiry during the charge is that there was no element of manslaughter in the case. In this, they were quite correct. There was no intention, however, to change the defendant's plea or to relieve the court of any duty which the law imposed upon him. State v. Grier, 209 N.C. 298, 183 S.E. 272; State v. Merrick, 171 N.C. 788, 88 S.E. 501; State v. Foster, 130 N.C. 666, 41 S.E. 284, 89 Am.St.Rep. 876. The immediate purpose was to eliminate any question of manslaughter. This part of the record may be put to one side as without material significance or bearing on the question here involved.

The question presented perhaps lends itself to much writing, but in the end it all comes to the interpretation to be placed on the entire charge. Construing it as without reversible error, we are disposed to overrule the exceptions and sustain the validity of the trial in the light of the whole record.

No error.

Ervin, Justice (dissenting).

The prisoner claims the right to a new trial on the ground that essential rules of criminal procedure were set at naught on his trial in the court below.

Candor compels the confession that it is not altogether easy to harken to the prisoner's plea. The State's testimony tends to show that the prisoner coveted his neighbor's wife, and slew his neighbor with rare atrocity that his physical enjoyment of the wife's person might be exclusive. The very sordidness of the evidence strongly tempts us to say that justice and law are not always synonymous, and to vote for an affirmance of the judgment of death on the theory that justice has triumphed, however much law may have suffered. But the certainty that justice cannot long outlive law give us pause; and the pause brings again to mind the ancient admonition of our organic law that "a frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty." N.C. Const. Article I, Sec. 29.

The system of criminal justice which prevails in North Carolina is a precious heritance from wise law-makers of past generations, who observed that tyranny uses the forms of criminal law to destroy those that oppose her will, and who established certain basic rules of criminal procedure to protect the people against such oppression. They bottomed these rules upon the bedrock proposition that the right to trial by jury is the best security of the liberty of men, and they guaranteed such right to all defendants in criminal actions in the Superior Court by the constitutional declaration that "no person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court." N.C. Const. Art. I, Sec. 13. It has been held by this Court without variableness or shadow of turning that when a defendant on trial in a criminal case in the Superior Court pleads not guilty to the charge against him, he may not thereafter, without changing his plea, waive his constitutional right to have the jury pass upon his guilt or innocence. State v. Muse, 219 N.C. 226, 13 S.E.2d 229; State v. Ellis, 210 N.C. 170, 185 S.E. 662; State v. Hill, 209 N.C. 53, 182 S.E. 716; State v. Crump, 209 N.C. 52, 182 S.E. 716; State v. Camby, 209 N.C. 50, 182 S.E. 715; State v. Walters, 208 N.C. 391, 180 S.E. 664; State v. Straughn, 197 N.C. 691, 150 S.E. 330; State v. Crawford, 197 N.C. 513, 149 S.E. 729; State v. Pulliam, 184 N.C. 681, 114 S.E. 394; State v. Rogers, 162 N.C. 656, 78 S.E. 293, 46 L.R.A., N.S., 38 Ann. Cas. 1914A, 867; State v. Holt, 90 N.C. 749, 47 Am. Rep. 544; State v. Stewart, 89 N.C. 563.

The founders of our legal system intended that the constitutional right of trial by jury should be a vital force rather than an empty form in the administration of criminal justice. They realized that this could not be if the petit jury should become a mere unthinking echo of the judge's will. To forestall such eventuality, they clearly demarcated the respective functions of the judge and the jury in both civil and criminal trials in a familiar statute, which was enacted in 1796 and which originally bore this caption: "An act to secure the impartiality of trial by jury, and to direct the conduct of judges in charges to the petit jury." Potter's Revisal, Vol 1, ch. 452. This statute, which now appears as G.S. § 1-180, establishes these fundamental propositions: (1) That it is the duty of the judge alone to decide legal questions presented at the trial, and to instruct the jury as to the law arising on the evidence given in the case; (2) that it is the task of the jury alone to determine the facts of the case from the evidence adduced; and (3) that "no judge, in giving a charge to the petit jury, either in a civil or criminal action, shall give an opinion whether a fact is fully or sufficiently proven, that being the true office and province of the jury." This statute is designed to make effectual the right of every litigant "to have his cause considered with the 'cold neutrality of the impartial judge' and the equally unbiased mind of a properly instructed jury." Withers v. Lane, 144 N.C. 184, 56 S.E. 855, 858. Any statement by the judge from which the jury may infer what his opinion is as to the guilt of the accused violates both the letter and the spirit of this statute, and constitutes reversible error. State v. Maxwell, 215 N.C. 32, 1 S.E. 2d 125; State v. Sparks, 184 N.C. 745, 114 S.E. 755.

Those who fashioned the basic concepts of our law entertained an abiding belief that any fair system of criminal justice must insure the acquittal of innocent persons so far as that can be done by human agency. To accomplish this object, they created an unvarying rule that every defendant brought to trial on any criminal charge in any criminal case is to be presumed to be innocent of the crime charged against him. This presumption of innocence attends the accused at every stage of his trial, and shields him from conviction unless it is overcome by evidence satisfying the jury beyond a reasonable doubt of every element of the crime alleged. State v. Maxwell, supra; State v. Carver, 213 N.C. 150 ,195 S.E. 349; State v. Ellis, 210 N.C. 166, 185 S.E. 663; State v. Shipman, 202 N.C. 518, 163 S.E. 657; State v. Spivey, 198 N.C. 655, 153 S.E. 255; State v. McLeod, 198 N.C. 649, 152 S.E. 895; State Allen, 197 N.C 684, 150 S.E. 337; State v. Boswell, 194 N.C. 260, 139 S.E. 374; State v. Tucker, 190 N.C. 708, 130 S.E. 720; State v. Arrowood, 187 N.C. 715, 122 S.E. 759; State v. Singleton, 183 N.C. 738, 110 S.E. 846; State v. Windley, 178 N.C. 670, 100 S.E. 116. A judge commits prejudicial error if he gives the jury an instruction which deprives an accused of his presumption of innocence. Gomila v. U.S., 5 Cir. 146 F. 2d 372; People v. Gerold, 265 Ill. 448, 107 N.E. 165, Ann. Cas. 1916A, 636.

Another basic rule of criminal procedure is embodied in the constitutional assurance that a defendant in a criminal prosecution shall "not be compelled to give evidence against himself." N.C. Const. Art. I, Sec. 11. This clause is the linguistic offspring of the Latin Maxim nemo tenetur seipssum accusare, meaning that no man can be compelled to criminate himself. 14 Am. Jur. Criminal Law, section 144; 22 C.J.S., Criminal Law § 649. The events giving rise to this clause and similar constitutional guaranties in other jurisdictions is epitomized in Brown v. Walker, 161 U.S. 591, 16 S. Ct. 644, 40 L. Ed. 819. The object of this provision is to secure a person who is or may be charged with crime from making conmpulsory revelations which could be used against him or his trial for the offense. State v. Hollingworth, 191 N.C. 595, 132 S.E. 667; La Fontaine v. Southern Underwriters' Ass'n, 83 N.C. 132, 133.

The benefit of these procedural principles must be extended to all men with impartiality and inflexibility if the innocent are to be secured against the hazard of unjust conviction, and the State is to have a government of laws rather than one of men. Even the rain falls upon the just and the unjust alike. To be sure, these rules may on occasion delay the conviction of the guilty, or even permit them to go unwhipped of justice altogether. But that is, indeed, not too great a price to pay for so effective an insurance of the acquittal of the innocent.

This brings us to this question: Were these basic principles observed on the trial of the prisoner in the court below? My interpretation of the transcript of the record on appeal compels me to answer this inquiry in the negative.

The record proper discloses that the prisoner was arraigned in the court below with the ancient and awesome formality which obtains in trials for captal felonies in the Superior Court, and that he thereupon entered a plea of not guilty, which was not withdrawn at any subsequent stage of the trial. Furthermore, the case on appeal shows that he did not take the stand as a witness in his own behalf.

At the beginning of the charge, the court told the jury, in substance, that it was authorized to return one of three different verdicts, i.e., guilty of murder in the first degree, guilty of murder in the second degree, or not guilty, depending entirely upon what it found the facts of the case to be from the testimony adduced. This instruction was clearly correct, for there was no evidence in the case justifying a conviction for manslaughter. But it was nullified in three subsequent parts of the charge, which form the bases for Exceptions Nos. 15, 32, and 33.

Exception No. 15 is addressed to this instruction: "I instruct you, however, that you have the right to render under the evidence in this case one of two verdicts. You may find the defendant guilty of murder in the first degree, or you may find him guilty of murder in the second degree."

Exception No. 32 challenges a portion of the charge in which the court advised the jury that it would be its duty "to render a verdict of guilty of murder in the second degree" in case it did not find accused guilty of first degree murder. Exception No. 33 covers the last paragraph of the charge, which was in these words: "Take the case and say whether or not you find the defendant guilty of murder in the first degree, and if so, whether or not you desire to recommend life imprisonment, or if you find him guilty of murder in the second degree. Take the case, gentlemen."

Soon after giving the jury the instruction covered by Exception No. 15, the court paused in its charge and propounded this question to the prisoner and his counsel in the presence of the jury: "I do not understand—and if I misunderstand I wish now to be corrected—that the defendant contends, either in his own proper person or through counsel, that this jury should render any less verdict than that of murder in the second degree. Is that correct, gentlemen?" The case on appeal recites that counsel for the prisoner thereupon replied: "That is correct"; and that the prisoner "bowed his head in affirmation."

If the jury had been permitted to rely on its own judgment, it might well have had serious doubt as to the probative value of the affirmation of the somewhat unlettered prisoner that it should "not render any less verdict than that of murder in the second degree" in the absence of any indication that he had any notion as to the constituent elements of the several grades of felonious homicide. But the jury was substantially instructed by the court in later portions of the charge, to which the prisoner has reserved exceptions, that the prisoner admitted "he would be guilty of murder in the second degree upon the evidence which has been adduced by the State," and that the prisoner did not deny "that upon this testimony as introduced by the State the jury would be justified in convicting him of at least murder in the second degree."

It is manifest that substantial procedural rights of the prisoner were nullified at his trial.

The court ought not to have made its inquiry of the accused and his counsel in the presence of the jury. The question itself necessarily implied an assumption on the part of the court that the prisoner was not innocent, but, on the contrary, was guilty of no less a crime than that of murder in the second degree. When the court thus questioned the accused in the presence of the jury, it virtually forced an incriminatory admission from him notwithstanding he had refrained from taking the stand as a witness and had a constitutional right not to be compelled to give evidence against himself.

The court gave its opinions as to what the testimony proved contrary to G.S. § 1–180 in the portions of the charge which the prisoner assigns as error. This is true because the jury unavoidably inferred from these instructions that the court knew that the accused was guilty of no less a crime then second degree murder, and strongly suspected that he was actually guilty of first degree murder. Furthermore, the court charged the jury, in substance, in these same instructions that it had no legal power of acquit the prisoner, but was required by the law itself to convict him of either murder in the first degree or murder in the second degree. In so doing, the court deprived the accused of his presumption of innocence, and denied to him his constitutional right to have the issue of his guilt or innocence determined by the jury.

Neither the compulsory affirmation of the accused nor the statement of his counsel can be construed to be judicial admissions excusing such action on the part of the court. These matters did not withdraw this case from the operation of the fundamental principle that so long as a plea of not guilty stands in a criminal action on trial in the Superior Court, the jury alone is empowered to determine whether the testimony be true or false, and what is proved if it be true. State v. Hill, 141 N.C. 769, 53 S.E. 311; State v. Riley, 113 N.C. 648, 18 S.E. 168; State v. Dixon, 75 N.C. 275. The prisoner could not admit or confess away the presumption that he was innocent, or waive the constitutional necessity for having the issue of his guilt or innocence decided by a jury by anything short of a plea of guilty, and no act, omission, or word of his or his counsel could constitute a plea of guilty to any offense embraced within the indictment unless it was accepted as such by the prosecution. There is no such thing in law as an unaccepted plea of guilty. In consequence, the contention of the State that the prisoner made an unaccepted plea of guilty of murder in the second degree, and that such unaccepted plea of guilty destroyed the presumption that he was innocent and disabled the jury to acquit him is untenable both in law and logic.

The State cites State v. Miller, 197 N.C. 445, 149 S.E. 590, 591, where this language is used in the opinion: "The prisoner, who testified that he was not drinking on the day in question, tendered a plea of murder in the second degree, but this was not accepted by the state. The appeal, therefore, presents the single question as to whether the evidence tending to show premeditation and deliberation is sufficient to warrant a verdict of murder in the first degree. We think it is."

The Miller case has no application whatever to the present appeal. An examination of the original record in that action discloses that the trial judge submitted the issue of the guilt or innocence of the accused to the jury under a charge to which no exception was taken, and that the jury convicted the accused of first degree murder after a trial in which all basic procedural rules were obesrved. The only question raised by the assignments of error in the Miller case was the sufficiency of the State's evidence to support the first degree verdict, and the only decision made therein by this Court was that it was ample for that purpose. Both the original transcript and the opinion disclose the absolute accuracy of this ruling. It is true that counsel for the accused in the Miller case announced his willingness to submit his client for second degree murder during a colloquy with the court and the Solicitor occurring in the absence of the jury. This offer was rejected by the Solicitor, and was not communicated to the jury. In truth, it did not figure in the trial in any way whatsoever. The reference to the matter in the quoted portion of the opinion was evidently deisgned to emphasize that the only question under consideration was the sufficiency of the State's evidence to sustain the first degree verdict.

This cause ought to be tried anew in accordance with sound and time-honored procedural practices. It might well be that such a retrial would result in the same verdict and judgment. That possibility should not shape our action. What may be the ultimate fate of the prisoner in his case is of relatively minor importance in the sum total of things. In any event, his role on life's stage, like ours, soon ends. But what happens to the law in this case is of gravest moment. It must be realized that the consequences of the decision of this Court on this appeal will not be confined to the single prosecution which is denominated on the docket as "State versus Robert John Bridges, alias Jack Bridges." Such decision will be invoked in other criminal trials as a guiding and binding precedent. The preservation unimpaired of our basic rules of criminal procedure is an end far more desirable than that of hurrying a single sinner to what may be his merited doom. For this reason, I vote for a new trial, and dissent to the ruling which makes my vote ineffectual.

Mr. Justice Seawell has authorized me to state that he concurs in this dissent.

Barnhill, Justice (concurring).

The dissent filed herein discusses a feature of the case to which no exception was entered and upon which the defendant does not rely in his brief. His counsel excepted for that (1) the court instructed the jury they could return in this case only one of two verdicts: guilty of murder in the first degree or guilty of murder in the second degree; and (2) the court failed to instruct the jury that they could return a verdict of not guilty. These two exceptions are directed to the one assignment of error debated here, to wit, the court erred in that it did not sufficiently charge the jury that it might, and the conditions under which it should, return a verdict of not guilty. This assignment is fully discussed in the majority opinion. In the conclusion there reached I concur.

But what about the rabbit flushed by the dissent? Did the court unduly prejudice defendant in its instructions and by the colloquy with counsel during the charge? Since the defendant's life is at stake, this attack upon the validity of the trial should not go unanswered.

There was uncontradicted and compelling evidence that defendant slew the deceased. It contains no element of mitigating circumstances, and its credibility was not substantially assailed. Wisdom dictated that counsel, to save the life of their client, undertake to persuade the jury that the circumstances of the killing were not such as to establish premeditation and deliberation beyond a reasonable doubt. The record indicated that they, in conducting the defense and in their arguments to the jury, wisely pursued this course. That this was the theory of the defense was admitted here. So I understood.

The court, to be quite sure that it correctly interpreted the theory of the defense, gave counsel for the defendant full opportunity to challenge its instructions based theron, to the end that it might correct them if it was in error. Practically at the threshold of the charge the colloquy between court and counsel, quoted in the majority opinion, took place. No exception was entered then and no assignment of error based thereon is presented here.

Thus counsel, in effect, formally admitted, in open court as well as in their arguments, that the homicide was committed by defendant and that the circumstances of the killing were such as to make it murder in the second degree. To this defendant indicated his assent. In my opinion this is one reasonable interpretation to be placed on the colloquy between court and counsel.

Had counsel so stated at the beginning of the trial, it would have been binding on defendant. That it was made during the progress of the trial does not alter its force and effect. State v. Grier, 209 N.C. 298, 183 S.E. 272. It was a judicial admission made in open court and in the presence of the defendant. It was made at a time and under circumstances which afforded him an opportunity to protest. State v. Redman, 217 N.C. 483, 8 S.E.2d 623. They were authorized to speak for him. The court acted on the admission. That it did so cannot be held for error. State v. Grier, supra.

It is true the defendant did not go on the witness stand, and the colloquy took place in the presence of the jury. But the court made no direct inquiry of the defendant which put him "on the spot" and compelled, or even invited, an incriminating reply. The court did, however, by its inquiry afford the defendant full opportunity to affirm or deny the formal statement of counsel, otherwise

binding on him. This was a thoughtful and praiseworthy effort on the part of the trial judge to protect the defendant in all of his rights.

The formal admission had already been made. It did not require defendant's affirmative ratification. His silence would have given assent, but he elected to affirm. How the action of the court in affording him an opportunity to repudiate it could be prejudicial to him I cannot perceive.

In any event, whether counsel referred to the only possible verdicts to be rendered or to the question of manslaughter, the court, notwithstanding the admission, admonished the jury that it should not convict the defendant of any offense unless it was fully satisfied by the evidence that he committed the homicide charged. This feature of the charge is fully discussed in the majority opinion.

I vote to affirm.

Mr. ERVIN. I pointed out in my dissent in the Bridges case how the accused had had his right of trial by jury frustrated and his right not to incriminate himself annulled, and I concluded, with this expression:

The preservation unimpaired of our basic rules of criminal procedure is an end far more desirable than that of hurrying a single sinner to what may be his merited doom.

The people of the District of Columbia enjoy similar rights under the Constitution of the United States. This bill undertakes to rob them of these and other rights.

I assert it is much more important for the Senate of the United States to preserve these great landmarks of the law, these liberties of the people, and these individual freedoms, than it is to hurry some lawbreakers in the District of Columbia to jail. I appeal to the Senate to reject the conference report; I assure the Senate that we will immediately call up for passage these other bills, which include in their context all of the sound provisions of the report for passage. I am confident the other bills will be speedily passed because I have not heard of a single Senator who is opposed to any of their provisions.

Mr. President, I ask unanimous consent to have printed in the RECORD telegrams, letters, and other statements which I have received expressing opposition to the conference report on the District of Columbia crime bill.

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

MORGANTOWN, W. VA.,
July 22, 1970.

Senator SAM ERVIN,
Washington, D.C.:

Urge continued opposition preventive detention measures D.C. crime bill as clearly unconstitutional.

Rev. JOSEPH M. SNEE, S.J.,
Visiting Professor of Law West Virginia University.

NEW YORK, N.Y.,
July 22, 1970.

Senator SAM J. ERVIN, Jr.,
U.S. Senate,
Washington, D.C.:

Black Lawyers National Bar Association, in convention, unanimously urges defeat conference District Columbia crime bill.

WILLIAM E. PETERSON,
National Bar Association.

TUCSON, ARIZ.,
July 22, 1970.

Senator SAM ERVIN,
Senate Office Building,
Washington, D.C.:

We strongly support your opposition to preventative detention provision of D.C. crime bill.

C. STEELINK,
Secretary, Arizona Civil Libertys, Tucson Chapter Union.

LOS ANGELES, CALIF.,
July 23, 1970.

Senator SAM ERVIN,
Senate Office Building,
Washington, D.C.:

Support absolutely your position contra crime bill no-knock and preventative detention.

Dean Leo J. O'Brien, Dean Jerald A. Cavanaugh, Prof. George C. Garbesi, Prof. Walter Trinkaus, Prof. Quinten Ogres, Prof. William Coskran, Prof. Lloyd Tevis, School of Law, Loyola University of Los Angeles.

IOWA CITY, IOWA,
July 23, 1970.

Senator SAM ERVIN,
Washington, D.C.:

I urge you to continue your efforts in behalf of your bills, S. 4080 and S. 4081. The passage of these bills will make the District of Columbia an example for the Nation in needed court reform and strong law enforcement without infringement of personal liberties. The District of Columbia will prove that such measures as wiretapping, no-knock entry and preventive detention are not necessary for good law enforcement. Congress should adopt both Ervin bills as soon as possible.

EDWARD MEZVINSKY,
State Representative.

ITHACA, N.Y.,
July 23, 1970.

Senator SAM ERVIN,
Senate Office Building,
Washington, D.C.:

Reject preventive detention. Don't fight crime by impairing our freedom.

Prof. WM. HOGAF,
Cornell Law School.

NEW YORK, N.Y.,
July 22, 1970.

Senator JAMES O. EASTLAND,
U.S. Senate,
Washington, D.C.:

Black Lawyers National Bar Association, in convention, unanimously urges defeat conference District Columbia crime bill.

WILLIAM E. PETERSON,
President, National Bar Association.

CITIZENS COMMITTEE FOR CONSTITUTIONAL LIBERTIES URGE IMMEDIATE ACTION TO DEFEAT PREVENTIVE DETENTION IN THE DISTRICT OF COLUMBIA OMNIBUS CRIME BILL

The Nixon-Agnew-Mitchell team is using crime, fear, political and racial tensions to stampede Congress into legalizing "preventive detention"—blank check for repression and internment against the poor, the minorities, the dissenters.

A tough District of Columbia Omnibus Crime Bill has been reported out of the Senate-House conference committee (7/13/70) with "preventive detention" and other punitive measures intact—despite almost unanimous opposition from leading constitutionalists, bar, civil liberties, black, ethnic and other national organizations as well as major editorial opinions.

This provision would permit a judge to jail for 60 days, without bail, any accused he considers a "danger to the community." Allegedly a crime-control bill, it would violate any defendant's right to presumption of innocence, reasonable bail, a speedy trial and would create a further crisis in confidence in our courts and government.

"A danger to the community" is not a definition of a crime, but a political estimate to be directed against those who will repeat and repeat active opposition to the Administration policies of extending the war and cutting funds for critical urban and poverty needs.

Only with immediate action to defeat "Preventive Detention" in the D.C. Omnibus Crime Bill, can Senators and Representatives reassert their responsibility to protect constitutional guarantees.

YALE UNIVERSITY LAW SCHOOL,
New Haven, Conn., July 21, 1970.

Hon. SAM J. ERVIN, Jr.,
Senate Office Building.

DEAR SENATOR ERVIN: May I congratulate and thank you for the splendid fight you have been waging against certain very unwise, and constitutionally more than dubious, provisions of the District of Columbia Crime Bill?

I take the liberty of enclosing a copy of an article of mine, entitled "How to Beat Crime," which appeared in the *New Republic* for August 30, 1969. The first part of the article, dealing somewhat generally with the narcotics problem, has some relevance, I believe, to the no-knock provisions of the District of Columbia Crime Bill. The latter part of the article, starting on page 11, expresses my opposition to the preventive detention proposal, and my view that in most imaginable circumstances, it cannot be consitutionally applied. I hold, if anything, more firmly now than I did a year ago the views expressed in this article, and am certainly strengthened in my opinion about preventive detention by the knowledge that it parallels somewhat the opinion of so meticulous and devoted a student of the Constitution as yourself.

I happen to be in Palo Alto just now, and I have had the opportunity to discuss both the preventive-detention and no-knock provisions of the District of Columbia Crime Bill with Professor Gerald Gunther of the Stanford University Law School. Professor Gunther authorizes me to say that he has strong doubts concerning the constitutionality of both provisions.

Faithfully yours,

ALEXANDER M. BICKEL.

[From the New Republic, Aug. 30, 1969]

HOW TO BEAT CRIME

(By Alexander M. Bickel)

Mr. Nixon promised to fight crime, and Attorney General Mitchell is doing it. He is doing it, that is, on the assumption that harsh new laws will cut into the crime rate. That assumption is very questionable. The President and Mr. Mitchell will have their fight—in Congress, and even if they succeed there, then for years afterwards in the courts, since some of their proposals raise intricate and close constitutional questions. When the fight is over, the jails which the Administration is doing nothing in particular to reform and improve may be more crowded, some constitutional rights to which the innocent as well as the guilty had previously thought themselves entitled may be a bit bruised and battered, and the crime rate is likely to be about where it is now—on the rise.

The crime rate that matters most, because it puts large numbers of our people in daily fear, is the rate of street and home crime—muggings, robberies and the like. Mr. Mitchell has made two major proposals to deal with it. One is a drug-control act, which has national application, and which is rele-

vant because drug addiction under present conditions results in an insatiable need for money, and hence leads to crime. The other, effective only in the District of Columbia, authorizes preventive detention before trial of persons accused of crime in certain circumstances.

The drug bill is in large part a codification of present federal law, which punishes criminally the distribution or use of drugs for other than medicinal purposes. Nothing is plainer than that this method of dealing with drug addiction has not worked. This is not to say that the problem might not be even worse than it is if the criminal law failed altogether to condemn the use of harmful drugs. But it is clear that condemnation and jail alone have not worked. The theory of the Administration's new bill is that more condemnation and more jail *will* work.

The bill outlaws marijuana, and of course LSD, among other substances, and it authorizes the Attorney General, after opportunity for comment from the public, and upon scientific advice, to outlaw yet other drugs, as well as to exempt some now listed. Penalties are increased, and they are rough, both for distributors and users, with minimum sentences of many years in jail, and with suspended sentences or probation prohibited, except in the case of users who are first offenders. A user is someone who uses, period. A user of marijuana, for example, who gives a cigarette to a friend, or possibly a puff, is also a distributor, and he is subject for a first offense to a minimum sentence of five years, which may not be suspended, and from the service of which he may not be released on probation. And anyone over 18 who hands that cigarette to a teenager under 18 "who is at least three years his junior" gets a minimum of 10 years in jail without probation or suspension of sentence.

No doubt drug pushing is very dirty business and should be stamped out. But Draconian provisions will not stamp out the professional drug pusher, who takes very high risks for very high profits, and who will continue to do so, possibly increasing his prices as his risks rise, thus producing more street crime committed by his customers who have to meet higher costs. The pusher will be stamped out when there are no addicts, or at least when addicts who cannot be cured are given some sort of legal access to the drug they need, so that they have to resort neither to the pusher nor to crime. Pushers also seek to make addicts, to create a market, and they certainly ought to be punished. But the point is that increasing their punishment is no substitute for trying to deal with the problem of addiction and attendant crime, and may be counter-productive.

The drug bill, moreover, treats the habits of what must by now be many thousands of people in the same way as the act of drug pushing. We may feel uneasy about marijuana smoking, and suspect that it is about as bad as cigarette smoking, or even worse, but it is widespread among people who on evidence no worse than is available to Attorney General Mitchell think it harmless, and who exhibit no other criminal tendencies. To punish the act of passing a marijuana cigarette with a mandatory minimum of five years in jail is outlandish as well as brutal. Such a law (compare the Volstead Act) can only be widely unenforced. This is the administration, not of justice, but of injustice.

The other major anti-crime measure, applicable only in the District of Columbia, where alone the federal government has general criminal jurisdiction, is a preventive detention bill. At present, a person charged with any but a capital crime is entitled to be released pending trial, with or without bail, unless a judge has good reason to believe that he will flee and be unavailable for trial. Since lengthy delays before trials are common, the habitual criminal is thus given an opportunity—or at least not deprived of the opportunity—to commit further crimes. There are no very good figures to show how many persons commit crimes while at liberty awaiting trial for an earlier alleged crime, and all indications are that the number is relatively small; but some undoubtedly do, and the Administration's idea is to see that they don't, by holding on to certain categories of them. It is an idea that has also independently attracted Senator Joseph D. Tydings, the Maryland liberal Democrat. The District of Columbia is a small part of the country, even though it has its good share of crime, but if Congress passes such a statute, many states will likely follow suit.

The presumption that an accused is innocent until proven guilty may be established more in popular mythology than in our actual system of administering criminal justice, but it does essentially inform the provisions of the Constitution concerning criminal procedure; and the Eighth Amendment does say that "excessive bail shall not be required," which would suggest an expectation that bail will generally be allowed. So preventive detention of persons accused of crime is constitutionally dubious.

Yet the question in general of whether bail must be granted is an open one. Bail is traditionally denied to persons charged with capital offenses, of which there used to be a great many more than there are now. The explanation may be that no man facing the death penalty can possibly give credible assurance, it is thought, that he will stick around to face it. But the explanation may also have to do with assumptions about such a person's likely behavior while at liberty. As for the presumption of innocence, we commit the dangerously insane because we don't trust their future behavior. To be sure, this sort of preventive detention is civil in nature, not criminal, but how much is in a name? Again, bail in many courts throughout the country is in fact set high when judges and prosecutors think they have on their hands a dangerous criminal who should not be allowed to run around loose. We might as well be honest and above-board about it with a preventive detention statute, and at the same time institute more regular, open and controlled procedures than prevail when a judge follows his intuition and sets high bail. Formal hearing procedures are provided in the preventive-detention bill.

But the constitutionality of the bill is going to be tested in its application in case after case, rather than in general on its face. If it is to pass muster, the Supreme Court must be convinced that a judge who, after a hearing, imposes preventive detention on a person accused of crime has not done so merely on a hunch that he has an ugly customer before him, very likely guilty and dangerous; or merely on the basis of statistics which may prove a great deal about people in the aggregate without in the least predicting an individual's actual behavior. The Court must be convinced the judge has decided on the basis of specific facts relating to the accused, which support a rational judgment, not a guess, that if let out he will commit more crime. And there's the rub. We may be able to tell something about the dangerously insane, although less than we need. But how do we distinguish between one and another mugger or robber, so as to be able to predict rationally before trial, not only guilt with respect to the offense now charged, but proclivity to commit a further offense during a period of liberty before trial? We cannot. Hunch is bound to reign, and to enthrone King Hunch is too great a danger to the innocent; it is wrong, and hence constitutionally also more than dubious. Is it wise to go to such lengths in order to get off the street some potential criminals who, by all indications, are so few in number that the crime rate will hardly know it has been fought?"

There is a narcotic problem, and there is a crime problem. They are connected with each other and with material and psychological conditions in city ghettos. The drug problem does not call for harsher criminal penalties, but for new approaches—difficult and no doubt imperfect—to the treatment of addicts, and for careful legalization of access by addicts to the drugs they need, and will otherwise steal and kill for. Persons who are accused of crime and out on bail will commit fewer crimes in the interval before trial if that interval is shortened, so that it is a matter of days and weeks rather than months and years. That requires more prosecutors and more judges, a more efficient court system. The Administration has introduced a bill to reorganize the District of Columbia court system, which in its broad outlines is a step in the right direction. Grants-in-aid might enable the states to unclog some of their own courts also.

For the rest, until we successfully attack underlying conditions, the crime problem calls for more, better and more professional police work. Our police are ill-paid, ill-trained, ill-equipped and often ill-chosen. The federal government has undertaken to do a little bit, chiefly about training and equipment, in the Safe Streets and Crime Control Act of 1968, and the Administration's request for $297 million in the House Appropriations Committee. There must be much more, more programs and more money. That would be the beginning of a real fight, if not against the causes of crime, at least against its high incidence.

AMERICAN FRIENDS SERVICE COMMITTEE,
July 20, 1970.

To: Senator Hugh Scott, Old Senate Office Building, Washington, D.C.; Senator Richard S. Schweiker, New Senate Office Building, Washington, D.C.; Senator Michael J. Mansfield, Old Senate Office Building, Washington, D.C.; Senator Robert W. Packwood, Old Senate Office Building, Washington, D.C.; Senator Charles H. Percy, New Senate Office Building, Washington, D.C.; Senator William B. Saxbe, New Senate Office Building, Washington, D.C.; Senator Mike Gravel, Old Senate Office Building, Washington, D.C.:

Urge you vote against discriminatory, probably unconstitutional D.C. Crime Bill which sets a chilling precedent for the nation. Experience of Philadelphia indicates overzealous application of law and order techniques not in the best interest of city as a whole. Ervin bill focus on court reorganization, revision of criminal code is correct approach.

CHARLOTTE C. MEACHAM,
National Penal Affairs Program.

BOARD OF SOCIAL MINISTRY,
LUTHERAN CHURCH IN AMERICA,
New York, N.Y., July 22, 1970.

Hon. SAM J. ERVIN,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: At its Fifth Biennial Convention held in Minneapolis, Minnesota, June 25–July 2, 1970, the Lutheran Church in America went on record as opposing the inclusion of preventive detention in federal and state anticrime legislation.

The full text of the convention resolution reads as follows:

"We recognize that crime is a growing problem, and that meeting it requires new and imaginative approaches. The Lutheran Church in America views with grave concern, however, the concept of preventive detention, and expresses its opposition to proposals for allowing such a principle to become a part of the body of law of either the federal or

state court systems in the United States. We strongly urge our members to consider the dangers of possible future applications of deliberate imprisonment without conviction, if once accepted into law. We request the Board of Social Ministry to study possible further actions on this subject."

Inasmuch as a preventive detention clause is the price required for passage of the District of Columbia crime bill, I am writing to urge your negative vote on that bill.

Sincerely yours,

RICHARD J. NIEBANCK,
Secretary for Social Concerns.

P.S.—The text of this letter is one which is being sent to a number of Senators. We know, of course, of your own stand on this issue, and we support you in it.—R.N.

DAVIDSON COLLEGE,
Davidson, N.C., July 20, 1970.

Senator SAM ERVIN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: I want to commend you for your continued defense of our constitutional standards which seem to be threatened by provisions of the conference version of the District of Columbia Crime Bill. Your willingness to fight these battles has earned you the respect and gratitude of citizens of all states, and it is a source of special pride for those of us whom you represent directly here in North Carolina.

My continued appreciation and best wishes are with you in this important task.

Sincerely,

JON W. FULLER,
Assistant Professor of Political Science.

D'ANCONA, PFLAUM, WYATT & RISKIND,
Chicago, Ill., July 20, 1970.

Senator SAM J. ERVIN, Jr.,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: I hope you will oppose adoption of the preventive detention provision in the pending Crime Bill.

It seems clear that such provision would be in violation of the Constitution.

It is the kind of drastic legislation which strikes out in all directions in a panic response to an extremely difficult situation.

This is not a time for losing our heads—or our constitutional rights.

Preventive detention would be a violation of a basic right of a free people.

My thanks to you for anything you can do to defeat it.

Sincerely,

EDGAR BERNHARD.

[From the Nashville Tennessean, July 18, 1970]

CRIME BILL FULL OF DANGER

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.

The no-knock measure has its supporters and detractors on both sides of the political fence. But perhaps the most effective opponent is Sen. Sam Ervin, noted conservative from North Carolina, who calls the District of Columbia crime bill "a garbage pail of some of the most repressive, nearsighted, intolerant, unfair and vindictive legislation that the Senate has even been presented."

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.

YALE UNIVERSITY,
New Haven, Conn., July 17, 1970.

Hon. SAM ERVIN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: 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 my heartfelt thanks and best wishes.

Yours sincerely,

D. A. SMITH.

KNOXVILLE, TENN., *July 21, 1970.*

Senator SAM J. ERVIN,
Senate Office Building,
Washington, D.C.:

The Board of Directors of the American Civil Liberties Union of Tenn. strongly urge that you oppose and vote against the District of Columbia Crime Bill S2601. This bill incorporates extended police wire tapping no knock policy entry and preventive detention. All severe and intolerable infringements on individual freedom.

JOHN CLELAND,
President.
Mrs. R. W. CHILDERS,
Executive Secretary.

PHILADELPHIA, PA., *July 16, 1970.*

Re Anticrime Legislation.

Senator ERVIN,
Senate Office Building,
Washington, D.C.:

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.

MILWAUKEE, WIS., *July 21, 1970.*

Senator SAM ERVIN,
Senate Office Building,
Washington, D.C.:

We strongly support your efforts to defeat conference committee report on District Crime Bill, especially preventive detention.

EDWARD M. MCMANUS,
Executive Director,
Wisconsin Civil Liberties Union.

COLUMBIA UNIVERSITY,
New York, N.Y., July 21, 1970.

Senator SAM J. ERVIN, Jr.,
Chairman, Constitutional Rights Subcommittee, U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: 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.

Very truly yours,

ALBERT J. ROSENTHAL,
Professor of Law.

ADA'S NATIONAL BOARD HITS DISTRICT OF COLUMBIA CRIME BILL

The national board of Americans for Democratic Action, beginning a two-day meeting here last night, unanimously passed a special resolution urging the Senate to defeat the D.C. Crime Bill Conference Report.

ADA said the bill would deny basic civil rights of District residents and would become a model for legislation elsewhere. ADA board members said the common assumption that Washington has the highest crime rate among U.S. cities is untrue but said the charge is being used deliberately to pass a bill which is being forced on voteless District citizens unable to mount political resistance to it.

SPECIAL RESOLUTION ON DISTRICT OF COLUMBIA CRIME BILL

ADA urges the U.S. Senate to defeat the D.C. Crime Bill Conference Report. We consider the bill both dangerous and punitive.

The bill has so many repressive provisions that no defender of citizens' rights can possibly support it. Among provisions ADA considers repressive are preventive detention, no-knock home searches, expanded wire-tap authority, mandatory minimum sentences, restricted juvenile court jurisdiction.

ADA does support the provisions for court reorganization and administration, but urges Congress to support these measures as separate legislation.

The oft-repeated lie that Washington, D.C., is the "crime capital" of the country is being used to generate an hysterical response to street crime. Such crime is high in every urban area. Neither in Washington nor elsewhere does such concern warrant a repressive bill such as the D.C. Crime Bill. This bill, being forced upon the voteless citizens of the District because they are unable to resist, would not pass a single state legislature in the country.

This bill should be defeated because it will deny elementary civil liberties to the residents of the District of Columbia, and because if passed it will be used as a prototype for bad legislation throughout the country.

Above all, the bill should be defeated because it proceeds on the assumption that the answer to crime lies in repressive measures. ADA holds steadfastly to the view that the only long-range answer to crime lies in giving every American a decent life and a real stake in our society. And, as short-run measures, we continue to support such nonrepressive programs as better trained and better paid police, speedy trials, rehabilitative prisons, gun control and the like. The D.C. Crime Bill, rejecting both these long-range and short-run measures, accepts the anti-democratic doctrine that crime can be controlled only by eroding our basic values.

[From the New York Times, July 17, 1970]

A BAD PACKAGE

After three months of consideration, a Senate-House conference committee has reported out an anti-crime bill for the District of Columbia which has been variously characterized as violative of no less than five Constitutional amendments and as "a blueprint for a police state." Twenty former Federal prosecutors have found the bill's

chief provisions of "doubtful constitutionality, questionable necessity and demonstrable ineffectiveness."

The measure passed by the House has been somewhat improved in conference, notably by the deletion of an incredible provision that would have required plaintiffs to pay the attorneys of policemen they had sued for false arrest, even when the policemen lost the case. The bill also calls for a much-needed court reorganization, designed in part to speed up the calendar—a highly desirable objective in a city with a grave crime problem and a judicial logjam.

But the bill's most dangerous and unnecessary provisions remain. Policemen would be empowered to enter houses without knocking, not just in the limited and special instances where that is permissible even now, but on what might amount to no more than a hunch that evidence might be destroyed or that those inside might make an armed attack if given notice of the police presence at the door. Shades of Chicago.

The bill would allow a judge to keep defendants in jail for sixty days if on the basis of their records he thought them likely to commit other crimes while awaiting trial. It is true that high bail permits even longer detentions now, but its imposition for reasons other than its legitimate purpose is often overruled by a higher court. The proposed bill would not replace the inappropriate use of bail in any case; it would only add to the injustice. More important, it would for the first time give legal sanction to the undoing of the most fundamental principle in Anglo-Saxon law—that a man is innocent until proved guilty.

Legislation for the reorganization of the District's courts was ready within weeks of President Nixon's inauguration. It is regrettable that Administration forces saw fit to make it part of a dubious anti-crime "package" instead of getting it enacted into law at once. Opponents of the bill in its present form, led by Senator Ervin of North Carolina, hope to defeat it on the Senate floor and start over again with a bill for court reform. That would perhaps do less to gratify the emotions of the hysterical but more to reduce crime in the District.

Mr. TYDINGS. I yield 5 minutes to the distingiushed Senator from Arkansas.

Mr. McCLELLAN. Mr. President, I support the District of Columbia Court Reform and Criminal Procedure Act of 1970. I shall vote for the conference report.

I believe that this bill is a major step forward in meeting the frightful problems that exist in the Nation's Capital. I recognize that its provisions have inspired spirited controversy. I have not participated in the debate until this time because I wanted to satisfy myself that the conference report embodied what I considered to be a constitutional and sound measure.

I recognize that there are honest differences of opinion as to the constitutionality of some provisions of this bill, and if I were convinced—if I had an abiding conviction—that any provision in this bill was unconstitutional, I would not support it. I have every respect and deference for those who may hold a different opinion and who feel that the provisions of this measure are unconstitutional.

As I said a few days ago on the floor of the Senate, when speaking about S. 30, which is now tied up in the House of Representatives in the House Judiciary Committee, where some contend that provisions of the bill are unconstitutional, we can argue here in the Senate about the constitutionality of the bill, and so we can do the same about this bill. Nevertheless, I said, if I had an abiding conviction that any provision of this bill was unconstitutional, I would vote against it. But ultimately we can only decide this for ourselves, individually, at this time. The final decision on constitutionality lies within the province of another branch of Government; and there is no doubt that, if this bill is enacted, the provisions in controversy will find their proper fate under our system, in an opinion and ruling of the Supreme Court.

Mr. President, speaking now for myself, I want to say that I have had now the opportunity to study the conference report, and I want to say that, for myself, I am satisfied that it is a good bill, meriting the support of the Senate and the Nation. The bill contains much that is beyond controversy and which is necessary for the effective administration of justice in the District of Columbia, such as court reorganization, the public defender system, and increased staffing.

In my judgment, however, the other major provisions of the bill that have occasioned much of this debate also deserve support. I believe it would be a serious mistake for the Senate to reject the bill at this time.

The wiretap provisions of the bill, in the main, are modeled on title III of the Omnibus Crime Control and Safe Streets Act of 1968, which the Senate refused to strike from the 1968 act by a vote of 68 to 12. I have since followed closely the administration of title III, not only as a law enforcement tool but also as a shield for citizenry privacy. I am satisfied that that measure has worked well. The basic structure of title III has been perfected and strengthened in this bill. Indeed, the chief differences between it and title III reflect additional safeguards for privacy recommended in the tentative draft of the American Bar Association's standards on electronic surveillance. It is also similar to legislation implementing title III that has been adopted in several States. I believe that the Senate can, without reservation, vote for these provisions, and I heartily endorse them.

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

Mr. TYDINGS. I yield 3 additional minutes to the Senator from Arkansas.

Mr. McCLELLAN. I have also examined the so-called no-knock provisions of the bill. Under current law, the police are generally required, with or without a warrant, to knock and announce their identity and purpose before arresting or searching. See generally 112 U. Pa. Law Review 499, 1964. Current law, however, recognizes several exceptions to this principle of announcement. A succinct statement of the rule and its exceptions may be found in the "Restatement of Torts," section 206, comment (d), 1934. It seems to me that the no-knock provisions of this bill largely codify these traditional rules. Indeed, these provisions to protect privacy go beyond existing practice by mandating prior judicial approval where practicable. In this regard, they reflect the recent lead of a number of States—see, for example, *State* v. *Parker*, 283 Minn. 127, 166 N.W. 2d 347 (1969); N.Y. Code of Crim. Pro., section 799 (1964), constitutionality sustained, *People* v. *Delago*, 16 N.Y. 2d 289 (1965), cert. denied, 383 U.S. 963 (1966). The Senate can, I believe, without serious reservation, support these provisions. I shall, therefore, vote accordingly.

Last, I have examined the provisions of the bill that authorize the limited detention of certain dangerous offenders prior to trial. Here, too, I have concluded that these provisions are both constitutional and necessary for the public safety.

Mr. President, bail has never been viewed as an absolute constitutional right. Since the Judiciary Act of 1789, bail has been discretionary for certain offenses. In the Crimes Act of 1790—1 Statutes at Large, second edition, chapter 9, page 112—for example, such offenses as robbery, larceny of goods in excess of $50, forgery, counterfeiting, and embezzling were capital offenses, and bail could be denied at that time to those accused of these offenses. It was in this context that the Supreme Court in *Carlson* v. *Landon*, 342 U.S. 425, 545 (1952) observed:

> The Eighth Amendment does not prevent . . . Congress from defining the classes of cases in which bail shall be allowed in this country.

Only two other questions, therefore, face us, it seems to me. First, can the procedures set out in this measure be squared with traditional notions of due process, and, second, is this measure, if constitutional, necessary for the public safety?

The provisions of the bill that establish the process for holding an accused before trial are carefully and narrowly drawn. In my judgment, however, they meet the test of due process. I need not burden the record with a detailed analysis of them at this time. Only the question of need remains.

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

Mr. TYDINGS. I yield 1 additional minute to the Senator from Arkansas.

Mr. McCLELLAN. Mr. President, crime committed by persons out on bail is real, savage, and significant. When Franklin Moyler, a defendant on bond from two armed robberies, critically wounded a police officer last June 18, and was himself finally killed following a third armed robbery of a liquor store, it graphically illustrates the choice that is presented to us by this bill.

Shall we do something about men like Moyler?

We must choose, I suggest, between according a future Moyler an absolute right to pretrial release and the safety of the police officer who will attempt to arrest him and the security of the liquor store proprietor who will be threatened. I think we must choose to protect the safety of our citizens and police officers and their right to be free from criminal assault and violence.

Mr. President, I do not lightly contemplate preventive detention, no-knock

searches or wiretaps, but I consider them to be the distasteful but necessary remedies that must be applied to remove the menacing and dangerous threat that violent and mounting crime presents to our internal security.

Mr. President, I add a personal note. I live in the District of Columbia. I am not voting for legislation that will apply to others but not to myself. I recognize, of course, that it is unlikely that I will be charged with a serious offense of violence or, if charged, considered a danger to the community. But I fully recognize that my apartment conceivably could be broken into by mistake, without announcement, under this statute. My phones or my conversations might well be overheard by mistake on a court-ordered wiretap under this bill. I am, however, willing to pay this price if it can help to restore, in some small measure, to the citzens of our Nation's Capital the protection from the ravages of crime that all our citizens deserve.

I have considered this matter carefully, and I conclude by repeating what I said at the outset. If I had an abiding conviction that anything in this bill were unconstitutional, I would not support it. I respect the viewpoint of others who may feel that way. Nevertheless, Mr. President, the crime situation, not only in the District of Columbia, but also throughout the Nation today has reached such crisis proportions that, as I have said on this floor many times, we must use, we must fashion every tool that we can, within the framework of the Constitution, and make them available to our law enforcement officials and agencies, so that we may begin successfully to combat the menace crime that is endangering the internal security of this Nation.

I shall vote for the conference report.

Mr. TYDINGS. Mr. President, I yield 5 minutes to the distinguished Senator from Louisiana (Mr. ELLENDER).

The PRESIDING OFFICER (Mr. JORDAN of Idaho). The Senator from Louisiana is recognized for 5 minutes.

DISTRICT OF COLUMBIA CRIME BILL NEEDED

Mr. ELLENDER. Mr. President, it has not been an easy task for me to reach a decision as to how I should vote on the pending conference report, on S. 2601, the so-called District of Columbia crime bill.

On the one hand, there has been the obvious and even the desperate need for an effective answer to the crime wave which has engulfed our Capital City for the past two decades. We have before us a bill which deals sternly and at many different levels with a problem which makes our Nation's Capital unsafe for people to live and work.

On the other hand, there are many respectable and knowledgeable Members of the Senate who say that the bill deals so sternly with criminals and with suspected criminals as to violate their constitutional rights. The leader of this group, Senator SAM ERVIN, is one of the most highly respected men in the Senate. He has led the way in protecting the rights of our citizens from undue or unconstitutional invasion by the Government. His arguments have been well stated and are very convincing, and I have no doubt that many Senators will be persuaded by them.

In the final analysis, however, I have found it essential to side with those who see this conference report as the best possible compromise between the House and the Senate on many controversial issues contained in the bill. I understand the conferees required no less than 24 meetings to hammer out this agreement, which the House has now accepted by an overwhelming vote of 332 to 64.

Many contend, with great conviction, as I previously pointed out, that certain provisions in the bill are unconstitutional. I, frankly, do not agree. Such questions and doubts as have been raised on this point by the persuasive arguments of Senator ERVIN and others, I am prepared to refer to the courts once the bill has been enacted. I am sure that if there are provisions in the bill which do violence to the constitutional rights of individuals, the courts will so hold, with very little delay.

In recent years our courts have been all too active and "helpful" in striking down provisions in the law and procedures in our judicial and law-enforcement systems which in my opinion encouraged lawlessness. That we must remedy, and the pending compromise bill will serve well to that end.

Some say that the bill is antiblack. Statistics obtained by the District of Columbia Crime Commission initiated by the former President Johnson refutes the charge in no uncertain terms. It found that 86 percent of all District of Columbia murder victims are black; that 86 percent of all aggravated assault victims are black; that 80 percent of all rape victims are black; that 66 percent of all auto theft victims are black, and that 60 percent of all burglary victims are black.

That being the case, the stern measures contained in this bill which are directed at reducing crime will be of great benefit not to the whites of the District of Columbia but primarily to the blacks. It is plainly not an antiblack bill; it is an anticrime bill.

In those areas where unconstitutionality is charged there are already in the bill itself or in our jurisprudence, clear-cut safeguards against abuse. In addition, if the courts hold these provisions to be constitutional there will most likely be additional guidelines prescribed for their proper and safe application.

The committees of the House and the Senate which handled this bill, and particularly the conferees who worked so diligently to achieve a meaningful compromise have done the best possible job under trying circumstances. The Senate should back them.

I believe that their bill, so far as the courts will allow it to do so, should be allowed an opportunity to change the pattern by which crime has been increasing in the District of Columbia at about 25 percent per year and by which we are able to obtain convictions in only about 3 percent of the felonies committed here.

It is my considered judgment that if the Senate does not favorably, it will be an invitation to criminals to expand lawlessness in the city of Washington.

I urge favorable action on the conference report.

PRIVILEGE OF THE FLOOR

Mr. TYDINGS. Mr. President, I ask unanimous consent that the following Senate staff personnel be permitted to remain on the floor during the duration of this debate and the vote on the pending conference report:

Jim Flug, Burt Wides, Nancy Chasen, Louise Regenbogen, Stan Darling, Rick Tropp, Carolyn Johnson, Malcolm Hawk, Wesley Williams, Jr., and David Cooper.

Also from the Subcommittee on Constitutional Rights: Larry Baskir and Glen Kitner.

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

Mr. TYDINGS. Mr. President, I yield 12 minutes to the Senator from Vermont (Mr. PROUTY).

The PRESIDING OFFICER. The Senator from Vermont is recognized for 12 minutes.

Mr. PROUTY. Mr. President, as my colleagues know, I am not a lawyer but as a citizen and a legislator I have a deep and genuine interest in this conference report, because as a layman I feel that it will do much to alleviate problems in the local judicial system and right some grievous wrongs in criminal procedure.

For a week now, Mr. President, I have heard my learned colleagues in this Chamber debate the constitutionality, the desirability, and even the patriotism of the pending conference report. I must confess that I scarcely recognize the bill we reported from conference as it has been described. After months of conference, where we allegedly swapped "a couple of rabbits for an elephant or a donkey," we returned to the Senate with what has been described as a conference report which "kicks the Constitution all over the District of Columbia."

I gather that no Member of this body opposes those parts of the report concerning the reorganization of the District of Columbia courts. I assume that no Member objects to modernization of the court administration. Surely no Member is adverse to the creation of a Public Defender Service or the expansion of the Bail Agency. These are the so-called "good apples" we are peddling and they have found a ready market with many willing buyers. This is the bulk, in substance as well as in fact, of the conference report before us.

What we have heard attacked this week is the very small portion of the report, the so-called "rotten apples," specifically, the no-knock and pretrial detention provisions.

The opponents of the no-knock and pretrial detention provisions have trotted out in support of their position, the wise words and opinions of prophets, statesmen, philosophers, distinguished jurists, and learned men in the realm of constitutional law. The proponents of these measures have supplied endorsements for their position in equal quality

and quantity. The diverse opinions dazzle the mind and befuddle the reason. Confusion has made his masterpiece and this battle of the experts should end in a draw.

We all recognize the problem that we face. The streets and parks of this city have become a jungle of fear. Those who walk the street are the prey of the lawless and the unsuspecting victim of the predator.

We in this Chamber share a common responsibility for a constituency in the District of Columbia. The residents of this city are our constituents as much as are the residents of our home State, and they look to us to speak and act in their behalf. Their welfare is a responsibility we cannot ignore and cannot shirk.

The distinguished junior Senator from Maryland gives us frequently in the CONGRESSIONAL RECORD a list of crimes committed in the District of Columbia on any given day. I doubt that the Members of this body take little more than passing interest in those statistics because those crimes are far removed in most cases from their primary constituency, the home State. If, however, a visiting constituent from the home State meets with foul play here in our own backyard and appears on that growing list—and this is not a rare occurrence—there is an upright demand for full exercise of the law and swift justice. Do we extend to our local constituents on that list the same concern?

How do you explain to the mother of a schoolchild that the accused attacker of her daughter is freely walking the street because to jail him would be a breach of his constitutional right? How do you explain to the victim of an assault and robbery, confined to a hospital bed perhaps, that his attacker is out on the street because the court is powerless to confine him? How do you explain to the parent of a juvenile drug addict that the police know who supplies drugs to his child but they cannot break into his house and surprise him with the evidence before he has had a chance to dispose of it? What justification do you give to the banker who has been robbed by a man already under one, two or even three charges of bank robbery? The explanations about constitutional rights and protection for the accused may make sense in the hallowed halls of justice but those explanations have a cloudy reality to the crime victim outside the restricted limits of that small world.

Are the criminal offenders the only ones whose civil rights should be guaranteed? I think those who respect the law have privileges too and their rights are paramount. It is an old maxim that he who spares the guilty threatens the innocent.

It does not disturb me if a drug distributor is raided or a dangerous criminal is taken off the street. What does disturb me is the fact that a drug distributor or a dangerous criminal is permitted to continue to ply his illicit trade or stalk the streets as a threatening danger to law abiding citizens.

I am not alone in my concern. The majority of the people in this city share my concern, but in their climate of despair they are helpless to do anything about it. We here in this Chamber can do something about it. It is not only within our power to act, but it is our responsibility to act to strengthen the entire criminal law system in this city.

The people of Washington are crying out to us for help. Hear their voice. We can help them. We must help them.

It is important that we bear in mind the adamant attitude of the House conferees on this legislation. In my judgment, if this conference report is not accepted by the Senate today, there will be no court reorganization and anticrime legislation for the District this year, and nothing will have been done by us to stay the rising wave of crime in the Nation's Capital.

Mr. President, in his remarks the other day the senior Senator from North Carolina referred to a colloquy carried on with Associate Deputy Attorney General Donald E. Santarelli at hearings on S. 2600, the Justice Department's Bail Reform Act Amendments. Most of S. 2600, although changed in a few significant details, is contained in the pending conference report. For the purpose of making a complete legislative history I think it would be appropriate to include in the RECORD the full text of that colloquy which took place between Mr. Lawrence M. Baskir, chief counsel of the Subcommittee on Constitutional Rights of the Committee on the Judiciary and Mr. Santarelli. The full text of that colloquy appears at pages 311–328 of the recently printed hearings of that subcommittee. I ask unanimous consent that they be printed in the RECORD at this point.

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

STATEMENT OF DONALD E. SANTARELLI, ASSOCIATE DEPUTY ATTORNEY GENERAL FOR CRIMINAL JUSTICE, DEPARTMENT OF JUSTICE; ACCOMPANIED BY EARL SILBERT, OFFICE OF CRIMINAL JUSTICE

Mr. SANTARELLI. S. 2600?

Mr. BASKIR. Yes, sir.

Mr. SANTARELLI. Before we get to the question, Mr. Baskir, if I might make clear for the record that I have been requested to appear here following the testimony of the Deputy Attorney General to respond to specific technical questions in response to problems that have cropped up. Questions of policy were covered by the Deputy Attorney General in his past two appearances, and he has expressed his willingness to return for any further hearings you may have on questions of policy.

I would also like the record to reflect that I am accompanied by Mr. Earl Silbert of the Office of Criminal Justice to assist in the response to these technical questions.

Mr. BASKIR. Fine. It may be difficult to avoid policy questions. I am not sure where the line is. But it is my intention to ask technical questions. If questions arise which you do not feel prepared to comment on, please say so for the record.

Turning to page 14, there two classes of definitions: one entitled "Dangerous Crime" and the other entitled "Crime of Violence."

Are these described crimes all felonies?

Mr. SANTARELLI. It says on lines 14 and 15 of page 14, if the offense is punishable by imprisonment for more than 1 year, it says, similarly, on line 24, one and two of pages 14 and 15, as defined by act of Congress in a State law if the act is punishable by imprisonment for more than 1 year, it is the intent that these are felonies in the Federal system.

I believe there are some oddity offenses in the United States Code which are 2-year sentences that are called misdemeanors, and I believe there are some in some of the States. They are rarities, I understand.

Mr. BASKIR. The phrase that you mentioned, "punishment by imprisonment for more than 1 year," in both cases is meant to modify the entire paragraph and not merely the last category; in the second paragraph, for instance, not merely meant to modify "attempts of conspiracy"; is that correct?

Mr. SANTARELLI. That is correct. The language of "offense punishable by more than 1 year" is intended to modify the entire category.

Mr. BASKIR. Thank you.

Now, moving back to page four, line 17, there is a phrase, "reasonably assure the safety of any other person or the community."

I believe this phrase appears also on page 2, line 7. The second instance is with respect to setting of bail condition. The first instance that I mentioned is with respect to one of the determinations at the preventive detention hearing. There is no definition in the bill of the phrase "reasonably assure the safety of the community or other person." Is there a definition? What does the phrase mean in any particular sense?

Mr. SANTARELLI. It doesn't mean anything different from the literal meaning of the language. We intend the language to be read for what its dictionary, and reasonably believed definition ought to be, and this is the province of the courts to interpret. This is the classic kind of case where reasonable judgment by judicial officers in the course of judicial opinion and interpretation will develop a definition as they do to every other word of language used in statutes.

The plain meaning of that is, on its face, the safety of the community.

Mr. BASKIR. May I ask specific questions?

Mr. SANTARELLI. Certainly.

Mr. BASKIR. I gather "safety" means avoidance of danger and it is easier to use the word "danger."

Mr. SANTARELLI. We would have done so had we not been trapped into the drafting by sticking with the form of section 3146 of the present Bail Act and the affirmative way in which it was set out required us, if we wanted to continue to utilize that law without totally redrafting it, to phrase it in this fashion.

Mr. BASKIR. For the purposes of this discussion, let's refer to the avoidance of danger to the community; is that all right? When you talk about "danger to another person," you are requiring specific proof of a threat of danger to a specified individual, for instance a husband to a wife?

Mr. SANTARELLI. Not necessarily, although that might be the facts in a given case. The wife might appear at the pre-trial bail hearing and say, "Your Honor, he has threatened a million times, and I know he will do it because he has done it before and I am afraid." That might be.

Mr. BASKIR. But it is not required to find specific danger to specific persons. It might be danger to community or people in general?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. I take it from what you said that there need not be any proof. Or to phrase it another way, there need not be a finding of the likelihood of committing another specified crime; is that correct?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. Does that also mean that an individual, let us say, who was arrested for one of those defined crimes in your bill, and who has a long history of committing other crimes of offenses which are not necessarily specified in the list on page 14, and not nec-

essarily felonies, might be considered a danger to the community nonetheless?

Mr. SANTARELLI. He might be.

Mr. BASKIR. You are aiming here at preventing not only additional crimes defined as dangerous in your bill and additional crimes defined as violent in your bill, but additional crimes of any sort whatsoever, is that correct?

Mr. SANTARELLI. Additional crimes of any sort that may be in the judicial officer's opinion dangerous to the community. They are not necessarily the offenses enumerated in the bill. The offenses enumerated are for the purposes of establishing eligibility for consideration for pretrial detention. You must be charged with one of those offenses before your record of dangerousness can be looked to.

Mr. BASKIR. I see. So the danger you are seeking to avoid is not specifically danger of the commission of one of the list of crimes designated by you in your bill on page 14 as dangerous crimes or the list of crimes designated by you as crimes of violence, but the likelihood of any kind of crime in the future that they may possibly commit that a judge feels is dangerous to the community.

Do I rephrase your statement properly?

Mr. SANTARELLI. I am not sure you do, and I am not sure we can phrase it definitely at this point. The consideration for the court is to view, the defendant in the totality of his circumstances, to review his record of conduct, to review his character and attitude and to conclude if from this prior activity and from information that can be adduced, whether or not he will engage in a course of conduct that will be dangerous to the community. That might include offenses not enumerated in the specified dangerous offense category.

Mr. BASKIR. Certainly if the judge found there was a likelihood he would commit another unlawful breaking and entering, he could then validly detain on the grounds this was dangerous?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. If the judge decided the man was, let's say, a kleptomaniac and he engaged in petty shoplifting, the judge could, under your bill, detain this person in order to prevent those subsequent offenses; is that correct?

Mr. SANTARELLI. Or—you know, the line between petty larceny and grand larceny is very difficult to tell, and from the record you don't always know. Specific facts would be adduced in the case of a narcotic addict, for example, that he lives by larceny. Though example, that armed robbery, he may not live by it. We now know that he is a larcenist each day and steals x amount of dollars. Under those circumstances, the court may reasonably conclude that that conduct is dangerous to the community.

Mr. BASKIR. Now, another question to ask—and I am not sure if that is policy or technical. Your responses suggest that certain kinds of activity which a judge might consider dangerous, but you might not, may involve, let's say, the smoking of marihuana. The judge might consider that to be dangerous. A judge might consider obscene photographs of other judges or publication of scurrilous underground newspapers to be dangerous. A judge might consider to be dangerous certain things which are practiced such as political demonstrations, dissenting, violent or nonviolent. He might under this bill consider those activities dangerous and he could make a finding; am I correct, that that is the kind of danger that he would like to correct under this bill? Is that a correct interpretation?

Mr. SANTARELLI. What a judge can do and what he ought to do——

Mr. BASKIR. I am only talking about now, what he can do.

Mr. SANTARELLI. Presumably, such evaluation or conclusion that those activities are dangerous would not be upheld under the appellate procedures here. But a proper answer to that seems to turn that around, and let's see how that operates under the present bail law.

Mr. BASKIR. I am really more interested in what the bill does. I suspect we may be slipping into policies—we are trying to get the facts.

Mr. SANTARELLI. This is a technical question, in fact, very technical.

If a court at the moment chooses, and under our bill, chooses to impose conditions on the release of the defendant, it might impose any conditions reasonably calculated to get the defendant to return to trial, or under our bill reasonably calculated to protect the community from danger.

I think it would be reasonable if the court concluded that the defendant engaged in a course, for example, of continual marihuana smoking and hung around with a number of other people that do so, for the court to impose as a condition on his release that he not smoke marihuana and that he stay out of bad company.

Mr. BASKIR. And that condition is imposed upon the theory that that course of conduct would make it likely he would not appear for trial?

Mr. SANTARELLI. Or that he may be dangerous under our bill.

Mr. BASKIR. And in your circumstances that would make him dangerous under your bill just as under the existing law that could be seen as a tendency to have him flee?

Mr. SANTARELLI. A court could consider such conduct in assessing either the likelihood of flight or likelihood of danger.

Mr. BASKIR. I see.

Mr. SANTARELLI. Now, if the defendant went out and performed the acts prohibited by the court, the court would have the authority to bring the defendant back and establish under the present law additional conditions, or under our proposal, and a recommendation of the ABA, a power to revoke and commit the defendant for violation of the condition of release. If the condition of release violation is of dangerous nature and can be upheld on that basis, then the same theory ought to apply to ab initio cases where the defendant is brought before the court and charged with an offense.

Mr. BASKIR. Under existing law the judge would have to determine that this course of activity had some impact or might have some impact upon his appearance?

Mr. SANTARELLI. Correct.

Mr. BASKIR. In your case it might be the simple conclusion that the smoking of marihuana is dangerous to society or dangerous to another person, and on the grounds of dangerousness detain him straightaway?

Mr. SANTARELLI. The court could say that a petty larcency or petty offense was dangerous to the community, the guy was a drunk driver for example, and this was dangerous to the community. Such a conclusion, however, would be simply unreasonable. I think the conclusion that marihuana smoking is dangerous is unreasonable. But I don't know of any way to prevent courts from being unreasonable.

We predicate everything here on the good faith of courts and the good faith of prosecutors not to allege such information and the good faith of courts of appeals to review these matters and be fair in their judgment. In either case, drunk driving or marihuana smoking would not be of sufficient magnitude, in my opinion, to be dangerous.

Mr. BASKIR. Is there a provision on the review of detention orders which gives a standard of review for appellate judges to use in reviewing decisions of dangerousness?

Mr. SANTARELLI. We looked to the review and saw that there was no standard for appellate judges, under 3148 of existing bail law where capital offenders may be detained under a general concept of dangerousness. We didn't think it appropriate to go beyond that in the case of noncapital offenders.

Mr. BASKIR. That means, I suppose, if a judge determined that marihuana smoking was dangerous under the terms of your bill that might be considered unreasonable. But it would have to approach something on the order of "abuse of discretion" or "gross abuse of discretion" in order to be reversed on appeal; is that correct?

Mr. SANTARELLI. No, that is not the standard presently used in the law on reviewing bail findings and results, nor would it be the standard under our statute. Our bill does not change the existing standard of review.

Mr. BASKIR. What is the standard under existing law?

Mr. SANTARELLI. Any order which results in the detention of a defendant must be supported by the proceedings. Under this standard, I believe that the appellate court merely reviews the reasoning of the trial court's findings and in a sense substitutes its own judgment for what is reasonable. See *Banks v. United States*, 414 F. 2d 1150 (D.C. Cir. 1959). If I might——

Mr. BASKIR. The standard in the act imposed upon a District of Columbia judge is "conditions that will reasonably assure the appearance of the person" before him and the appeal is based upon whether or not those conditions reasonably assure or are unreasonable in terms of assuring appearance. I am not sure how that standard would apply in reviewing a determination of dangerousness, because the determination of dangerousness is not tied to reasonable conditions assuring appearance.

There is no review on the grounds of dangerousness or reasonability of dangerousness under existing law as I see it with respect to persons we are considering here.

Mr. SANTERELLI. There is no question. Mr. Baskir, that the court of appeals of any circuit has the power to review cases under 3148 where defendants may be detained for whatever reason, either flight or dangerousness, and in fact, they do review such convictions. It doesn't say so in your 1966 act.

Mr. BASKIR. If it does not say so in the 1966 act, it will not, because you are amending it, say so with your amendment?

Mr. SANTARELLI. We provide it specifically in our law. The capital defendants detained as dangerous will have the same right of review with the same standard as the 1966 act now provides for those detained because they are likely to flee.

Mr. BASKIR. In effect, you will be relying upon existing practice for these reviews of dangerousness just as the existing law does?

Mr. SANTARELLI. No; we would authorize them specifically by statute in our bill.

Mr. BASKIR. For the record, would you point out the provision in the bill which authorizes that review?

Mr. SANTARELLI. If I might have a minute to do so—I think if you will look at 3147——

Mr. BASKIR. Excuse me, is this in the bill?

Mr. SANTARELLI. Yes, page 9, and read the language of 3147 in conjunction with the existing law. We didn't repeal it and rewrite it, we just amended it to conform to the changes we made in section 3146 and 3146A.

Mr. BASKIR. That does, indeed, provide for review of detention. We are talking about the standard of review.

Mr. SANTARELLI. That is correct.

Mr. BASKIR. And there is no standard of review in your bill. You would have to rely upon whatever standard is in the act?

Mr. SANTARELLI. We have a standard in the existing law, and we enact it to the extent that the proceedings below must support the detention just as in the 1966 law.

Mr. BASKIR. Right. The standard of review under the existing law is reasonability of conditions of release. That does provide for review. That does provide a standard for testing release conditions. But there is no existing

law with respect to standards for reviewing dangerousness.

Now, are there standards of review of dangerousness in your bill?

Mr. SANTARELLI. Under the standard of review which requires that the orders of detention be supported by the proceedings below, the courts have simply determined whether they are in fact reasonable conclusions in the light of the evidence below.

We have seen that in the District of Columbia. See *Banks* v. *U.S., supra.*

Mr. BASKIR. What you are saying is that a district judge may say smoking marijuana or participating in a political demonstration is dangerous to the community. That would be reviewable because you do provide for review?

Mr. SANTARELLI. Findings of dangerousness are reviewable on appeal.

Mr. BASKIR. The standard of whether that is abuse of discretion, that standard is not discussed in your bill?

Mr. SANTARELLI. No.

Mr. BASKIR. And that standard is not existing law. You rely on practice to make sure the standard is reviewable.

Mr. SANTARELLI. But the standard is not abuse of discretion.

Mr. BASKIR. What is the standard?

Mr. SANTARELLI. The standard used is not abuse of discretion, it is one of reasonableness, whether the order of detention is reasonable in light of the proceedings below.

Mr. BASKIR. I see. This discussion, by the way, is built into the record and if the standard is not "reasonable" under existing law, we hope this discussion will make it reasonable.

Mr. SANTARELLI. Courts don't enunciate this standard.

Mr. BASKIR. The statute does not, either.

Mr. SANTARELLI. Correct.

Mr. BASKIR. That is what I was trying to get clear.

Now, just to go back, there is no standard for the judge to use to determine dangerousness in the first instance; is that correct? On page 4, starting with line 14, the judge must find there are no conditions which will reasonably assure the safety of a person, in determining the question of safety, the judge would not have to find lack of safety by "preponderance of the evidence," "by clear and convincing evidence," or any particular standard, according to your bill?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. It could be the record taken as a whole, as low as that?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. Or it could be "beyond a reasonable doubt," as high as that, depending upon the judge?

Mr. SANTARELLI. Well, the question is what is the present standard. We don't, in the statute, change the existing practice on what kind of process the court uses in arriving at its factual conclusion. If it presently looks at 3146 and considers, as in the bail law, what the general background of the defendant is to determine what conditions to impose on him or to detain him if he is likely to flee, we would have the courts continue that same process, only look to an additional factor as they now do under Section 3148, namely, dangerousness.

That is one which has got to be supported by evidence. That is clear from what we say. There has got to be some record of evidenciary findings to support the conclusion.

Mr. BASKIR. How much is not specified in your bill?

Mr. SANTARELLI. That is correct, nor in existing law.

Mr. BASKIR. In the detention hearing, also, there is another finding that has to be made, that is substantial probability the person has committed the offense. There has been some question raised in the hearings as to the use of that term and what it means. Is it a new term showing new balance of evidence or is it another reflection of the instant term?

Does "substantial probability" mean "probable cause?"

Mr. SANTARELLI. No; it means more than probable cause.

Mr. BASKIR. Clear and convincing evidence? I don't want to get into a discussion of imperfect standards, but exactly what it means would be good to get for the record.

Mr. SANTARELLI. No; rather than answer those questions, maybe it would be better to affirmatively state what we think it means, because otherwise we may get it confused with other distinctions that are made. That is, we have set it out in the Law Review article of the Attorney General, and that is that the test is perhaps best compared to the civil test for the issuing of a preliminary injunction, frequently characterized as likelihood of eventual success on the merits, comparable to the civil injunctive test.

Mr. BASKIR. All right.

Turning to page 7, line 3. Upon the expiration of 60 calendar days of detention, the defendant is returned to the bail hearing under section 3146.

Mr. SANTARELLI. Right.

Mr. BASKIR. Except if two things are occurring. One is that the trial is in progress, and the other is stated on line 2; that is, if the trial has been delayed at the request of the person.

Mr. SANTARELLI. Right.

Mr. BASKIR. Does this mean that if the defendant has asked for a continuance then the detention period will be continued; is that correct?

Mr. SANTARELLI. If he has asked for continuance on the day on which his trial was scheduled to come forward he would continue to be detained.

Mr. BASKIR. If he asked for continuance, let us say, 30 days after he was detained, and it was a continuance for one week, would he be detained 60 days plus one week?

Mr. SANTARELLI. No.

Mr. BASKIR. He would be detained only 60 days?

Mr. SANTARELLI. Yes.

Mr. BASKIR. The bill does not specify that.

Mr. SANTARELLI. We consider that to be the clear impact of the language.

Mr. BASKIR. Well, the bill may be interpreted as saying that if the defendant asks for so little an extension as one day that he will be detained indefinitely until the trial occurs. The bill may be read that way. That is why I asked the question.

In other words, his detention will continue if he asked on the 60th day, when the trial is about to begin, for an extension of time?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. His detention will continue for as long as he has asked for extension; is that correct?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. If he asked on day 60 and trial is to begin on day 60, for 1 week extension of time, he will be detained 67 days?

Mr. SANTARELLI. That is correct; if he asks for it.

Mr. BASKIR. I see. If trial is not to occur at the 60th day for some other reason, whatever it may be, and he, on the 60th day, asks for an extension for one week——

Mr. SANTARELLI. I don't understand that.

Mr. BASKIR. I am not sure what the time——

Mr. SANTARELLI. I mean, if on the 60th day his trial is scheduled on the regular calendar of the court for the 70th day——

Mr. BASKIR. That is right.

Mr. SANTARELLI (continuing). And he comes in and says he wants it delayed to the 75th day——

Mr. BASKIR. Yes; wants an extension for 5 days beyond the 70-day period, does he get detained 60 days, 70 days, or 75 days?

Mr. SANTARELLI. I do not believe he can be detained beyond that time.

Mr. BASKIR. What point?

Mr. SANTARELLI. Beyond the 60-day period. At that point.

Mr. BASKIR. In other words, the provision should read, if on the day of the trial the defendant asks for extension of time he can be detained for that additional extension. And in no other circumstance?

Mr. SANTARELLI. No; that is too narrowly read. There may be circumstances in which the defendant may ask for a continuance prior to the 60 days, in which it is an unreasonable request of a dilatory nature that the court can conclude is an unreasonable request, or that the court may not be able to get to the case by the 60th day. It would be unreasonable to make a flat absolute statement that in every case it would operate in the manner that you just discussed.

What we intend is that we be reasonably interpreted by courts to prevent defendants from taking unreasonable actions to encourage the delay of the trial beyond the 60th day and then not pay any penalty for those unreasonable acts. Timely motions, proper motions, corrections will not delay the period of time.

Mr. BASKIR. The reason I asked this question is that the bill says he is to be released at the expiration of 60 days unless the trial has been delayed at the request of the person. From our colloquy it appears that within that phrase you are talking about reasonable delays and delays which are not only asked for after 60 days.

I thought you said at first it was only delays after the 60th day that would trigger extensions—and any extension of time would extend detention for that time.

Mr. SANTARELLI. That is correct, sir. There is a question of reasonableness, Mr. Baskir.

Mr. BASKIR. This bill should read, then "unless the trial has been unreasonably delayed at the request of the person"; is that what you are reading into the phrase?

Mr. SANTARELLI. We have left it to the court's discretion.

Mr. BASKIR. Would you like it to read—because in a markup we might add the word "unreasonable"—"or if the trial has been unreasonably delayed at the request of the person"; is that the way the phrase has been designed?

Mr. SANTARELLI. No; we have preferred to leave it this way because it might be a reasonable request for the defendant on the day 60. It might be a reasonable request—I want 5 more days to do something. On the other hand, the court will say, why didn't you ask for that 5 days ago.

Mr. BASKIR. If he shows good cause for his request, would that extend his period of detention?

Mr. SANTARELLI. Probably good cause is a better test than reasonable.

Mr. BASKIR. If at any time he asks for an extension, and the judge gives it to him upon good cause shown, that request would not extend his detention; is that correct?

Mr. SANTARELLI. I would think that would be what we had in mind.

Mr. BASKIR. Is there any procedure at the end of 60 days—Let me ask you this: what is the procedure generally that will be followed when he is released from jail at the expiration of 60 days?

Mr. SANTARELLI. I think we pursued this earlier when Mr. Kleindienst was here in the beginning, and the simple answer to that is that the defendant would be brought back to court at that time, at the expiration of his 60 days, and be in the same posture as a new defendant coming before the court for the first time for consideration under section 3146 of the bail law.

Mr. BASKIR. Now, does he have to make a motion at the end of 60 days? What act does he have to make at the end of 60 days?

Mr. SANTARELLI. No act, no motions on his part.

Mr. BASKIR. If the jail records show he has been detained and it is the 60th day of that detention, he must be picked up and returned automatically as an administrative matter?

Mr. SANTARELLI. That is correct, the jail would return him to the court. His release would occur through the court.

Mr. BASKIR. Now, section 3146—which we picked up on the discussion with the deputy before and your remarks just now—section 3146, as amended, would require a judge to review the man's record and determine which conditions will assure his appearance at trial. That is existing law, section 3146, subsection (a)?

Mr. SANTARELLI. Correct.

Mr. BASKIR. Section 3146 as amended by this bill, in paragraph (a), also requires a determination of which conditions, other than financial, will assure the safety of the community under section 3146, subsection (a). This is in the first instance, and this is another determination at the bail hearing. As amended by your bill, section 3146, subsection (b) would direct the judge, in determining which conditions, if any, will reasonably assure the appearance of the person or the safety of the community, to review certain kinds of evidence. If the judge determines at this hearing that no conditions will assure the safety of the community, can the judge then go on to section 3146(a) and order a detention hearing the second time around?

Mr. SANTARELLI. Without additional facts, without additional——

Mr. BASKIR. Let us assume that we have the same facts adduced as at the original hearing——

Mr. SANTARELLI. No new facts?

Mr. BASKIR. No new facts, same danger, same determination that no conditions will reasonably assure the safety of the community. Can the judge then order another detention hearing?

Mr. SANTARELLI. No.

Mr. BASKIR. Can you point in the bill to the provision which says that on the second go-around under section 3146, subsection (b), when the judge determines that there are no conditions which will reasonably assure the safety to the community, he cannot then call another hearing for detention for additional 60-day period.

Mr. SANTARELLI. The language on page 7 which referred to earlier at the expiration of 60 calendar days is meant to be singular in its application, and——

Mr. BASKIR. Well, at the bottom of page 6 it says "any person detained shall be treated in accordance with section 3146" as it will be amended, of course, upon the expiration of 60 calendar days of detention. When you go to section 3146, as amended, it seems you are back in the original posture. The judge determines which conditions other than financial will assure the safety of the community. Now, you have determined that no conditions will assure the safety of the community?

Mr. SANTARELLI. Right.

Mr. BASKIR. Then he may order a new detention hearing. The same evidence may be adduced the second time around. To repeat, if the judge determines on the basis of that second bail hearing that detention is required, he may then order a second detention proceeding. I am not sure from the discussion before the Deputy or from our discussion now, what prevents a second ride on the merry-go-round, to use the term used earlier.

Mr. SANTARELLI. Take a look at page 6 at page 6 at the bottom, any person detained shall be treated in accordance with section 3146 of this title.

Mr. BASKIR. That is right. And section 3146, as you would amend it, has an amendment to subparagraph (a), which includes the requirement of a determination of the question of dangerousness.

Mr. SANTARELLI. Look on page 3, line 10, 3146A. That is not 3146. 3146——

Mr. BASKIR. It is reenacted, with amendments.

Mr. SANTARELLI. Continued in the statute and will continue to read 3146.

Mr. BASKIR. When I say "A," I am talking about subparagraph (a) and subparagraph (a) as you have recommended it be amended.

Mr. SANTARELLI. Subparagraph (a) and subparagraph (b) appear only under the large black letters of line 10 of page 3 of 3146.

Mr. BASKIR. That is not correct. Let us go back again.

Your bill starts on the first page. Section 3146 is amended as follows, by inserting the words of subsection (a), "or the safety of any other person or community." In other words, in setting these conditions you would include consideration of both flight and safety.

Then you also, on page 2, if you will follow me, you further amend section 3146, in subsection (b), to read as follows, and you have certain provisions in there.

Mr. SANTARELLI. Right, correct.

Mr. BASKIR. Now, an individual coming up before the judge in the first instance is covered by section 3146 as you have amended it. The first question to determine is whether or not there are any conditions of release which will assure return or protect the community. That is in 3146, subparagraph (a), as you have amended it. If he determines under section 3146, subparagraph (b), as you have amended it, that there are no conditions which will reasonably assure the safety of the community, then he moves into new section 3146A, which is a preventive detention section.

What I am asking you is, if at the end of 60 days the man is returned under the bill and under the law, as you will amend it, can he not be moved into another detention hearing? You say no, and I would like to have for the record your showing where it provides that he cannot be subjected to a second detention hearing and a second 60-day detention order.

Mr. SANTARELLI. As I understand this, Mr. Baskir, if you will read on page 3, line 7 through 9, it indicates that line 10 is to be read as a new section following existing 3146 as amended in the first two and a half pages.

Mr. BASKIR. I understand that; yes.

Mr. SANTARELLI. And that when the statute, when our statute says on page 7, page 6, lines 23, 24, that he be returned, that defendant be treated in accordance with 3146, we do not mean 3146A where the only authority to enter a detention order exists.

Mr. BASKIR. Yes. If you will read 3146A, your new section, it says whenever judicial officer determines that no condition or combination of conditions of release will reasonably assure the safety of any other person or the community he may then move into a detention hearing.

Mr. SANTARELLI. Right.

Mr. BASKIR. Let us move back to section 3146, subparagraph (b), as you have amended it. It says in determining which conditions of release, if any—now, the words, "if any" suggest that there may be none—if in 3146 (b) the judge determines there are none, then your new section, 3146A, comes into operation. What I am suggesting is that if under section 3146 the judge determines the situation is no different on day 61 than on day 1, if the man is just as dangerous as before and if no conditions will assure the continued safety of the community, he is then directed by the United States Code as you have amended it to turn to section 3146A. That says if you find no conditions which will assure safety you may then go in detention hearing.

Mr. SANTARELLI. I followed you twice down that path, Mr. Baskir.

Mr. BASKIR. What breaks the train in the circle?

Mr. SANTARELLI. No. 1, we don't read it in the way in which you do.

Mr. BASKIR. It can be read in the way I read it even though you disagree.

Mr. SANTARELLI. That is not the intent of the statute, and if I am to resort to Mr. Kliendienst's language, we would welcome an opportunity to make that clear. The fact of the matter is when we drafted the proposal and expressed it as I have explained on page 6, we did not intend that there would be any possibility of the court to return to a detention proceeding after having detained the defendant 60 days.

The commonsense reading and commonsense explanation of our bill has been to the effect that will not be permitted.

Mr. BASKIR. You know in adversary proceedings there are no commonsense readings, they are adversary. Is this a reasonable interpretation of your bill? If it is, would you suggest an amendment to make sure that on day 61 there can only be——

Mr. SANTARELLI. I do not think it is reasonable, and we would agree to an amendment making it clear.

Mr. BASKIR. Okay, Fine.

Now, the list of things that the judge is to look at in determining whether or not there are any conditions of release is identical, if I recall, to the list which now exists in law, with one exception, and that is "past conduct."

Mr. SANTARELLI. That is correct.

Mr. BASKIR. Character and mental condition, that may not be in the original law.

Mr. SANTARELLI. I thought we added another word, too, past conduct and——

Mr. BASKIR. My question really is directed to the phrase, "past conduct."

Mr. SANTARELLI. All right.

Mr. BASKIR. Now, the existing statute does discuss the record of convictions?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. It does discuss record of appearance before proceedings or flight, and things of tha nature?

Mr. SANTARELLI. Right.

Mr. BASKIR. What is meant by the phrase, "past conduct" in addition to the things which are already in the law which you would restate?

Mr. SANTARELLI. The plain language of what it says, past conduct.

Mr. BASKIR. This is past conduct in addition to records of convictions?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. Does that mean records of arrests?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. Does it mean his reputation in the community for being bawdy and boisterous?

Mr. SANTARRELLI. No, I don't think that is——

Mr. BASKIR. What does it mean? I don't think his reputation for past conduct is good.

Mr. SANTARELLI. Well, you have loaded the language.

Mr. BASKIR. I am sorry. Past conduct as you phrase it does not mean only convictions. Does is mean more than record of arrest?

Mr. SANTARELLI. Yes, it means conduct in general that can be adduced in an evidentiary proceeding in one manner or another.

Mr. BASKIR. What kind of conduct other than arrest records and convictions?

Mr. SANTARELLI. Any conduct that reflects on the likelihood of defendant's flight or conduct that reflects on the defendant's likelihood of dangerousness to the community. That may be conduct, for example, established by the defendant's wife or mother-in-law or brother or neighbor coming in and saying this guy behaves in the following fash-

ion: Every Saturday night he is drunk and he starts a fight, he has a knife, he has cut people in the past, but he has never been arrested.

That is the kind of evidence that might be valuable, similarly, another person situated in the community may say this defendant is frequently out of town, he travels a great deal, he has family and relatives in other parts of the country, he is a drifter. Past conduct of that nature sheds light to the court in determining whether he is likely to flee or whether he is likely to be a danger.

Mr. BASKIR. When you talk about character, that would permit discussions as to the kind of person he is over and beyond specific things like arrests or convictions?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. Well, if you want to use the word "reputation," by character, by what he is thought to be like in the community, can be shown to be like in the community, that may show something about what his future conduct will be with respect to safety?

Mr. SANTARELLI. Character is already a consideration in the 1966 act.

Mr. BASKIR. But the flight with respect to danger.

Mr. SANTARELLI. Character would be considered also in the dangerous category.

Mr. BASKIR. Okay. Fine.

Now, there are a variety of phrases in section 1A.

Mr. SANTARELLI. Mr. Baskir, I might remind you of my time. I am 10 minutes past——

Mr. BASKIR. Where do you have to be and when do you have to be there?

Mr. SANTARELLI. I have to be—I had to be on the House side at 1:30.

Mr. BASKIR. May I extend the same invitation that was apparently extended to the Deputy Attorney General?

Mr. SANTARELLI. Mr. Kleindienst?

Mr. BASKIR. Perhaps we can continue this at the time, not quite so close to lunch.

Mr. SANTARELLI. Do you have much more? What can I anticipate?

Mr. BASKIR. I am not sure I have very many more, but it seems these have engendered some discussion.

I was interested in particular the meaning of the phrase "to the extent practical" with respect to confinement in separate facilities. Does that turn on the existence of other facilities?

Mr. SANTARELLI. No, what our concern was—we know, as a matter of fact, that defendants prior to trial are now detained in facilities separate from those defendants who are, for example, convicted in the District of Columbia. Those facilities may be just different buildings in the same complex, but they are nevertheless separate.

Our concern was that there are occasions when mixes with a convicted person would be inevitable, such as in the transportation from the jail to the court house or the place of detention to the court house, such as in the cell block behind the courtroom. There are times I would think when, because of the reality of our criminal justice system, it would be impossible to keep the defendants separated at every moment, and so that we put an escape valve in the statute to allow the executive branch or administrative officials some latitude in their detention of the defendant.

But the clear manifestation of that is that he should be kept in separate facilities.

Mr. BASKIR. Now, section 3146B discusses a number of things applicable to the person detained. It says a person who is an addict—this is A, line "e"—may be ordered detained in custody under medical supervision. Is that medical confinement, would you say, in a hospital?

Mr. SANTARELLI. No.

Mr. BASKIR. Does it mean confinement in the jail facility?

Mr. SANTARELLI. Either the jail facility or detention facility, wherever the executive officials decide that their separated facilities will be. But under "medical supervision" means with exposure to medical treatment for whatever manifestations the defendant might have during that period of pretrial detention, withdrawal, acute reactions, comas, and the like.

For the reason that one has to consider that at the present state of the art is such that there can be no meaningful treatment of addiction in such a short period of time, we were very careful in analyzing this before we submitted it and checked with experts of all kinds on the subject of treatment, and they all assured us no meaningful treatment program could be meaningfully undertaken in 60 days.

Mr. BASKIR. The medical treatment is to assist the individual with withdrawal symptoms; is that correct?

Mr. SANTARELLI. And any other manifestation of addiction he may have that requires medical treatment or that ought to have medical treatment. It may be far more than withdrawal.

Mr. BASKIR. With respect to the question of addiction and the like, one of the offenses that will trigger off this detention hearing, there is on page 14, line 12, unlawful sale or distribution of narcotics as defined in the act of Congress.

One question raised was, does that include the use of marijuana.

Mr. SANTARELLI. No, it does not. For that matter, it does not include use of any drug, only rate of specified drugs.

Mr. BASKIR. It does not include the use of marihuana?

Mr. SANTARELLI. That is correct. Marihuana is not in the definition of the act itself.

Mr. BASKIR. As defined by any act of Congress as a narcotic or depressant or stimulant drug?

Mr. SANTARELLI. No.

Mr. BASKIR. Marihuana is not one of those classes, correct?

Mr. SANTARELLI. No, and may I say I have been asked that question, and to clarify it, maybe we ought to say so in the statute. But we did not include marihuana. We didn't add it because we thought that definition was adequate. We would offer it at this point if it would clarify——

Mr. BASKIR. This is the first instance this particular bill has undergone this kind of study, and it may very well require a certain amount—I am sorry, it may very well require some markup, and that is the purpose of this little session at the moment.

Mr. SANTARELLI. I would hope it would have some markup.

Mr. BASKIR. If an individual is charged with a felony as you have listed it on page 14 in the list of crimes and through new investigation the prosecutor's office decides that he should be charged with a different crime, not one of those listed, but equally serious, what would be the procedure? What would be the conditions of that decision?

Mr. SANTARELLI. After he had been detained?

Mr. BASKIR. Yes, sir.

Mr. SANTARELLI. We provide in here that the court—page 7, please, lines four and five—whenever judicial officer finds that subsequent events have eliminated the basis of such detention, it would permit the court——

Mr. BASKIR. Is this automatic procedure? What I am saying is, what are the mechanics?

Mr. SANTARELLI. It could be. we didn't specify mechanics. The bill authorizes the judge on his own to terminate detention.

Mr. BASKIR. How is that generated, obligated on the part of the prosecution, motion by defendant—how does it happen?

Mr. SANTARELLI. We did not spell out the machinery in the statute, as most of the machinery for the administration of justice is not spelled out in the statute. Presumably the court on its own could do so as clearly the indication of that language, presumably a prosecutor who is an officer of the court and representative of society, and certainly the Department of Justice, would be compelled in his obligation to inform the court of any change in the charge, or the defendant on his own could certainly call that to the attention of the court.

All those alternatives are left open.

Mr. BASKIR. On page three, line one, it says the person detained shall be afforded reasonable opportunity for private consultation with counsel.

Mr. SANTARELLI. Yes.

Mr. BASKIR. Is reasonable opportunity—is this a determination by the judge or by the detention facility authorities?

Mr. SANTARELLI. We didn't specify that because we would allow either to do so.

Mr. BASKIR. If the detention authorities decided it was not reasonable cause, then the attorneys appear and——

Mr. SANTARELLI. Then the court should certainly——

Mr. BASKIR. Then you would rely on application of the court to see——

Mr. SANTARELLI. Correct. Of a most informal nature, too. We left that wide open.

Mr. BASKIR. It is not specified. I assumed reasonable interpretation would be informal.

Mr. SANTARELLI. We didn't want to lock it up. If we locked it up with the judge then there would be no availability for correctional institutions to exercise their own wise discretion. On the other hand, if the correctional institution is unwise in its lack of discretion, the court can order it.

Mr. BASKIR. Now, that paragraph goes on to say:

"And for good cause shall be released in the custody of marshal or some other person."

Mr. SANTARELLI. Correct.

Mr. BASKIR. Now, here is a release where the release is not at the authority or discretion of the detention authorities, it must be before a judge?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. What would be required to be shown to the judge in order to secure release?

Mr. SANTARELLI. Whatever is good cause.

Mr. BASKIR. Would this be an adversary proceeding?

Mr. SANTARELLI. They are not as a rule now, nor under this bill, will they generally be adversary proceedings.

Mr. BASKIR. What I am asking is a question that has been asked—if the defendant's counsel comes and says, I need the defendant because I have to bring him over to Joe's Bar and Grill to identify some witnesses, and if it is an adversary proceeding or the prosecution is available, the prosecution will find out what they intend to do in the way of defense.

How could you solve that problem?

Mr. SANTARELLI. I think you have made an unreasonable assumption.

Mr. BASKIR. It is not a position of opposing, it is a matter of showing good cause to the judge. Does the prosecution get to see what the good cause is?

Mr. SANTARELLI. We have not specified that it must. We have left——

Mr. BASKIR. There you run to a danger—however large or small—of good cause being for the preparation of defense, and the prosecution finding, because he is there, because he is asked to be there or because he opposes release or because he sees the papers in the file, what the defendant was going to do during his release period.

Mr. SANTARELLI. That presumes that on the part of the prosecutor, and I don't think we can presume——

Mr. BASKIR. Was the intention of the bill not to have the prosecutor either know of or oppose application of good cause?

Mr. SANTARELLI. No, the intention of the bill is to leave such matters to the sound

discretion of the administration of justice, as worked out between courts and their officers, defense lawyers and prosecutors.

Mr. BASKIR. It is impossible in application for good cause proceeding, I assume, for the prosecutor to decide this man is using——

Mr. SANTARELLI. It is possible for the prosecutor to say anything he wants to, that "the sun is coming up in the north tomorrow, your honor."

Mr. BASKIR. Would that be a reasonable thing to oppose release on the grounds there is no good cause?

Mr. SANTARELLI. It might be reasonable for the prosecution to make whatever allegation or presentation to the court it wishes to. If you will allow——

Mr. BASKIR. It is not unreasonable for the prosecution——

Mr. SANTARELLI. If you will allow me to finish, Mr. Baskir, my answer—it is not unreasonable for the prosecution to make whatever allegation he chooses to consistent with his ethical duties and responsibilities as a representative of the executive branch and the people.

It is the function of the courts to pass judgment upon what is good cause. It is the function of the judge to determine whether the prosecutor's allegations that the defendant should not be released amount to sufficient persuasion that the defendant has not shown good cause to be released.

Mr. BASKIR. Let us return to the start of this question. My question is meant to determine what the intent of the legislation is. The question has been raised in hearings that the requirements of showing good cause for release for the purpose of preparing defense enables the prosecution to get an idea of what the man intends to use for his defense.

Now, what I am asking you is, does the bill permit it? If the bill permits it, but it should not, is it the intent of the bill that the prosecution should not know?

Mr. SANTARELLI. That cannot be answered in the abstract.

Mr. BASKIR. It is a question raised. Is it a true saying that the bill as interpreted permits the defense to be disclosed to the prosecution—would it be unreasonable?

Mr. SANTARELLI. I think it would be unreasonable.

Mr. BASKIR. Is it an unreasonable interpretation of the statute?

Mr. SANTARELLI. I think it would be unreasonable.

Mr. BASKIR. In other words, it is not the intent of the legislation to permit the prosecution to discover what good cause is if good cause has to do with the preparation of defense, because you do not intend the prosecution to know what the man is doing in the way of preparation of defense?

Mr. SANTARELLI. I think that stretches the point, Mr. Baskir.

Mr. BASKIR. I asked the question. I am trying to get an answer.

Mr. SANTARELLI. I have answered it as many ways as I can. There is nothing new here. Defendants presently make such requests for temporary release and prosecutors respond. No abuse is presently cited in this regard.

Mr. BASKER. The answer is, it is left to the discretion of the reasonable decision of the judge?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. It is possible for the prosecution to discover, it would not be unreasonable for a judge to let a prosecution discover?

Mr. SANTARELLI. I do not know what would be reasonable or unreasonable for a court in the abstract.

Mr. BASKIR. Is it your intent that it be unreasonable? What does the bill intend? Does the bill intend that the judge does want it or didn't you want it under your legislation, or do you leave it up to the judge and if the judge determines it is reasonable you are satisfied with that determination?

Mr. SANTARELLI. I believe the court, in the exercise of its wisdom, can judge what reasonable information the prosecutor needs to know to make whatever response the prosecutor needs to respond to the request for release.

Mr. BASKIR. And the intention of the legislation goes along with that decision?

Mr. SANTARELLI. That is right.

Mr. BASKIR. No money bond is permitted under your bill for the purpose of assuring the safety of another person or the community?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. This is on page 2, starting line 1. Is money bond still permitted in our bill on the grounds of flight as it is on existing law?

Mr. SANTARELLI. Yes.

Mr. BASKIR. Is it possible for a judge to determine that detention cannot be justified in the provisions of our bill or would not be upheld upon review because you cannot show the man is dangerous, but the detention is necessary nevertheless?

Mr. SANTARELLI. Necessary for what, flight or dangerousness?

Mr. BASKIR. Dangerousness, and so he can, as under existing law, impose a high money bond and say this is not for dangerousness because we have no detention here, this is for flight, nevertheless the man would be detained because he cannot raise it. Is that possible under your legislation?

Mr. SANTARELLI. Abuse is always possible.

Mr. BASKIR. Is that existing practice?

Mr. SANTARELLI. It seems to be the existing practice.

Mr. BASKIR. This is what the Deputy meant by the hypocrisy situation?

Mr. SANTARELLI. That is correct.

Mr. BASKIR. And this hypocritical operation can still go on under the bill as you would amend it?

Mr. SANTARELLI. Hypocrisy by courts may go on no matter what statutes we pass. What we have done is give the courts an alternative to make a dishonest practice an honest practice, open and reviewable.

Mr. BASKIR. You can eliminate that by prohibiting money bond not only for danger but flight as well. That would—is that possible? You didn't, but that is possible?

Mr. SANTARELLI. Anything is possible, Mr Baskir. We did not do that because it is the overwhelming opinion of people that we contacted, including Members of Congress who were not of our party, and people who have subsequently spoken with us at hearings in the House, that money bond continues to have a value under general suretyship concepts, under the theory for assuring specific performance; namely, return for trial.

Mr. BASKIR. Now, would you object—I will drop that.

At any rate——

Mr. SANTARELLI. Let me add for the record specific materials Mr. Kleindienst intended to submit. They consist of three cases in which the courts of different jurisdictions have expressed opinions that we think are relevant to a consideration of this issue of bail reform and pretrial detention.

Mr. BASKIR. The chairman has asked me to adjourn these hearings until tomorrow morning at 10:30 at room 2228.

(Whereupon, at 2 p.m., the subcommittee adjourned, to reconvene at 10:30 a.m., on Thursday, June 18, 1970, in room 2228.)

Mr. PROUTY. Mr. President, I yield back the remainder of my time.

Mr. TYDINGS. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Maryland has 25 minutes remaining. The Senator from North Carolina has 21 minutes remaining.

Mr. TYDINGS. Mr. President, I yield 15 minutes to the distinguished senior Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana is recognized for 15 minutes.

Mr. MANSFIELD. Mr. President, on a number of occasions the President of the United States referred to the fact that he had yet to receive one of his major recommendations on crime legislation covering the District of Columbia. The President was correct.

After today it is my hope that that statement will no longer be correct. If this conference report is agreed to it will be the first comprehensive measure dealing with crime in the District of Columbia placed on his desk. I hope it is signed most expeditiously.

Much has been said about the constitutional rights of individuals; much has been said about how we ought to consider the constitutional rights of society as a whole.

But there are many who ask about the constitutional rights of the raped. About the robbed. And what about the constitutional rights of the maimed? And the murdered? Or do they have any rights?

Mr. President, I know it is fundamental that an individual be presumed innocent until proven guilty. And I know that this is a most serious measure before us. Not being a lawyer, perhaps I am unable to distinguish fine constitutional points. But I have endeavored with all of my ability to face these constitutional points fairly and honestly and to decide them accordingly. If I am wrong in my decisions regarding this conference report no one is to blame but myself. In any case as on all issues of constitutionality the matter will be taken to the courts and a decision will be rendered accordingly.

Mr. President, there is much to be said in favor of the pending anticrime measure. No one, for example, has disputed the merit of the greater share of the law enforcement tools it provides. Revamping many parts of the local criminal code, the creation of a public defender agency, an enlarged District of Columbia bail agency, an expanded and more efficient Court system, are just a few of the features that hopefully will restore needed confidence in the crime-fighting capacities of the Nation's Capital.

Of course—as I have implied already—the measure is not without controversy. And the expressions, no-knock and pretrial detention characterize what most of that controversy has been all about. Nor can these provisions be treated lightly. If they are in fact unconstitutional—as is said by some—then eventually they will receive the same fate accorded any other law enacted by Congress that has similarly been ruled to fall outside the limits of the Constitution. They will be struck down by the high court. In the circumstances and to avoid such an adverse ruling by the Court, these provisions and the others similarly attacked deserve the Senate's and each Senator's most serious attention.

From a constitutional standpoint, the provision that appears most troublesome to me deals with the incarceration of criminal defendants before trial.

Recently, along with what was contained in the debate and the report, I

reviewed an article on this subject appearing in the Georgetown University Law Journal. Its author is Mr. J. Patrick Hickey, a member of the bar of the District of Columbia. In it the whole question of so-called pretrial detention is examined with the closest scrutiny. The many questions about permitting such a procedure are discussed with a great deal of understanding. As an alternative to detention, the author clearly would prefer a procedure that would provide any defendant posing a high risk of crime on bail, a trial that would take place far more expeditiously than is obtainable in today's clogged courts. By adopting the expeditious trial procedure, it is suggested, the whole matter of preventive detention may be avoided since the accused will have had his trial presumably before he is able to commit any crime while free on bail. I ask unanimous consent, Mr. President, that this very fine article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. MANSFIELD. Mr. President, unfortunately, may I say, we are not today faced with a choice of alternatives. We must consider whether on balance the Constitution would allow what is termed the "pretrial detention" section of this particular bill. I am not a lawyer and there is no need to conceal the fact that I approach the resolution of close legal and constitutional questions with some hesitancy. As I said, I have read a great deal and what has most impressed me in reviewing this particular provision in this measure is the fact that there do appear to be sufficient safeguards.

For example, there is a guarantee of a due process hearing, a guarantee of right to counsel, a preliminary determination, the availability of an appeal with dispatch from any adverse ruling and an expedited trial provision which would provide that the defendant, if so detained under this provision, would have to be tried within 60 days. With these safeguards—and I may be wrong—I feel that any constitutional impediments of this provision have been overcome.

As for the no-knock provision of the bill, it seems clear to me that what the conferees have here achieved is a codification of what is recognized as existing law in many parts of this country. Further, it is a procedure that has been upheld by the Supreme Court in the case of Ker against California as being completely compatible with the fourth amendment. In all, about 30 States have provided such no-knock authority. It is available in my own State of Montana.

I am going to support this conference report. I am going to support it because upon examination, I am convinced that the provisions that have been here challenged have been safeguarded to the extent that they are not, in fact, constitutionally impaired. I am going to support it as well because the drastically rising crime rate, Mr. President, has been documented time and time again. To say it bluntly: crime stalks the streets of this Capital and it is imperative that every effort be employed to reduce its tragic consequences.

In this Chamber day in and day out we have talked a good deal about District crime. We have passed a great number of crime proposals. So it is about time that we put together a package that can be sent to the President and again demonstrate that on this issue, the record of this body is outstanding.

Certainly the bill before us does not represent a panacea for crime in the District of Columbia. But it does offer an approach that says to the criminal in terms that are clear and simple that this Nation and this city have committed themselves to an all-out fight against crime in any shape or form. In many ways this pending measure complements the Omnibus Crime Control and Safe Streets Act of 1968. There, the Congress began its all-out effort to assist local law enforcement agencies in the fight. The tools requested were granted. More are provided by the pending measure and more still remain to be provided. Surely we can provide more funds to localities to help them carry on more effectively the fight against crime. And we can make more of an effort and devote more of our resources to rooting out the causes of crime—a matter that has hardly been touched. Even further, we can enact the broad reforms that are so vitally needed in our prisons—institutions which serve today largely as criminal breeding grounds.

I must say, that I noted with some sense of pride the provision of this bill that would impose mandatory sentences in the case of those who choose to use a gun when committing acts of crime and violence. Patterned after the Mansfield gun-crime bill which passed the Senate last November 19, this provision would make the offender serve a separate and additional sentence for the mere act of using a gun. I am delighted that the conferees accepted this provision. I believe it will serve to deter the commission of gun crimes.

Before yielding the floor, I would only add that it would be helpful at this time to again set forth the Senate's outstanding record on anticrime proposals. The Senate has now passed all major crime proposals requested and supported by the administration with a single major exception and two minor exceptions which will be considered this session without fail. The major exception is the proposal that would extend the preventive detention procedure to all Federal courts—not just to the District of Columbia. With certain individual items combined into major bills, the list of these proposals—including the District of Columbia proposals—reads as follows:

Goldwater-Mansfield Anti-Obscene Mail amendment to the Postal Reform Act (H.R. 17923);

Organized Crime Control (S. 30);

Drug Bill (S. 2637, S. 3246).

District of Columbia Court Reorganization (S. 2601);

Public Defender, District of Columbia (S. 2602);

Criminal Law Revision, District of Columbia (S. 2869);

Juvenile Code, revision (S. 2981);

Omnibus Judgeship bill (S. 952);

Federal Immunity of Witnesses (S. 2122);

Sources of Evidence (S. 2292);

Corrupt Organizations Act (S. 1861);

Criminal Justice Act amendments (S. 1461);

Illegal Gambling Control (S. 2022);

Increase Penalties, Sherman Antitrust Act (S. 3036, Senate passage expected this session);

Wagering Tax Amendments (S. 1623, Senate passage expected this session).

Mr. President, I urge as strongly as possible that the Senate complete action on this particular conference report, that the conference report be agreed to and that it be sent to the President. I hope this marks only the precursor of other major steps that will be taken; a precursor of other conference reports which will be forthcoming on this vital question in this session.

EXHIBIT 1

PREVENTIVE DETENTION

(By Patrick Hickey*)

The idea that persons accused of crime should be at liberty until a judicial determination of guilt has its roots deep in the history of the English common law.[1] Freedom, however, was conditioned by requiring that bail be posted in order to guarantee the accused's presence at trial.[2] In the United States, the Judiciary Act of 1789 affirmed this right to pretrial release on bail,[3] and the rationale for withholding the right to capital cases was that no bail would be adequate to insure the accused would appear at trial.[4] Furthermore, within days of the Judiciary Act's passage, Congress proposed the eighth amendment with its prohibition against excessive bail.[5] This guarantee has been interpreted to mean that bail not "reasonably calculated" to secure the appearance of an accused is by the fact alone "excessive" within the meaning of the amendment.[6]

Although the role of bail in the criminal justice system seems clearly established as a deterrent to the flight of an accused, it is equally clear that bail was and is used frequently to meet another assumed need of the system—protection of the community from a defendant during the time it takes the system to operate. This use of bail has been implemented tacitly through the disingenuous device of requiring money bail in an amount beyond the means of the accused,[7] on the ground that a high risk of flight demands such an amount.[8] With the defendant's incarceration thereby assured, both the presence of a "subject" upon which the criminal system can operate and the interim safety of the community from further criminal acts by that particular defendant are guaranteed.

In recent years, the risk of flight has ceased to furnish a realistic justification for most pretrial incarceration, having fallen victim to gradual changes in society, indisputable facts obtained in experimental programs, and the revolutionary Bail Reform Act of 1966.[9] Persons intimately involved with the operation of the criminal justice system became aware that even in a substantial amount, a surety bond affords a defendant scant motivation to appear, since it is nearly always posted by a professional bondsman whose fee—defendant's only personal investment—is not returned, regardless of whether the defendant appears or flees.[10] Furthermore, instances of successful flight to avoid prosecution have become less common with improvements in law enforcement, communications, and identification techniques and facilities.[11] Additonally, studies conducted by

Footnotes at end of article.

the Manhattan Bail Project[12] and by the District of Columbia Bail Project[13] have effectively demonstrated that the chance of flight is a tolerable risk. With speedy verification of certain basic facts about an accused,[14] reasonable assurance that he will appear at trial can be obtained by requiring in some cases nothing more than his personal bond to do so. As the cry for reform of the bail system became more strident, Congress' concern heightened, culminating in passage of the Bail Reform Act of 1966.

Nevertheless, efforts to deal with the problems of the bail system were undertaken in light of its traditional function—prevention of flight. No substantial attempts were made in either the Manhattan or District of Columbia experiments to evaluate the likelihood of additional crimes being committed by persons free on pretrial release.[15] Moreover, while Congress recognized that pretrial detention in order to prevent a person from committing crime while on bail was not unrelated to the topic of bail reform, it expressly disclaimed any attempt to deal with the matter in the Bail Reform Act of 1966.[16]

The time for facing this question, however, apparently has arrived. In early 1969, hearings were held before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee[17] and in October 1969, before a House Judiciary subcommittee[18] to consider proposed amendments to the Bail Reform Act. Meanwhile, the Administration has endorsed preventive detention and introduced in both Houses legislation embodying the concept.[19] Because of the currently intense interest in the issues of "crime on bail" and "preventive detention,"[20] this article attempts to treat in detail certain basic aspects of these issues and to evaluate some of the legislation pending before Congress in light of that treatment. Specifically, inquiry is made into (1) whether crime on bail should be treated as a separate type of crime; (2) the proper definition, incidence of occurrence, and predictability of crime on bail; and (3) the appropriateness of preventive detension as a means to combat crime on bail.[21]

ARREST AS A SEGREGATING PRINCIPLE

In an effort to combat a spiraling rate of crime, both the Government and interested citizens have assumed that offenses committed by persons on bail constitute a separate class of crime with attendant peculiarities calling for special remedial measures. In the context of preventive detention, arrest serves as the identifying characteristic common to all crime on bail. Thus, the initial issue must be whether the occurrence of an arrest should be one decisive factor in determining whether preventive detention may be imposed.

Under the Administration's preventive detention scheme, the occurrence of an arrest has both legal and factual significance.[22] Legally, arrest is the crux of the proposal, since it is the only factor with legal significance separating those persons to whom preventive detention may be applied from other persons at least equally dangerous to the community or from the most law-abiding citizens, who are not subject to the detention procedure.[23] Factually, it is significant because it is used to establish a past act from which to predict a future crime.

The significance of arrest

Legal Significance.—Traditionally, the legal purpose of arrest has been to bring an accused into the criminal justice system in order to answer the charges preferred against him.[24] To achieve this end, taking the subject into custody generally has been thought necessary.[25] Because an arrest involves at least a temporary restraint on one's liberty[26] and because innocent people sometimes are arrested, it is necessary to determine whether arrest is a sound jurisdictional basis for a system of preventive detention. The need to make such a determination, however, does not imply that the legal relationship between the State and one of its citizens is not changed by the occurrence of an arrest. Indeed, the legal consequences flowing from an arrest are already substantial and even when the person arrested is ultimately acquitted, may have a disastrous impact upon his life. A citizen may be seized with such reasonable force as is necessary to effectuate the arrest[27] and if he flees, may even be "executed" by the arresting officer, whether suspected of a capital offense or not.[28] He also receives an arrest record[29] and may be fingerprinted and photographed,[30] the results of which remain indefinitely in the police files.[31] He therefore suffers the accompanying and not insubstantial risk that his "mugshot" will be shown to future victims of crime as a possible culprit.[32] He likewise may be searched by the police[33] and required to submit to various identification procedures.[34] Furthermore, the practical prejudice which may flow from an arrest, although not a legal consequence, cannot be ignored.[35]

The substantial protections with which the law has attempted to circumscribe the arrest power bear witness to its potentially ruinous effects on the lives of citizens subjected to its use. An arrest can be made only when there is probable cause to believe that a felony has been committed[36] or when a misdemeanor has been committed in the presence of the arresting officer.[37] When prior judicial authorization is practical, it is strongly encouraged,[38] and a prompt presentment before a committing magistrate, to determine if there is in fact probable cause to warrant further proceedings, is required.[39] Moreover, a person is permitted to resist an illegal arrest, and the officer attempting to carry it out does so at his peril.[40]

To further deter illegal arrests, the use of even the most trustworthy evidence of guilt, if obtained as a result of such an arrest, is denied to the prosecution, although acquittal of an obviously guilty defendant may result.[41] Even if an arrest is technically legal, the existence of an improper motive on the part of the arresting officer will result in the exclusion of evidence so obtained.[42]

Thus, although interference with a citizen's liberty is tolerated, every effort is made to minimize it, and even limited restrictions on freedom of movement must be supported by a strong showing of need.[43] The need to determine, through a criminal trial, whether laws have been violated justifies this interference, and once guilt has been established, punishment of the offender and prevention of future crimes may also warrant deprivation of liberty. If a principle can be drawn from the historical development of the arrest power and the present structure of the criminal justice system, it is that the right to liberty must be removed by a finding of guilt before society will accept incarceration of a citizen, presumably capable of responding to the law's commands, to prevent future crimes.[44]

There are, of course, many instances in which confinement may follow an arrest without a subsequent trial. Some obvious examples include detention of persons incompetent to stand trial,[45] commitment under some sexual psychopath[46] and hospitalization of the mentally ill statutes,[47] and confinement upon being found not guilty by reason of insanity.[48] The mental condition of such persons makes it unfair to adjudge them criminals, but society requires protection from their potential future acts. An equally important goal of such confinement, however, as the cases involving the "right to treatment" make clear, is therapy.[49] The arrests of such persons, although frequenty the first step in the confinement process, is illegally immaterial as a basis for that confinement and does not justify a curtailment of protective procedures. As one court has held, "[t]he procedure for committing an accused by unconvicted felon [to a mental institution] should contain safeguards at least equivalent to those provided in the procedures for civil commitment."[50] Even during the customary 60-day period for a competency examination in the District of Columbia,[51] the court of appeals has directed that the examination be conducted on an outpatient basis, unless the hospital makes a showing that inpatient observation is necessary.[52] Likewise, a mentally competent person may be confined for a lengthy period without conviction by setting unattainable pretrial release conditons or, in capital cases, by denying release altogether. In these cases the ostensible purpose of such detention is to insure the presence of defendant at trial.[53]

Thus, preventive detention, in its adoption of the arrest as the segregating juridical principle, breaks new ground in two areas: the purpose of the confinement is neither therapeutic nor necessary to the operation of the criminal justice system,[54] and the persons to be subjected to it suffer from no mental abnormality that would distinguish them from other citizens.[55] While the novelty of the principle does not make it per se undesirable, claims of its proponents that preventive detention has an honorable ancestry under our law[56] are at best inaccurate.

Factual Significance.—The arrest of a citizen may also have a factual significance, which increases with the tendency of the public and some officials associated with the criminal justice system to equate arrest with the commission of the acts charged.[57] Although many of the protective rules surrounding the exercise of the arrest power operate to strengthen the factual validity of an arrest,[58] it is important to recognize that such rules are not intended to establish facts as a predicate for punishment.

Quite obviously, the reason for this is that an arrest is not currently viewed as a final factual determination that the person arrested committed the offense charged. Such a finding of guilt is left to ensuing stages of the criminal justice system, specifically to the criminal trial, at which the facts are determined by a jury of citizens and the law by an independent judge. Even with the myriad procedural rights afforded a defendant as he moves through the criminal process, sufficient doubt remains that a substantial program of appellate and collateral remedies is maintained in order to confirm the accuracy and fairness of the procedures utilized. At present, there is no available data to establish with any degree of certainty whether or not most arrests are proper.[59] Nevertheless, although not admitted by its advocates, legislation embodying the concept of preventive detention would make arrest a critical factual stage in the process of determining whether to impose such detention.

The factual significance of arrest in a scheme of preventive detention seems to be its value in predicting future harmful conduct. Specifically, the occurrence of an arrest constitutes some evidence that the accused did a particular act in violation of the law, and since he did it on one occasion, he may do it again.[60] Admittedly, preventive detention proposals do not limit the basis of this prediction to the factual probability "established" by an arrest. A finding must also be made that no conditions of release will adequately assure the safety of the community.[61] It is hard to discern in this finding, however, anything more than a judge's guess that a particular defendant will commit another prohibited act in the future.[62] In some proposed detention classes there is the further requirement of a prior conviction for a similar crime,[63] thus suggesting that a similar earlier act provides additional support for the prediction of future acts.

Also required in order to detain certain classes of arrested persons is a finding that

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"there is a substantial probability that the person committed the offense for which he is present before the judicial officer." [64] One reason for this requirement is that it serves as an added check on the validity of an arrest—another screening process to rectify police errors. As a predictive basis, however, it is not at all clear that the most recent act is so significant that it should be singled out for searching inquiry.[65] Notwithstanding, the Attorney General has explained that this finding is "critical" not only as the "best possible evidence" of future dangerousness,[66] but also to insure that persons detained are those likely to be convicted.[67] The distressing inference from the latter rationale is that since only criminals would be subjected to preventive detention, the inequities and vagaries of the prediction are less important.

Arrest as an indicator of guilt

As is apparent, the use of an arrest as a critical factor in a preventive detention system raises several substantial questions; one of these is the extent to which an arrest for a particular crime indicates that the person arrested actually committed that crime. In this regard, available information casts substantial doubt on the validity of equating an arrest for a crime with proof that the crime was committed. For example, a major reduction in the number of persons retained in the criminal justice system occurs as charges are processed through the various stages from arrest to trial. The President's Crime Commission noted 467,000 arrests for serious crimes in 1965, but only 160,000 convictions for such offenses.[68] While there are many factors contributing to this reduction, including prosecutorial discertion, inadequate manpower to investigate and prosecute cases, and plea bargaining, it is a reasonable assumption that a substantial portion of the original arrests were in fact erroneous. If this is not the case, it might be better to inquire why so many are escaping justice after being brought into the system. Even when convictions for lesser offenses are taken into consideration, there is a marked disparity between the number of arrests and the number of subsequent convictions. Thus, only 33 percent of the arrests for burglary in 1965 resulted in a conviction of either the crime charged or a lesser offense; [69] for homicide charges, the figure was only 39 percent.[70] Moreover, the group of persons charged by the prosecutor consisted of approximately 70 to 80 percent of those arrested, and the conviction rate of those charged varied from less than 30 percent to greater than 60 percent.[71] Similarly, the D.C. Crime Commission reported that of 6,266 adult felony arrests in 1965, only 981 convictions were secured in the district court.[72] Even if one assumes that the felony cases then pending would all result in convictions, the total (1221) constitutes less than 20 percent of the total number of adult felony arrests.[73]

In addition, policemen are recognized to be under some pressure to "clear" offenses by means of arrests.[74] Moreover, the excitement and tension of the situations in which policemen frequently must operate, as well as the need for quick action, are hardly conducive to accurate fact-finding.[75] Under such circumstances, it would seem undesirable to place the added burden upon police officers that they treat the arrest of a citizen as a factual determination of guilt.[76] Moreover, arrests at times are made without regard to law violation, such as for "cooling-off" a potentially explosive situation, the safety of the arrested person himself, and the quick establishment of innocence by a lineup or other identification procedure.[77] Although imprecise, these statistics and considerations, without more, make reliance upon an arrest as the basis for establishing a reasonable certitude of guilt extremely questionable.

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CRIME ON BAIL

Since the notion of preventive detention involves a substantial deviation from the usual processes of the criminal justice system, two interrelated premises must be clearly established before deciding that the deviation is warranted: (1) that the amount of crime on bail requires special measures of this nature; and (2) that the potential bail offender can be identified in advance with a sufficient degree of accuracy to make these special measures acceptable. The first premise admittedly raises the question of what incidence of crime on bail would warrant preventive detention. There is obviously no correct answer, but if the extent of such crime is "significant," a deference to legislative judgment would seem appropriate. The second premise is a practical correlative of the first; the size of the needle in the haystack may be determinative of the probability of locating and identifying it.

Defining crime on bail

In evaluating the extent to which crime is committed by persons released on bail, there are certain definitional issues that must be resolved. In the abstract, one coud say that crime on bail means any violation of the law perpetrated during the period of time in which a person who has been arrested is on release from custody with an earlier charge against him still pending in the trial or appellate courts. For crime prevention purposes, however, such a definition is too broad, because it encompasses persons with substantially different legal statuses and offenses with varying impacts upon society. A closer examination of what for purposes of a preventive detention scheme is meant by crime on bail should include an evaluation of the stage of the criminal process at which a person becomes potentially subject to detention, the original charge against him, and the bail offense or offenses sought to be prevented.

The Stage of the Criminal Proceeding.—Although for purposes of analysis potential bail offenders can be separated into three groups based upon the stage of their progress within the criminal justice system, the main focus of the preventive detention debate is upon persons awaiting trial, rather than upon those persons whose trials are in progress or convicted defendants seeking release pending appeal. Once a defendant has been found guilty, both reason and history support a different evaluation of his right to liberty.[78] Imperfect as the system may be, reversals on appeal are the exception rather than the rule,[79] and the sufficiency of the evidence and fairness of the trial procedures are generally deemed adequate.

With regard to a defendant presently on trial, the possibility of interference with the orderly functioning of the judicial process by activities such as witness intimidation or bribery has led the courts to recognize an inherent power to revoke bail and incarcerate for the duration of the trial.[80] Since this power is available for trials already in progress [81] and since the group of defendants affected is not numerically significant in assessing the amount of crime on bail, the need for special legislative treatment is obviated.[82] The relevant group of defendants, therefore, for measuring the amount of crime on bail is limited to those persons awaiting trial.

The Nature of the Original Charge.—If the purpose of preventive detention is to protect society by incarcerating those likely to commit crimes on bail, logically the particular crime for which a defendant is originally charged and for which bail is set bears little relevance to the determination of which individuals should be detained. Society has an equal interest in being protected from the homicide committed by a person awaiting trial for disorderly conduct as it does from a killer-to-be initially charged with robbery. Nevertheless, under the preventive detention schemes proposed, the charge for which a defendant is arrested is made to serve a factual function.[83] An arrest for robbery is taken as some evidence that the defendant committed the act charged, and commission of that act is thought to increase the likelihood of repetition. Assuming the validity of this analysis, preventive detent should be limited to those charges similar to the crimes sought to be prevented.

The Bail Offenses To Be Prevented.—Because the untested remedy of preventive detention deprives a citizen of his liberty on the basis of an uncommitted act, it appropriately should be used, if at all, to prevent only the most serious offenses—those involving violence to the person of the victim. Under this application the definition of crime on bail would be limited to offenses such as robbery, assault, rape, and homicide, and would not include property offenses such as larceny and forgery. Another justification for this limitation is the existence of alternative remedies to rectify injuries to property. Stolen goods can be recovered and returned,[84] insurance protection is available,[85] and in the event of conviction restitution can be ordered as a condition of probation.[86]

Other minor offenses, for which only minimal penalties are imposed, also should be excluded from the group of crimes sought to be prevented by pretrial detention. It would be patently unreasonable to justify detaining a man for months in order to prevent an offense which if committed, customarily would result in a lesser penalty; [87] nor would detention seem appropriate to prevent certain "status" offenses or "crimes without victims," since the need to protect society is less clear, and the interest to be protected less substantial.[88] Thus, vagrancy offenses should not be the type of "crime on bail" sought to be prevented. Similarly, certain gambling offenses and offenses related to private sexual behavior, for which the appropriateness of applying criminal sanctions is in itself questionable, should be exempted.

In sum, crime on bail, as it should be conceived in discussing preventive detention, would be limited to those serious offenses involving personal violence committed while a person is on pretrial release for a similar crime. With this understanding, it is appropriate to inquire as to what information is available concerning the extent of crime on bail as thus defined.

The amount of crime on bail

In 1967, the President's Crime Commission concluded that "the United States is today, in the era of the high speed computer, trying to keep track of crime and criminals with a system that was less than adequate in the days of the horse and buggy." [89] The absence of accurate factual information becomes graphically evident when attempting to assess the amount of crime on bail. Initially, it would be desirable to know at least the number and types of crimes committed by persons on bail; since, however, there is no conclusive evidence of the amount or type of crime on bail,[90] it is necessary to rely on arrest and indictment figures as an indication of the scope of the problem.

Although last year the Hart Committee noted that "estimates of crime allegedly committed while on bail range *from 6% to 70%*," [91] these figures at best reflect the statistical uncertainty of the amount of crime on bail. Giving support to the lower percentage, the D.C. Crime Commission found that only 7.5 percent of those felony defendants released on trial or appeal bonds between January 1, 1963, and October 8, 1965, were rearrested and held for grand jury action on other felony charges allegedly committed while on bail.[92] The percentage of the same group charged with crimes of violence while on bail was 4.5 percent.[93] The Hart Commit-

tee, limiting its figures to pretrial release, reported that of the more than 2,500 persons indicted in the District of Columbia in 1968, 153 (5.9 percent) were reindicted for offenses committed while on bail.[94]

Thus, while certainty is unattainable, present indications are that the total number of felony defendants indicted for other felonies allegedly committed on pretrial release is less than 10 percent of all accused felons on pretrial release. Furthermore, the number of defendants charged with and convicted of violent crimes on bail, whatever the nature of the original felony charge, is probably only about three to five percent. Although the amount of crime on bail that would continue to exist if less stringent recommendations were effected is a highly pertinent question, it is presently unanswerable.

Proponents of preventive detention have taken varying positions on the importance of present statistical evidence of the amount of crime on bail. Both the District of Columbia Crime Commission [95] and the Hart Committee [96] attempted to evaluate the amount of crime on bail in order to support their recommendations for preventive detention, and the Senate Hearings in January 1969, discussed various statistics at length.[97] In August 1969, an administration spokesman, responding to an editorial challenge to the need for preventive detention,[98] relied on both a statistical study indicating that 70 percent of robbery defendants granted pretrial release were rearrested for other offenses allegedly committed while on bond [99] and FBI figures showing that crime in general is committed by recidivists.[100] The accuracy and validity of the former study has been severely criticized as equating arrest with commission of the offense and failing to distinguish the types of bail offenses.[101] The latter information does not appear relevant to crime on bail and seems to suggest that a basic argument in support of preventive detention should be that there is simply too much crime. Although there is no denying that the amount of crime in general is increasing, such an argument avoids the question of whether crime on bail warrants specific and unusual preventive measures.

The latest statement of the Administration's position recognizes that statistics on bail crime are "fragmentary," but relies on estimates of extensive amounts of unreported and unsolved crimes to explain the absence of reliable statistics.[102] The conclusion reached is that "the problem is, by any standard, a serious one." [103] Thus, while initially conceding the relevance of an inquiry into the amount of crime on bail, advocates of preventive detention have now despaired of making a strong statistical case to support their claim of an epidemic of bail crime, and have placed their reliance on the alarming growth rate of crime in general.[104]

Identifying the bail offender

Once the policy decision has been made that preventive detention should be imposed but limited in application to certain serious offenses, the next area of inquiry is the possibility and probability of identifying in advance those persons who, if released on bail, would commit the crimes sought to be prevented. Unless society is willing to tolerate the imprisonment of large numbers of defendants on a random or statistical basis,[105] it is necessary to identify those individuals for whom a judgment can be made that the probability of committing an offense while on bail is so strong that the opportunity to do so must be removed by incarceration. Moreover, in order to instill respect for the fairness and integrity of the criminal justice system, a high degree of accuracy in this prediction must be demanded. To further depersonalize a system already resembling an assembly line would exacerbate the dissatisfaction with the administration of law felt by many citizens.[106] Thus, any decision to enact a scheme of preventive detention must be founded upon a demonstrated ability to predict specific types of future criminal activity, particularly since the person potentially affected has not been convicted of the charge against him, and in the case of a "dangerous crime," [107] may be subject to detention based only upon a policeman's decision to arrest and a hearing that leaves much to be desired.

There is also another reason why the committing magistrate's ability to predict serious crime on bail should be evidenced before implementing a policy of preventive detention. Since preventive detention in operation is a "self-fulfilling prophecy," once in effect it would be impossible to know whether an incarcerated defendant would in fact have committed a serious offense had he been granted pretrial release.[108] It does not take an oracle to predict that the amount of crime on bail will decrease if fewer defendants are released, and such "proof" of preventive detention's effectiveness in reducing crime could lead to proposals for its expanded use.[109]

Even if it can be demonstrated that potential bail offenders are identifiable, it is still necessary to determine the degree of accuracy that should be demanded.[110] Resolution of this issue turns on a variety of value judgments, involving the balance between liberty of the individual and the need for public safety, the cost of detention, the burden upon courts of making detention decisions, and the effect of detention decisions upon subsequent trials and sentences.[111] Nevertheless, the difficult question of the degree of accuracy required is reached only if there is some substantial ability to predict, and such an ability is not only undemonstrated, but instinct with perhaps unsolvable problems.[112]

Predicting that a person will commit crime on bail is further complicated by the requirement of finding that no conditions of release will "reasonably assure the safety of any other person or the community." [113] A similar test is applied currently under the Bail Reform Act for release in capital cases and cases pending appeal,[114] but the Act's broad grant of authority to the court to set release conditions [115] requires a highly speculative inquiry into the etiology of a particular crime before such a finding can validly be made. Thus, if financial motives appear to underlie a defendant's criminal offenses, a release condition requiring him to obtain and maintain steady employment may reduce the likelihood of crime on bail and danger to the community. Because of the subjective nature of the inquiry and the many intangible factors involved, it is difficult to determine what other circumstances the court should consider, such as, for example, the likelihood of a financial crisis in defendant's family as might be caused by unexpected hospitalization expenses or the availability and efficacy of counseling services for a defendant whose offenses are in part the result of psychological problems. Even for the class of persons generally considered the most predictable recidivists—narcotics addicts who commit crimes to support their addiction—the encouraging results of methadone maintenance programs suggest a possible way to break the cycle of recidivous behavior.

Notwithstanding the difficulty and subjectivity of such inquiries, which must be made under present law in assessing the danger posed by defendants in capital cases and cases pending appeal, it is not contended that the likelihood of an accurate prediction is so faint and the prediction should not be permitted. Rather, it is suggested that such speculative predictions, while tolerable when restricted to postconviction release and perhaps to release of defendants charged with capital offenses, are not sufficiently accurate to justify incarceration without conviction under less extreme circumstances.

Moreover, even when investigations have been conducted to determine the ability to predict future violence, the results have been inconclusive. To date, such investigations generally have been in connection with sentencing and parole determinations,[116] in which statistical tabulations, psychological testing, presentence reports, and psychiatric interviews are utilized.[117] Despite ready access to such information, most of which would be unavailable at a detention hearing held at the outset of a prosecution, many authorities on parole and sentencing still disclaim any ability to make a prediction of future violence.[118] Similar disclaimers can be found in the testimony of persons who have studied the crime on bail problem.[119]

Although one might expect advocates of preventive detention to proffer vigorous claims and statistics in support of the purported ability of judges to predict future criminal activity, such is not the case. Furthermore, those claims that are made amount to either unsupported hopes that such predictions can be made [120] or arguments that because predictions are made in administering other aspects of criminal justice, there is no reason not to rely on them in imposing preventive detention, particularly since procedural protections are afforded.[121] More important than the absence of claims, however, is the absence of any proof that a judge can identify those individuals who will commit crime on bail.[122] In addition, no attempt to test this ability has been made, although such tests could be administered without serious difficulty. For example, although utilizing the likelihood of flight standard in determining whether to grant pretrial release, bail-setting magistrates could be asked to indicate on a form those defendants they would have detained in order to prevent bail offenses, the basis for their determination, and any additional information thought necessary or desirable to make such a decision. For those persons released, a followup study would determine the existence and disposition of bail offense charges.[123] Given the ease with which the predictive ability of judges can be tested, it is unreasonable to abandon such a central issue of preventive detention proposals to speculation.

Appeal to the existence of other predictive decisions in the administration of criminal justice is similarly unpersuasive. Parole boards, sentencing judges, and courts setting appeal bonds deal with convicted defendants who no longer have a right to liberty,[124] and authough judges predicting pretrial flight are not dealing with persons already convicted,[125] pretrial incarceration to prevent flight is nearly to the point of being prohibited.[126] Even when detention does result from a prediction of flight, its purpose and justification are to insure defendant's presence at trial, a demonstrably important element in the administration of justice.[127] Embarking upon a system of preventive detention would constitute a significant departure from traditional concepts of criminal justice. To do so when the need is unclear would be precipitous; to do so without any showing that those persons for whom it is designed can be accurately identified would be tragic.

THE ADMINISTRATIVE BILL

Previous legislative proposals

Even before passage of the Bail Reform Act, suggestions for a preventive detention system were being discussed.[128] The D.C. Crime Commission recommended legislation authorizing 30-day detention for any felony who evidenced "a high degree of probability" that if released, he would seriously injure another or be a "grave menace to the physical safety of the public." [129] Likewise, a committee of the American Bar Association, as

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part of a project to develop minimum standards for criminal justice, considered, but subsequently rejected, a tentative preventive detention proposal.[130]

Under the proposal considered by the ABA committee, imposition of preventive detention for a 30-day period would have been authorized with respect to a defendant charged with (1) a felony committed on bond; (2) a felony involving infliction of or threat to inflict serious bodily harm; (3) any felony if the defendant had been convicted within the preceding five years for a violent felony; and (4) any felony if a "high degree of probability" were found that if released, defendant would inflict or threaten to inflict serious bodily harm in order to intimidate witnesses.[131] An evidentiary hearing also would have been required, at which the burden would be on the prosecution to show the need for detention by "clear and convincing evidence." [132] Furthermore, to deal with the difficulties of predicting violence and to minimize potential abuse, the proposals required that in all cases the court additionally find a "high degree of probability that the defendant, if released, would inflict serious bodily harm on another." [133] Thus, a clear and definite standard was set forth, focusing the magistrate's attention on the particular prediction he was asked to make, and the policy decision of which varieties of danger would justify use of detention was resolved in the proposed statute itself.

The ABA committee, however, in rejecting the concept of preventive detention, recognized both the lack of information concerning the extent of crime on bail and, notwithstanding the clear standard to be applied, the difficulties in predicting criminal behavior during the release period.[134] These inherent problems recognized by the ABA can serve as guidelines for an evaluation of the bills introduced on behalf of the Administration to establish a preventive detention program.

Senate Bill 2600

Classes of Defendants Eligible for Detention.—Senate bill 2600,[135] embodying the Administration's preventive detention proposal, establishes three basic classes eligible for detention: those charged with a "dangerous crime," those charged with a "crime of violence," and those who attempt to intimidate witnesses or jurors.[136] Once a person is found to be included in one of these classes and upon determinations that there is substantial probability he committed the offense and that no release conditions will assure the safety of other persons or the community, detention must be imposed.[137]

With regard to "dangerous crime," the Justice Department claims that the class is "restrictively defined to cover offenses with high risk of additional public danger if the defendant is released." [138] Nevertheless, for defendants falling within this class, neither a prior conviction nor an arrest for other violent acts is required in order to impose pretrial detention.[139] The "high risk" offenses included within this category are robbery and attempted robbery, in which force or threats are involved; burglary and attempted burglary of residences or business premises; arson and attempted arson of residences or business premises; rape, carnal knowledge; and assault with intent to commit either; taking and attempting to take indecent liberties with minors; and felonies charging sale or distribution of narcotic, depressant, or stimulant drugs.[140]

Implicit in the Administration's proposal to impose preventive detention upon those persons charged with a "dangerous crime" is the clear use of an arrest as a factual basis for predicting future violence. One might expect, therefore, a strong showing that persons charged with such offenses commit serious and violent crimes on bail. The claim made, however, is much more modest: "There is . . . some evidence that the recidivision rate among robbers and perhaps burglars is markedly higher than in other categories of crimes." [141] In addition to offering no evidence with regard to the other crimes categorized as "dangerous," by making general reference to a higher recidivisim rate such claim indicates nothing about the offense precipitating the subsequent arrest or indictment. While some meaningful limitation has been imposed upon the definition of "dangerous crimes" by eliminating the pickpocket version of robberies, some of the other "limitations" can be classified only as trivial. For example, arson is limited by exclusion of the burning of crops, fences, woods, and haystacks; [142] burglary, which is "limited" to residences and commercial establishments, presumably excludes entry into stables, steamboats, canalboats, vessels or other watercraft, and railroad cars.[143]

Furthermore, those offenses included in the class of dangerous crimes do not in themselves constitute "proof" that the persons accused would present a high risk of violence if released on bail. Burglars make every effort to enter premises when they are unoccupied. Residential burglaries nearly always occur during the daytime, and burglaries of commercial establishments generally take place at night.[144] A survey of 855 of the 904 housebreakings reported in the District of Columbia during a one-month period in 1965 revealed that only 10 homes were occupied at the time of the offense.[145] A similar survey disclosed that carnal knowledge—intercourse with victims under sixteen—was nonforcible in more than half of the cases examined.[146] With regard to drug offenders, merely witnessing "street-corner addict-pushers," who constitute the vast number of narcotics offenders prosecuted in the District of Columbia, should suggest that more substantial support is needed than conclusory generalizations of their high risk of violence.[147] It is insufficient to say "the tie between narcotics and crime is widely recognized" and "[t]hose persons involved in the sale of . . . drugs are often highly organized and can generally be considered dangerous criminals." [148]

The second group eligible for detention, those charged with "crimes of violence," can be detained only if the alleged offense was committee while on bail, parole, or probation and the prior charge was also a crime of violence; if defendant has been convicted of a crime of violence within the preceding 10 years; or if defendant is a drug addict.[149] "Crime of violence" is broadly defined to include such offenses as robbery, burglary, arson, rape, carnal knowledge, homicide, assault with intent to commit any offense, and felonious attempts to commit the aforementioned.[150] The explanation that accompanies the Administration's bill describes the category of violent crimes as one "firmly tied to past conduct justifying a generalized inference of future dangerousness." [151] Neither support for the "generalized inference" nor a definition of the "future dangerousness," however, are indicated.

Detention of the third group—those who threaten witnesses or jurors—is justified as a codification of existing case law.[152] Since it is a crime itself to threaten witnesses and may result in prosecution for obstruction of justice,[153] detention of such offenders is arguably unnecessary. Nevertheless, the reason for the abandonment of the usual procedure of arrest and prosecution for this offense is not explained. Additionally, if authority is granted to terminate release for violation of release conditions, it would seem that the circle of witness intimidation could be easily broken by simply revoking bond on the original charge for which defendant was indicted. It should be noted that for this category of eligible defendants the criterion for detention is not a prediction that defendant will intimidate witnesses, but rather a finding, based upon clear and convincing evidence, that such acts have occurred. The extent to which defendants who threaten witnesses or jurors would be preventively detained is difficult to estimate; the necessity for such a classification, at any rate, is dubious.[154]

Scope of Coverage.—It is difficult and perhaps impossible to obtain an accurate estimate of the number of defendants who would be subject to preventive detention under a proposal such as in the administration bill, but in any event the number would be substantial, almost certainly more than half of those defendants prosecuted in the D.C. federal district court.[155] Pertinent statistical data suggests this conclusion. In fiscal 1968, 1,737 criminal cases were commenced in the United States District Court for the District of Columbia, of which 1,053 cases are broken down into the following categories: robbery (363), burglary (351), sex offenses (95), and narcotics offenses (244).[156] Admittedly, these four classifications do not precisely parallel the offenses included in the Administration's definition of "dangerous crime." [157] Some of the 363 robbery cases were the pickpocket type, an offense not considered a "dangerous crime" under the Administration's proposed bill; similarly, some of the 95 sex offenses were for sodomy and thus not "dangerous crimes" according to the Administration's definition. Nevertheless, the total number of sodomy offenses was probably minimal, and most of the nondangerous robberies were probably reduced to misdemeanors and tried in the court of general sessions.[158] The great majority of the other charges, however, would be included in the classification of "dangerous crimes" and without any additional finding, result in eligibility for detention.

A substantial number of defendants also would fall within the category of those charged with a "crime of violence" who, within the preceding 10 years, have been convicted of an earlier crime of violence. Based upon a study prepared by the Stanford Research Institute, the President's Commission on Crime in the District of Columbia disclosed that 39 percent of all defendants convicted in federal district court had prior felony convictions for the same charge and that 30 percent previously had been convicted of crimes of violence.[159]

One other factor suggests that the reach of the proposed statute would be broad. Bail determinations are made at an early stage in the criminal process, generally at the time of the initial appearance before a magistrate,[160] but when charge reductions occur, as is frequently the case, it is at a later stage of the proceedings.[161] Under the administration bill, the subsequent reduction of a charge to an offense for which detention is not authorized does not necessarily result in release of a detained individual; rather it only demands that he be treated in accordance with the amended release procedures of section 3146 of the Bail Reform Act.[162] Since it is generally conceded that many judges have been ignoring the commands of section 3146 and detaining defendants by imposing high money bonds on ostensible risk-of-flight grounds,[163] it is not unreasonable to assume that a judge who has ordered a man detained pursuant to the proposed preventive detention bill will attempt to continue the incarceration on the pretext of risk of flight.

Safeguards and Required Findings.—If the problem of crime on bail is centered in a pathological few, it is difficult to justify such a broad grant of detention. Moreover, the proposed bill's procedures and standards for making the detention decision afford little protection against abuse of this power. The bill specifically provides that ordinary standards governing the admissibility of evidence

Footnotes at end of article.

do not apply,[164] and while the defendant is given the right to cross-examine witnesses at the detention hearing, this right is of little value if no such witnesses are presented and the "evidence" consists only of the U.S. Attorney's allegations. Moreover, although the bill requires "clear and convincing evidence," [165] this provision seems to have been added primarily for the sake of appearances, since it applies only to the finding that the defendant comes within the class eligible for detention.[166] Regarding the "dangerous crime" category, clear and convincing evidence can be found simply by reading the information or felony complaint, which would be difficult, if not impossible, to dispute. There would also be little problem in determining whether a defendant has been convicted of a crime of violence within the previous 10 years. With respect to the crucial finding, however, that "no condition or combination of conditions of release . . . will reasonably assure the safety of any other person or the community," [167] traditional evidentiary rules are suspended. This determination requires a prediction of neither specific future violence, as did the statue considered by the ABA,[168] nor a specific future act.

To justify detaining a defendant charged with a dangerous crime or crime of violence, a substantial probability that the defendant committed the offense for which he is under arrest must also be found.[169] Although such a finding is generally relevant to a prediction of future violent offenses, its purpose seems to be to obviate complaints that innocent persons might be subjected to detention.[170] If this is its true purpose, a serious question arises whether due process as a prerequisite to the deprivation of liberty would be violated. In addition, the finding of probable guilt need not even be based upon information disclosed to defendant or his counsel, but only upon "information presented to the judicial officer." [171]

To further protect against abuses in imposing preventive detention, the defendant is entitled to a "hearing," which affords him the right to present information and to cross-examine witnesses if the Government chooses to present any.[172] Nevertheless, defendant's probable guilt may be determined by a judge on the basis of secret information. Furthermore, although defendant has a right to appointed counsel, this right may be forfeited, since the hearing is held immediately unless defendant has the presence of mind to request a continuance until counsel is provided.[173] Thus, serving to induce waiver of the right to an attorney, a premium is placed upon the exercise of such right—immediate detention without a hearing.[174]

One additional finding must be made before detention can be imposed; a redetermination that "no condition or combination of conditions will reasonably assure the safety of any other person or the community" must be made.[175] As described by the explanation accompanying the bill, "[i]n essence this finding is the judicial officer's belief that, if released, the person will pose a danger to the community." [176] Since the danger posed is defined in terms of neither the injury to be feared nor the likelihood of its occurrence and since it is difficult to assign any meaning to the phrase "or the community" except to include protection from offenses *not* involving personal violence, the logical conclusion seems to be that the dangers, for example, of one act of shoplifting and of daily homicides are of equal dignity for purposes of imposing preventive detention. Moreover, attention is not directed to defendant's future acts, which might cause qualms about the ability to prognosticate, but to the adequacy of conditions that have already been judged inadequate to protect against bail offenses.[177]

CONCLUSION

The ABA's committee on minimum standards recognized that "the American court system has never really explored alternatives short of outright detention in an effort to curb crime while on release." [178] As a result of the lengthy study by the Hart Committee on the administration of the Bail Reform Act in the District of Columbia, specific recommendations were proposed to minimize the risk of bail offenses.[179] A year later, however, the Committee conceded that there had been little implementation of its suggestions.[180]

Both advocates and opponents of preventive detention agree that speedy trials would greatly reduce the amount of crime on bail,[181] but while the problem of count delay is substantial, indications are that improvement to the point of perfection is not required in order to reduce the amount of crime on bail. If, in fact, potential bail offenders could be identified in advance, those persons, which would be a limited number, could be selected for expedited trial. A study prepared under the auspices of the Hart Committee found that in almost 50 percent of the cases in which a defendant had been indicted for a felony allegedly committed while on bail for a previous felony offense, the second crime occurred more than 90 days after return of the first indictment.[182] Thus, if trials for those defendants posing a high risk of crime on bail could be held within three months of the first indictment, a considerable amount of crime on bail could be prevented, without the necessity of imposing a broadly encompassing scheme of preventive detention.

In spite of the clear paths available to reduce crime on bail, however, the Administration has chosen the Draconian approach of large-scale punitive detention before conviction. It has done so without any clear showing of need, without guidelines for identifying bail offenders, and without adequate procedures for protecting against abuse. In addition, through the concept of preventive detention it rejects the criminal trial as the fact-finding prerequisite for the imposition of punishment, as well as the more basic principle that imprisonment is not imposed for violations before they occur. Even if a statute in the terms of Senate bill 2600 can survive constitutional scrutiny, it seems highly undesirable as a crime prevention measure.

FOOTNOTES

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[1] The practice was first codified by the Statute of Westminster 1, 3 Edw. 1, c. 1275).

[2] The writs *de homine replegiando*, mainprize, and *de odio et atia* were used early to protect both the liberty of the subject and the right to bail. *See* 9 W. HOLDSWORTH, A HISTORY OF THE ENGLISH LAW 105–08 (1938).

[3] Ch. 20, § 33, 1 Stat. 91; *see* Foote, *The Coming Constitutional Crisis in Bail:* I, 113 U. Pa. L. Rev. 959, 971–82 (1965)) (discussion of bail in the colonies). The Judiciary Act, however, includes a significant exception for capital offenses. Judciary Act of 1789, ch. 20, § 33, 1 Stat. 91. *See also* The Crimes Act of 1790, ch. 9, §§ 10, 14, 1 Stat. 112 (treason, wilful murder, robbery, and forgery, *inter alia*, are captial offenses).

[4] State v. Konigsberg, 33 N.J. 367, 164 A. 2d 740, 743 (1960). The exception for capital cases thus was "within the traditional historical ambit of bail release." *Hearings on S. 1357, S. 646, et al. Before the Subcomm. on Constitutional Rights and the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess., 175 (1965) [hereinafter cited as *1065 Hearings*]. *But see Hearings on Amendments to the Bail Reform Act of 1965 Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 91st Cong. 1st Sess. 393 (1969 [hereinafter cited as *1969 Hearings*].

[5] The Judiciary Act was passed on Sept. 24, 1789, The Bill of Rights was proposed by Congress to the States on Sept. 25, 1789.

[6] Stack v. Boyle, 342 U.S. 1, 5 (1951).

[7] *See* United States v. Lawrence, 26 F. Cas. 887, 4 D.C. (4 Cranch) 518 (No. 15,577) (D.C. Cir. 1835). In *Lawrence*, Francis Scott Key, then a district attorney, urged setting of a high bond to preventively detain a defendant who, imagining himself to be the King of England, attempted to assassinate President Jackson. The prosecutor's view apparently has not changed with the passage of time. In 1969, the chief of the criminal division of the United States Attorney's Office in the District of Columbia acknowledged a general policy of holding persons accused of threats against the President on high bail until a "mental, criminal and narcotics check" had been run. Washington Post, Aug. 18, 1969, § A, at 1, col. 1. Unreasonable bail also was recently used in Chicago to detain members of the Blackstone Rangers during a "long, hot summer." D. OAKS & W. LEHMAN, A CRIMINAL JUSTICE SYSTEM AND THE INDIGENT 97–98 n. 152 (1968).

In England, the attempt of judges to negate the right to bail by setting excessive sums was one of the complaints precipitating the English Bill of Rights. 1 W. & M. 1, c. 2, § 1(10) (1689); *see* 9 W. HOLDSWORTH, *supra* note 2, at 118–19.

[8] The inequity of making imprisonment before conviction dependent upon the size of a man's bankroll has been highlighted by Supreme Court decisions striking down financial resources as a relevant factor in the administration of criminal justice. *E. g.*, Douglas v. California, 372 U.S. 353 (1963) (appointed counsel); Griffin v. Illinois, 351 U.S. 12 (1956) (right to free trial transcript). *See generally* Longsdorf, *Is Bail a Rich Man's Privilege?*, 7 F.R.D. 309 (1947). This disparity of treatment is exaggerated as delays in the trial process increase.

[9] 18 U.S.C. §§ 3146–52 (Supp. IV, 1969). *See generally* Ervin, *The Legislative Role in Bail Reform*, 35 GEO. WASH. L. REV. 429 (1967); Wald & Freed, *The Bail Reform Act of 1966: A Practitioner's Primer*, 52 A.B.A.J. 940 (1966).

[10] In some instances, bondsmen demand "collateral" in addition to the premium. Collateral, however, is not generally supplied by the accused himself, but by his family or friends.

[11] *See* Note, *Bail: An Ancient Practice Reexamined*, 70 YALE L.J. 966, 973 (1961).

[12] *See* Ares, Rankin & Sturz, *The Manhattan Bail Project: An Interim Report on the Use of Pre-Trial Parole*, 38 N.Y.U.L. REV. 67 (1963).

[13] *See* R. MOLLEUR, BAIL REFORM IN THE NATION'S CAPITAL (1966).

[14] Such factors would include length of residence in the area, employment, and relatives and friends residing locally. The interview forms used in the District of Columbia are reprinted in R. MOLLEUR, *supra* note 13, at A84–A87.

[15] A certain amount of "evaluation," however, was conducted by the various release programs in determining those offenses for which they would recommend a defendant's release. Many of the projects considered only misdemeanor defendants and some only certain misdemeanor offenses. In contrast, the District of Columbia Bail Project considered nearly all offenses as "eligible." *See* R. MOLLEUR, *supra* note 13, at 50–51.

[16] "A solution [to the problem of crime on bail] goes beyond the scope of the present proposal and involves many difficult and com-

plex problems which require deep study and analysis. The present problem of reform of existing bail procedures demands an immediate solution. It should not be delayed by consideration of the question of preventive detention." (H.R. REP. No. 1541, 89th Cong., 2d Sess. 6 (1966). A similar disclaimer was entered by the Senate. S. REP. No. 750, 89th Cong., 1st Sess. 5 (1965).)

[17] *1969 Hearings, supra* note 4.

[18] *Hearings on Amendments to the Bail Reform Act of 1966 Before the Subcomm. on Constitutional Rights of the House Comm. on the Judiciary,* 91st Cong., 1st Sess. (1969). In addition, the Senate Committee on the District of Columbia held hearings in November 1969, on Senator Tydings' preventive detention proposal for the District of Columbia. *Hearings on S. 3034 Before the Senate Comm. on the District of Columbia,* 91st Cong., 1st Sess., pt. 6 (1969); *see* note 177 *infra.*

[19] S. 2600, 91st Cong., 1st Sess. (1969) [hereinafter cited as S. 2600]. All references to the Administration's proposal will be cited to the Senate bill. The proposal, if enacted, would both amend sections of and add sections to the Bail Reform Act of 1966, 18 U.S.C. §§ 3146–52 (Supp. IV, 1969). For the convenience of the reader, these section numbers will also be indicated. For the text of S. 2600, comments of the Attorney General, and an explanatory statement on the proposed amendments, see CONG. REC., vol. 115, pt. 14, pp. 19259–19264. Three days after Senator Hruska introduced S. 2600, Congressman McCulloch introduced an identical bill in the House. H.R. 12806, 91st Cong., 1st Sess. 1969).

[20] *See, e.g.,* R. GOLDFARB, RANSOM 127–49 (1965); PRESIDENT'S COMM'N ON CRIME IN THE DISTRICT OF COLUMBIA, REPORT 513–27, 930–36 (1966) [hereinafter cited as D.C. CRIME COMM'N REPORT]; PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS 30–40 (1967) [hereinafter cited as TASK FORCE REPORTS COURTS]; Foote, *supra* note 3, at 963–65; Note, *Preventive Detention Before Trial,* 79 HARV. L. REV. 1489 (1966).

[21] This article does not treat the constitutional status of the right to bail, the presumption of innocence, or the right to due process of law. For a discussion of these issues, see AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PRETRIAL RELEASE 66–71 (Approved Draft 1968) [hereinafter cited as ABA MINIMUM STANDARDS]; Foote, *The Coming Constitutional Crisis in Bail: II,* 113 U. PA. L. REV. 1125 (1965); Mitchell, *Bail Reform and the Constitutionality of Pretrial Detention,* 55 VA. L. REV. 1223 (1969); Note, *Preventive Detention, supra* note 20, at 1498–1505.

[22] Unless otherwise indicated, the system for detention discussed in this article is that proposed in the administration bill, S. 2600, 91st Cong., 1st Sess. (1969). For a detailed discussion of the bill's provisions, see notes 135–77 *infra* and accompanying text.

[23] Other legal factors are relevant to preventive detention, but are not used as the justification for detention. Thus, the fact that a person is already on bond on another charge or is on probation or parole following an earlier conviction may be utilized in reincarcerating him. In such cases, however, detention is based upon violation of the earlier conditions of release.

[24] *See* W. LAFAVE, ARREST: THE DECISION TO TAKE A SUSPECT INTO CUSTODY 3–4 (1965).

[25] *See* Aspen, *Arrest and Arrest Alternatives: Recent Trends,* 1966 U. ILL. L.F. 241, 242. This concept, however, has been the subject of recent criticism. *Id.* at 249–54.

[26] Henry v. United States, 361 U.S. 98, 103 (1959). "It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." Terry v. Ohio, 392 U.S. 1, 16 (1968).

[27] Costello v. United States, 298 F.2d 99, 100 (9th Cir. 1962).

[28] *See* Rummel, *Right of Law Enforcement Officers to Use Deadly Force to Effect an Arrest,* 15 N.Y.L.F. 749 (1968).

[29] In the District of Columbia, arrest records are required by statute. D.C. CODE ANN. §§ 4–134 to 134b (1967).

[30] Kennedy v. United States, 122 U.S. App. D.C. 291, 293, 353 F.2d 462, 466 (1965); United States v. Kelly, 55 F.2d 67, 70 (2d Cir. 1932); *cf.* Escobedo v. Illinois, 378 U.S. 478, 498 (1964) (White, J., dissenting).

[31] D.C. CODE ANN. § 4–137 (1967).

[32] There is some authority that upon acquittal a defendant can compel either return or destruction of his photograph. *See* Itzkovitch v. Whitaker, 117 La. 708, 42 So. 228 (1906); *cf.* Morrow v. District of Columbia, 417 F.2d 728 (D.C. Cir. 1969), *rev'g In re* Alexander, 243 A.2d 901 (D.C. 1968) (judge has authority to enjoin dissemination or use of arrest record); United States v. McLeod, 385 F.2d 734, 749–50 (5th Cir. 1967) (records of harassing-type arrests of civil rights demonstrators ordered expunged); United States v. Kalish, 271 F. Supp. 968 (D.P.R. 1967); State *ex rel.* Reed v. Harris, 348 Mo. 426, 433, 153 S.W.2d 834, 837 (1941) (innocent person may have fingerprint records and photograph returned).

[33] See Terry v. Ohio, 392 U.S. 1, 17 n.13 (1968) (description of search procedure).

[34] Appearance in a lineup may be compelled under some circumstances even though the suspect has been released on bond. United States v. Allen, 408 F.2d 1287 (D.C. Cir. 1969), *But cf.* Adams v. United States, 130 U.S. App. D.C. 203, 399 F.2d 574 (1968). Legislation recently has been proposed to require suspects for whom probable cause to arrest was lacking to appear for various identification procedures. S. 2997, 91st Cong. 1st Sess. (1969); *see* CONG. REC. Vol. 115, pt. 21, pp. 28896–28900.

[35] An arrested person may have his name associated with a crime by the press. If he has funds, he may be required to pay a substantial fee to a bondsman in order to obtain his release and to an attorney to represent him, and he runs the risk that he will lose his job prior to obtaining release. If the judge believes that he is likely to flee or desires to confine him for other reasons, unattainable bail conditions may be set, and if detained, he generally will be confined in a jail that is in worse condition than a prison. *See* J. CAMPBELL, J. SAHID & D. STANG, LAW AND ORDER RECONSIDERED 574–80 (Report to the Nat'l Comm'n on the Causes and Prevention of Violence, 1969). Professor Foote has noted ironically that after conviction, a prisoner's "standard of living is almost certain to rise." Foote, *supra* note 21, at 1144.

[36] Draper v. United States, 358 U.S. 307 (1959).

[37] Many jurisdictions have statutorily changed this common law rule for selected misdemeanors. *See e.g.,* D.C. CODE ANN. § 23–306 (1967) (possession of burglar tools, dangerous weapons, or lottery tickets); D.C. CODE ANN. § 33–402 (1967) (possession or sale of narcotic drug).

[38] Ford v. United States, 122 U.S. App. D.C. 259, 352 F. 2d 927 (1965) (en banc). *Ford* also notes that in the exercise of its supervisory power, the court can compel resort to a magistrate if "a practice of not getting warrants, even though practicable to do so, was resulting in a significant number of unreasonable arrests, inflicting an injustice upon the immediate victims as well as a strain upon the judicial machinery." *Id.* at 265, 352 F. 2d at 933.

[39] FED. R. CRIM. P. 5; *see* Mallory v. United States, 354 U.S. 449 (1957). Currently there is no procedure for testing the validity of a misdemeanor arrest, although such validity may be decided as an ancillary issue to a ruling on the admissibility of evidence obtained incident to the arrest. The D.C. Circuit, however, recently held in affirming the grant of a writ of habeas corpus that a juvenile being detained pending a hearing on a law violation charge in juvenile court is constitutionally entitled to a hearing on the existence of probable cause. Cooley v. Stone, 414 F.2d 1213 (D.C. Cir. 1969); *accord,* Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis. 1969) This ruling seems equally applicable to misdemeanors, although habeas corpus may be an awkward procedure when compared to a rule 5 preliminary hearing.

[40] *See* Note, *Criminal Law: The Right to Resist an Unlawful Arrest: An Outdated Concept?,* 3 TULSA L.J. 40 (1966).

[41] Beck v. Ohio, 379 U.S. 89 (1964).

[42] Hill v. United States, 418 F.2d 449 (D.C. Cir. 1968); Hutcherson v. United States, 120 U.S. App. D.C. 274, 281, 345, F.2d 964, 971 (Bazelon, C.J., concurring), *cert. denied,* 382 U.S. 894 (1965); Taglavore v United States, 291 F.2d 262, 265 (9th Cir. 1961).

[43] *Compare* Terry v. Ohio, 392 U.S. 1, 24, 29–30 (1968) (showing of need to search for weapon), *with* Sibron v. New York, 392 U.S. 40, 62–66 (1968) (inadequate showing of need to search for narcotics).

[44] In striking down a portion of the District of Columbia vagrancy statute, Judge Robinson quoted with approval the trial judge's characterization of the unlawful purpose of the vagrancy law as "one of preventive conviction imposed upon those who because of their background and behavior are more likely than the general public to commit crimes," and added that the "statistical likelihood that a particular societal segment will engage in criminality is not permissible as an all-out substitute for proof of individual guilt." Ricks v. District of Columbia, 414 F.2d 1097, 1109–10 (D.C. Cir. 1968); *see* Note, *Use of Vagrancy-Type Laws for Arrest and Detention of Suspicious Persons,* 59 YALE L.J. 1351 (1950).

[45] D.C. CODE ANN. § 24–301(a) (1967).

[46] *Id.* §§ 22–3503 to –3511.

[47] *Id.* §§ 21–541 to –551.

[48] *Id.* § 24–301(d).

[49] Millard v. Cameron, 125 U.S. App. D.C. 383, 373 F.2d 468 (1966); Rouse v. Cameron, 125 U.S. App. D.C. 366, 373 F.2d 451 (1966).

[50] Miller v. Blalock, 411 F.2d 548, 549 (4th Cir. 1969) (Haynsworth, C.J.); *cf.* Baxstrom v. Herold, 383 U.S. 107 (1966); Cameron v. Mullen, 128 U.S. App. D.C. 235, 387 F.2d 193 (1967).

[51] D.C. CODE ANN. § 24–301 (1967).

[52] Marcey v. Harris, 400 F.2d 772 (D.C. Cir. 1968).

[53] *See generally* note 4 *supra.* It is generally conceded that judges in fact set high bonds to assure confinement of individuals they consider dangerous. *See, e.g., 1969 Hearings, supra* note 4, at 289; Mitchell, *supra* note 21, at 1237. Indeed, proponents of preventive detention sometimes argue that one of its virtues will be to bring this practice out in the open where it can be controlled. The desirability, however, of legitimizing an illegal, sub rosa practice by adopting it as an express principle seems dubious. Nor does it seem likely that judges who have swallowed the camel of clearly illegal pretrial detention under the Bail Reform Act will strain at observing the procedures of the proposed detention scheme.

[54] As the name implies, the purpose of preventive detention is generally considered to be the protection of society by the prevention of future crimes. Some intent to punish those persons detained for the crimes they would commit if free and for the crime for which they were arrested, however, also appears to be involved. In either case, a strong relation-

ship exists between the purpose of the confinement and the adequacy of the procedures. *See* Rouse v. Cameron, 125 U.S. App. D.C. 366, 368 n.9, 373 F.2d 451, 453 n.9 (1966). *See also* Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963); text at notes 64–67 *infra*.

[55] One exception might be those provisions of S. 2600 dealing with narcotics addicts. *See* S. 2600 § 2[§ 3146 B].

[56] The Hart Committee stated its belief that "[p]reventive detention is an historically recognized principle and is not a novel method of protecting the interests of society." JUDICIAL COUNCIL COMM. TO STUDY THE OPERATION OF THE BAIL REFORM ACT IN THE DISTRICT OF COLUMBIA, REPORT 32 (1969) [hereinafter cited as HART COMM. REPORT].

[57] *See* Comment, *The Administration of Justice in the Wake of the Detroit Civil Disorder of July 1967*, 66 MICH. L. REV. 1544, 1573 (1968).

[58] The preliminary hearing and grand jury procedures in felony cases are examples. Their effectiveness is limited, however, since the grand jury proceeding is non-adversary, and the preliminary hearing is often waived. *See* H. SUBIN, CRIMINAL JUSTICE IN A METROPOLITAN COURT 158 (1966).

[59] Proper, in this context, means that the defendant committed the acts charged and that these acts constitute the offense charged.

[60] This inference is by no means inexorable. Thus, although the D.C. Crime Commission found that the bail offenders studied "tend to commit felonies of the same type as the original offense," it also noted that studies of convicted offenders in the District of Columbia did not indicate a significantly higher percentage of prior violent crimes when the most recent charge was an offense involving violence. D.C. CRIME COMM'N REPORT, *supra* note 20, at 136, 517. Moreover, the President's Crime Commission noted studies of recidivism showing that persons imprisoned for murder, rape, and aggravated assault were *least* likely to commit additional crimes after release. PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CRIME AND ITS IMPACT—AN ASSESSMENT 79 (1967) [hereinafter cited as TASK FORCE REPORT: CRIME].

[61] S. 2600, *supra* note 19, § 2 [§ 3146A].

[62] *See* notes 105–27 *infra* and accompanying text.

[63] Under the Administration's proposal, this requirement would attach to those defendants charged with "crimes of violence." S. 2600 § 2 [§ 3146A(a)]. Nothing within the present concept of criminal justice, however, even suggests that part of the punishment for a present conviction should be future eligibility for detention.

[64] S. 2600 § 2 [§ 3146A(b)(2)(C)].

[65] *See* note 60 *supra*. Richard A. McGee, Administrator of the California Youth and Adult Corrections Authority, has commented that "[e]ven the person who has committed a violent act may stop at one." McGee, *Objectivity in Predicting Criminal Behavior*, 42 F.R.D. 192, 194 (1968). Moreover, a behavioral scientist attempting to make a prediction of future violence might well be more interested in a pattern of behavior than in a single act. If this is a better predictive basis, the required finding should be a substantial probability of particular future conduct based upon several past acts of a similar nature. *See* Minnesota *ex rel.* Pearson v. Probate Court, 309 U.S. 270, 274 (1940); Rome, *Identification of the Dangerous Offender*, 42 F.R.D. 195 (1966).

[66] Mitchell, *supra* note 21, at 1238–39. Elsewhere in the same article, however, the Attorney General notes the "almost universal experience of law enforcement officials" that persons charged with premeditated murder "are the least likely of all offenders to be recidivists." *Id.* at 1236; *see* note 60 *supra*.

[67] Mitchell, *supra* note 21, at 1238–39. The language of the proposed statute requires a substantial probability of guilt, not conviction. The analysis accompanying S. 2600 points out that the "substantial probability" of guilt requirement "is an added protection for the defendant and should bar the possibility of detention in weak government cases." CONG REC. Vol. 115, pt. 14, p. 19264). The suggestion seems to be that detention of a defendant who will be subsequently convicted is appropriate whatever the likelihood that he will commit bail offenses. It is noteworthy in this regard that less than half of all defendants sentenced by federal courts in fiscal 1968 received sentences of imprisonment. DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, ANNUAL REPORT 264 (table D5) (1968).

[68] *See* ABA MINIMUM STANDARDS, *supra* note 21, at 24.

[69] *See* TASK FORCE REPORT: CRIME 39 (table 19).

[70] *See id.*

[71] *Id.*

[72] D.C. CRIME COMM'N REPORT, *supra* note 20, at 240–41.

[73] *Id.*

[74] TASK FORCE REPORT: CRIME 38.

[75] Even when a defendant is caught "red-handed" and properly arrested, subsequent evidence may reveal that his mental state at the time of the offense was below the minimum necessary for criminal responsibility, in which case an acquittal by reason of insanity will result.

[76] A nationwide survey for the President's Crime Commission indicated that nearly half the population thought it better for the police to risk arresting an innocent person in a doubtful case than "to be really sure they are getting the right person" before making the arrest. TASK FORCE REPORT: CRIME 92.

[77] ABA MINIMUM STANDARDS 32.

[78] *Compare* 18 U.S.C. § 3146 (Supp. IV, 1969), *with* 18 U.S.C. § 3148 (Supp. IV, 1969). The legislative history of the Bail Reform Act, however, indicates that even in cases of bail pending appeal, the defendant is "presumptively to be released." H. Rep. No. 1541, 89th Cong., 2d Sess. 15 (1966); S. Rep. No. 750, 89th Cong., 1st Sess. 19 (1965).

[79] DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, ANNUAL REPORT 174 (table B1) (1968).

[80] Carbo v. United States, 288 F.2d 686 (9th Cir.), *cert. denied*, 365 U.S. 860 (1961). For a full discussion of the *Carbo* power in relation to the administration's proposal for preventive detention, see notes 152–54 *infra* and accompanying text.

[81] A recent District of Columbia case approves in dictum consideration of witness intimidation at the pretrial stage. *See* United States v. Gilbert, No. 23,711 (D.C. Cir., Dec. 17, 1969) (per curiam).

[82] Senate Bill 2600, however, does contain special detention provisions for persons who intimidate witnesses or jurors. S. 2600 § 2 [§ 3146A(a)(3)].

[83] *See* notes 57–67 *supra* and accompanying text.

[84] Approximately 64% of all stolen cars are recovered within 48 hours; only 12% are never recovered. TASK FORCE REPORT: CRIME 49.

[85] Although insurance is "usually involved" in cases of auto theft, less than 20% of all other crime losses are covered by insurance. *Id.* at 24, 58.

[86] U.S.C. § 3651 (1964).

[87] *Cf.* ABA MINIMUM STANDARDS 83; Note, *Preventive Detention*, *supra* note 20, at 1505.

[88] *See* Note, *The United States Court of Appeals for the District of Columbia Circuit: 1968–1969 Term*, 58 GEO. L.J. 80, 195–200 (1969).

[89] TASK FORCE REPORT: CRIME 123.

[90] Under a recent grant from the Law Enforcement Assistance Administration, the National Bureau of Standards has been commissioned to undertake an extensive study of bail crime

[91] HART COMM. REPORT, *supra* note 56, at 18 (emphasis added). The initial experience of bail projects suggests that with regard to the group of defendants who are not likely to flee, the amount of crime on bail is negligible. In St. Louis, the rearrest rate was two percent (4/170); in Des Moines, one percent (2/160). The Vera Project in New York City found that only 20 out of approximately 3,200 persons on pretrial releases were rearrested; the District of Columbia Bail Project reported a rearrest rate of 9.5%, but with only about two percent of the total number of persons released rearrested on "serious charges." Note, *Preventive Detention*, *supra* note 20, at 1496.

[92] D.C. CRIME COMM'N REPORT, *supra* note 20, at 514.

[93] *Id.* at 931.

[94] HART COMM. REPORT 19.

[95] D.C. CRIME COMM'N REPORTS 514–20.

[96] HART COMM. REPORT 18–28.

[97] *1969 Hearings*, *supra* note 4, at 88–89, 128–32.

[98] Wall Street Journal, Aug. 29, 1969, at 8, col. 3; *see* Wall Street Journal, July 31, 1969, at 10, col. 1.

[99] HART COMM. REPORT 20–21.

[100] *See generally* FBI, UNIFORM CRIME REPORTS: CRIME IN THE UNITED STATES—1968.

[101] In arriving at the 70% figure, the nature of the offenses involved was not taken into account, and arrests themselves were relied upon as proof that the offenses occurred. A partial reexamination of the data sheets from which this figure was compiled indicated that 27% of the robbery releasees surveyed were rearrested for violent crimes. HART COMM. REPORT 35.

[102] The suggestion has been made, which is undoubtedly correct, that "the precise extent of recidivism on pretrial release can never be fully documented." Mitchell, *supra* note 20, at 1241.

[103] Mitchell, *supra* note 20, at 1241–42.

[104] *But see* note 90 *supra*. According to Senator Ervin, preliminary indications are that there is less crime on bail than previously thought. Washington Post, Oct. 17, 1969, § C, at 4, col. 1

[105] Such an approach is not without constitutional pitfalls. *See* Skinner v. Oklahoma *ex rel. Williamson*, 316 U.S. 535, 543–45 (1942) (Stone, C.J., concurring).

[106] TASK FORCE REPORT: COURTS, *supra* note 20, at 29 (1967); *1969 Hearings* 352 (statement of Professor Foote); *cf.* Comment, *The Administration of Justice*, *supra* note 57, at 1627–30.

[107] S. 2600 § 7 [§ 3152(3)]; *see* notes 138–48 *infra* and accompanying text.

[108] ABA MINIMUM STANDARDS, *supra* note 21, at 69.

[109] *Cf. 1969 Hearings* 32 (statement of Chief Judge Greene, District of Columbia Court of General Sessions). Justice Jackson's warning about the danger of any principle that "lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need," seems particularly apropos in light of the use by advocates of the principle of preventive detention of figures reflecting high crime rates. *See* Korematsu v. United States, 323 U.S. 214, 246 (1945 (dissenting opinion).

[110] Professor Dershowitz has suggested that a 75% accuracy rate would be an adequate basis for a preventive detention plan. *1969 Hearings* 183–84.

[111] *See e.g.*, U.S. ATT'Y GENERAL'S COMM. ON POVERTY AND THE ADMINISTRATION OF FEDERAL CRIMINAL JUSTICE, REPORT 72–77 (1963).

[112] The problems inherent in a prediction of violent crime on bail were described recently:

"Predictions of human conduct are difficult to make, for man is a complex entity and the world he inhabits is full of unex-

pected occurrences. Predictions of rare human events are even more difficult. And predictions of rare events occurring within a short span of time are the most difficult of all. Acts of violence by persons released while awaiting trial are relatively rare events (though more frequent among certain categories of suspects), and the relevant time span is short. Accordingly, the kind of predictions under consideration began with heavy odds against their accuracy. A predictor is likely to be able to spot a large number of persons who would actually commit acts of violence only if he is also willing to imprison a very much larger number of defendants who would not, in fact, engage in violence if released." (Dershowitz, *Preventing "Preventive Detention,"* NEW YORK REVIEW OF BOOKS, Mar. 13, 1969, at 24–25, *reprinted in 1969 Hearings* 816.)

[113] S. 2600 § 2 [§ 3146A(b)(2)(B)]. The court is not required, however, to predict that the defendant will commit a specific crime if released. *See* text at notes 175–77 *infra*.

[114] 18 U.S.C. § 3148 (Supp. IV, 1969); *see* White v. United States, 412 F.2d 145 (D.C. Cir. 1968).

[115] The present authorization under the Bail Reform Act permits imposition of "any other condition deemed reasonably necessary to assure appearance as required." 18 U.S.C. § 3146(a)(5) (Supp. IV, 1969). Although the Administration's bill does authorize consideration of safety to the community in setting release conditions, it does not propose an amendment that would permit the court to fashion new conditions unrelated to appearance for trial, in order to prevent danger. *See* S. 2600 § 1(a) [§ 3146(a)].

[116] *See, e.g.*, McGee, *Objectivity in Predicting Criminal Behavior*, 42 F.R.D. 192 (1968); Thomsen, *Sentencing the Dangerous Offender*, 45 F.R.D. 175 (1968); Wolfgang, *Violence and Its Relation to Sentencing*, 46 F.R.D. 533 (1969).

[117] For an example of the diagnostic problems involved with even carefully planned tests to evaluate a potential for violence, see Sarban & Wenk, *Resolution of Binocular Rivalry as a Means of Identifying Violence-Prone Offenders*, 60 J. CRIM. L.P. & P.S. 345 (1969).

[118] Professor Wolfgang has commented that "[t]he difficulties of predicting violent behavior, even among the small and limited set of persons to be released on parole, preclude efforts to obtain much accuracy or efficiency beyond the operation of chance." Wolfgang, *supra* note 116, at 550–51.

At the 1969 hearings, one witness commented that some future bail offenders are easily identified, stating that "[i]f Dillinger came before you, anybody with three grains of sense knows he is dangerous." *1969 Hearings* 22. The example given was infelicitous: Dillinger's one-man crime wave, which ended with his death in a gun battle with FBI agents, began within months of his release on parole from the Indiana State Prison, thus suggesting that his dangerousness was not particularly apparent to the parole board. *See* D. WHITEHEAD, THE FBI STORY 103–06 (1956).

[119] *See, e.g., 1969 Hearings* 37 (Chief Judge Harold H. Greene), 60 (Bruce D. Beaudin, Director, D.C. Bail Agency), 131 (Mrs. Patricia M. Wald), 226 (H. Subin, Associate Director, Vera Institute of Justice), 227 (Chief Judge Alfred P. Murrah).

[120] *See id.* at 124, 220.

[121] *E.g.*, HART COMM. REPORT 34; *1969 Hearings* 220.

[122] An informal survey of two judges' ability to predict is described in *1969 Hearings* 69–71, 182.

[123] *1969 Hearings* 175–76, (proposal of Professor Alan Dershowitz); *1969 Hearings, supra* note 4, at 206–07 (proposal of Mrs. Patricia M. Wald).

[124] Although consideration of probable recidivism is permitted in such proceedings, between 10 and 20% of those persons released and presumably predicted to engage in future criminal activity did in fact commit additional offenses. Nationally, statistics show that 7.5% of those defendants removed from probation supervision during fiscal 1967 were removed for a "major offense violation" of their probation. The percentage of major violations while on parole for the same year was 20.3. DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, ANNUAL REPORT 154 (table 7) (1968). In fiscal 1966, the figures were 8.5% and 19.6% respectively. DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, ANNUAL REPORT 160 (table 7) (1967).

[125] Such defendants, of course, may have prior convictions, but they are not yet convicted of the charge for which release conditions are being set.

[126] Both in pretrial capital cases, and on appeal, defendants are "presumptively to be released." H.R. REP. NO. 1541, 89th Cong., 2d Sess. 15 (1966).

[127] *See* FED. R. CRIM. P. 43. On the trial court's duty to determine that the absence of defendant is voluntary, see United States v. McPherson, —— F.2d —— (D.C. Cir. 1969).

[128] *See* Note, *Preventive Detention, supra* note 20.

[129] D.C. CRIME COMM'N REPORT, *supra* note 20, at 527–28.

[130] ABA MINIMUM STANDARDS, *supra* note 21, at 83.

[131] Although not relevant to a discussion of the Administration's preventive detention proposal, two other classes of defendants were also eligible for detention: those charged with capital offenses, and those charged with felonies in which there is a high degree of probability that if released, defendant would flee the United States. *Id.* at 85.

[132] *Id.*

[133] *Id.* at 86.

[134] *Id.* at 83–84.

[135] S. 2600, 91st Cong., 1st Sess. (1969); *see* note 19 *supra*.

[136] S. 2600 § 2 [§§ 3146A(a)(1)–(3)].

[137] S. 2600 § 2 [§§ 3146A(b)(1)–(2)].

[138] Letter from Attorney General John N. Mitchell to the Vice President, in CONG. REC. vol. 115, pt. 14, p. 19262.

[139] *Id.*

[140] S. 2600 § 7 [§ 3152(3)].

[141] CONG. REC. vol. 115, pt. 14, p. 19263.

[142] *Compare* D.C. CODE ANN. § 22–401 (1967), *with* D.C. CODE ANN. § 22–404 (1967).

[143] D.C. CODE ANN. § 22–1801 (1967).

[144] D.C. CRIME COMM'N REPORT 85.

[145] Of the ten residents found at home, all were "assaulted in some manner." *Id.* at 86.

[146] *Id.* at 49.

[147] *But see* CONG. REC. vol. 115, pt. 14, p. 19263.

[148] *Id.*; *cf.* D.C. CRIME COMM'N REPORT 568.

[149] S. 2600 § 2 [§§ 3146A(a)(2), 3146B].

[150] S. 2600 § 7 [§ 3152(3)].

[151] 115 CONG. REC. S7910 (daily ed. July 11, 1969).

[152] *Id., citing* Carbo v. United States, 82 S. Ct. 662 (Douglas, Circuit Justice, 1962); Mitchell, *supra* note 21, at 1235, *citing* Fernandez v. United States, 81 S. Ct. 642 (Harlan, Circuit Justice, 1961). Neither of the two cases cited in support of this proposition involved detention during the pretrial period. Moreover, until very recently, no federal court ever had applied the *Carbo* power to detain a defendant for witness intimidation prior to his trial. In December 1969, however, the D.C. Circuit ruled that the courts' inherent power to authorize detention to prevent witness intimidation could be invoked during the pretrial period as well. United States v. Gilbert, No. 23,711 (D.C. Cir., Dec. 17, 1969) (per curiam).

[153] 18 U.S.C. § 1503 (1964).

[154] The clear and convincing evidence of witness intimidation would be more than adequate to support at least an arrest warrant on an obstruction of justice charge.

[155] *But see* Mitchell, *supra* note 21, at 1237, noting that an "informal study" by the Department of Justice indicated that approximately 10% of the defendants charged during a two week period in the District of Columbia would have been eligible for detention.

[156] *See* DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, ANNUAL REPORT 246 (table D3) (1968).

[157] *See* text accompanying notes 128–30 *supra*.

[158] H. SUBIN, *supra* note 58, at 35–36.

[159] D.C. CRIME COMM'N REPORT 138.

[160] FED. R. CRIM. P. 5.

[161] H. SUBIN, *supra* note 58, at 42–44.

[162] S. 2600 § 2 [§ 3146A(d)(2)(B)].

[163] CONG. REC. vol. 115, pt. 14, p. 19260 (remarks of Senator Hruska); *1969 Hearings* 289; HART COMM. REPORT 16; *cf.* United States *v.* Leathers, 412 F.2d 169, 170. (D.C. Cir. 1969).

[164] S. 2600 § 2 [§ 3146A(c)(5)].

[165] S. 2600 § 2 [§ 3146A(b)(2)(a)].

[166] *Id.*

[167] S. 2600 § 2 [§ 3146A(b)(2)(B)].

[168] ABA MINIMUM STANDARDS, *supra* note 21, app. C, at 86–87.

[169] S. 2600 § 2 [§ 3146A(b)(2)(C)].

[170] *See* notes 64–67 *supra* and accompanying text.

[171] S. 2600 § 2 [§ 3146A(b)(2)(C)].

[172] S. 2600 § 2 [§ 3146A(c)(4)–(5)].

[173] S. 2600 § 2 [§ 3146A(c)(3)].

[174] *Id.*

[175] S. 2600 § 2 [§§ 3146A(a), (b)(2)(B)].

[176] CONG. REC., vol. 115, pt. 14, p. 19264.

[177] Senator Tydings has introduced two bills which although avoiding some of the pitfalls into which S. 2600 has fallen, contain most of its significant defects. The prediction inherent in the bills is the commission of specific crimes, basically those involving bodily harm, robbery, burglary, or witness intimidation, but the required finding is that the probability of those crimes would create such a danger that no condition of release would "provide the necessary protection." S. 546, 91st Cong., 1st Sess. § 2(c) (1969). Both bills, as well as the Senator's statements in their support, fail to deal adequately with the need for preventive detention and with the ability of courts to identify likely offenders. Furthermore, although both bills require an "evidentiary" hearing and findings based upon "clear and convincing" evidence, apparently the rules of evidence would not apply. *See 1969 Hearings* 80, 87, 89–90. Senate bill 3034, which would apply only to the District of Columbia, was the subject of hearings before the Senate Committee on the District of Columbia in November 1969. *See* note 18 *supra*.

[178] ABA MINIMUM STANDARDS 70.

[179] JUDICIAL COUNCIL COMM. TO STUDY THE OPERATION OF THE BAIL REFORM ACT IN THE DISTRICT OF COLUMBIA, REPORT 25–30 (1968).

[180] HART COMM. REPORT, supra note 56, at 14–15, 26–31.

[181] *E.g., 1969 Hearings* 10 (Judge Hart), 41 (Chief Judge Greene), 337 (Chief Judge Curran), 278–79 (Chief Judge Murrah), 353 (Professor Foote).

[182] *See* HART COMM. REPORT. 23.

The PRESIDING OFFICER. Who yields time?

Mr. TYDINGS. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Maryland has 19 minutes remaining and the Senator from North Carolina has 20 minutes remaining.

Mr. TYDINGS. Mr. President, I yield 5 minutes to the Senator from Missouri.

Mr. SYMINGTON. Mr. President, the increase in serious crimes and the fear felt by law-abiding citizens for their lives and property are among the most critical problems of the Nation. They are particularly acute in the Washington area. Serious crimes here are reported to be increasing at the rate of 22 percent a year.

In an effort to protect themselves, many law-abiding citizens have erected barriers to their homes and refuse to venture out at night. Many business establishments have either abandoned the city or revised their modes of operations in effort to avoid further robberies, burglaries, and shootings.

Better solutions than we presently have are urgently needed now to check crime and to check also the rising fear of crime. What shall we do about these problems? Certainly we need to attack more vigorously the problems of poverty, education, the crowded and indecent conditions that may be the real cause of crime. But we need also to strengthen our law enforcement and criminal justice system to make it operate fairly and swiftly if it is to serve as a deterrent to crime.

Clearly there is an urgent need for court and law enforcement overhaul here in the District of Columbia, the only particular jurisdiction in the United States where the Congress writes the criminal laws and provides for the criminal justice and law enforcement system.

The Senate is asked to vote up or down on a massive array of proposed legislative solutions which are contained in one package, the District of Columbia crime conference report. My vote reflects my judgment that, taken as a whole, the District of Columbia crime conference bill can fairly reinforce the criminal justice system; and can do so in a manner calculated to make that system serve society more effectively.

The conference report offers several provisions which I believe will be highly beneficial in strengthening the law enforcement and criminal justice system.

Presently the average time between arrest and trial in the District of Columbia is 10 months. For an average, that is too long if the criminal justice system is to be at all effective in deterring crimes. Our system of justice needs to move more swiftly and, therefore, the provisions of the bill providing for court reorganization and adding 17 judges to the Superior Court should serve the highly desirable purpose of providing for speedier trials and a reduction of the criminal case backlog.

The establishment of a Public Defender Agency to provide legal representation for indigent defendants would also serve to expedite criminal trials.

The conference report also provides for an expansion in size and of the role of the District of Columbia bail agency. Under the provision, the Bail Agency will not be limited to its present service as a provider of information about the accused for the guidance of the judicial officer in making a decision as to release conditions. It will also make recommendations on bail alternatives and most importantly, supervise the accused who may be conditionally released.

All of the foregoing provisions in my opinion will make an important contribution to crime deterrence through improving and strengthening the criminal justice and law enforcement system.

Other provisions of this crime package—particularly those involving pretrial detention and "no-knock" warrants—do raise problems as to their wisdom and constitutionality. We might prefer that they were not present in this omnibus measure but improvement has been made in both provisions over what was earlier contained in the House bill and there are also the following considerations.

Police officers today, on their own authority, can enter premises to serve search or arrests warrants without first knocking and announcing their identity, when justified by certain circumstances. As would be expected, when necessary to prevent death or serious injury to a third person, or the officer himself, or to prevent the destruction of quickly and easily destroyable evidence when the policeman's presence is already known and announcement would be useless, a police officer is permitted to dispense with notice.

The District of Columbia crime report provisions on no-knock warrants does not give police officers this authority. They already have it. What the conference report does is require that a police officer obtain judicial permission in advance when he has probable cause to believe that these exigent circumstances are likely to exist at the time of the execution of the warrant.

The goal of the pretrial detention provisions of the District of Columbia crime conference report is to protect the public and its individual members from the danger of potential criminal acts committed by persons charged with prior serious criminal offenses who are at liberty awaiting trial.

In other Western nations with civilized criminal justice systems—most notably Great Britain—pretrial detention has been practiced fairly and effectively. In England, be it murder, rape, bank raid, or the like, they do not allow the man out on bail, but keep him imprisoned if they think he may make another offense and assure that he is tried within 8 weeks—this, according to a high ranking member of England's judicial system as presented by the Senator from Maryland (Mr. TYDINGS).

The distinguished English jurist notes that in their experience—

> It is better for society that criminals or potential criminals should not be let loose pending trial. We do not let them out on bail, although we have in our bill of rights, like you, the prohibition against excessive bail being demanded.

As a matter of fact, neither the concept nor the actual practice of pretrial detention is new in the United States. It has been a long accepted practice under certain circumstances to deny bail to persons charged with capital offenses and thus to detain them prior to trial.

Under the Bail Reform Act of 1966, a Federal Court is authorized to detain prior to trial those charged with offenses punishable by death when release would pose a danger to the community or any other person.

But danger to the community or any other person is not now a factor that can be considered forthrightly by a court in setting financial or other conditions of release for persons charged with other serious and violent crimes.

While under existing law the only stated legal basis for requiring a money bond is to secure the accused's presence at trial, there may be a reason to suspect that courts do in fact consider harm to the community posed by release. When bond is set so high that it cannot be made, an accused is jailed and thus detained prior to trial.

Recent District of Columbia studies show in fact that over 40 percent of felony suspects are detained prior to trial because of inability to post bonds.

Under the District of Columbia conference report, dangerousness to the community, would be a factor for consideration by the Court with regard to release for certain classes of defendants charged with serious offenses. The determination would be based on an appealable adversary hearing of record in which the defendant would be represented by counsel.

To order pretrial detention of the accused for a period of 60 days, the court must find that no conditions under which release could be permitted would reasonably assure the safety of the community and must also find that the Government has established that there is a substantial probability that the accused committed the offense with which he is charged. The cases of persons ordered detained for 60 days must be placed on an expedited trial calendar and given priority.

The pretrial detention hearing seeks to afford due process safeguards for the accused person and at the same time seeks to give a better balance to the rights of society to be protected from the threat of repetition of crime on bail.

I present the foregoing favorable considerations of these two highly controversial provisions so as to demonstrate that they may offer the possibility of fair improvement over existing practices. If unconstitutional, these provisions certainly will be subject to review and can be nullified by the courts. Moreover it is obvious that legislation of this character cannot be perfect in the first instance. We would expect recognition in the Congress of refinements that will be needed.

I do not agree with all the provisions in the conference report, but it is clear to me that unless this legislation is adopted, there will be no legislation this year to expand and improve the courts and the law enforcement agencies that are needed for the District of Columbia.

Mr. ERVIN. Mr. President, I yield 10 minutes to the Senator from Mississippi (Mr. STENNIS).

Mr. STENNIS. Mr. President, I yield 1 minute to the Senator from Wisconsin (Mr. NELSON).

Mr. NELSON. Mr. President, no matter

how artistically and eloquently the proponents of this measure defend the concept of no-knock entry, preventive detention, and the provisions for wiretapping, the fact of the matter is that the provisions do in fact compromise the constitutional rights of the people of this country, and the conference report ought to be defeated.

Mr. President, there can be no doubt that the increasing crime rate is one of the most serious domestic problems facing our country today. The latest satistics of the Federal Bureau of Investigation indicate that there has been a 13 percent increase in serious crimes in the first 3 months of 1970. This added burden of crime has fallen most heavily upon our cities.

Nowhere are the criminal statistics more appalling than in the Nation's Capital: 56,000 felonies reported in the District of Columbia in 1969; serious crime rising at almost double the national rate; reported felonies having increased 122 percent in the last 5 years. Thus it is apparent that the national commitment to reducing crime can best begin here in Washington, making the District of Columbia an example for the entire country.

S. 2601, the District of Columbia crime bill, which we are now considering, therefore, must be considered as a pilot program to demonstrate the Federal Government's fight on crime to all of the United States. With this expectation, the administration has already sent similar legislative proposals to Congress to apply provisions of S. 2601 to all Federal districts throughout the country.

The District of Columbia crime bill which emerged from conference contains many noncontroversial features that are badly needed in any vigorous system of effective law enforcement—in the District of Columbia and in every other Federal jurisdiction as well. This bill, as it now stands, also contains provisions which are so antithetical to the entire history of American jurisprudence that their inclusion makes this legislation unacceptable.

The Senator from North Carolina (Mr. ERVIN) has ably and carefully documented the constitutional flaws in this legislation. While the bill provides for badly needed court reorganization, a strengthened District of Columbia Bail Agency, establishment of a public defender for the District, and the adoption of an Interstate Compact on Juveniles, it is, in my judgment, totally compromised by the inclusion of such obnoxious features as preventive detention, no-knock entry, mandatory sentencing, broadened wiretapping authority, automatic mental commitment, changes in burden of proof in insanity pleas, procedures for the no-jury trial of multiple offenders, and expanded treatment of juveniles as adults.

It has been suggested that, because the valid and necessary features of this present bill outnumber the objectionable provision, the Senate should swallow its objections and approve the conference report as it stands. It has also been suggested that at some later time the courts can repair any violence done to the Constitution. This is a dangerous concept and ought to be summarily rejected by the Senate. It is also implied that preventive detention of persons charged with crime who may commit another crime, no-knock entry by policemen and unnamed assistants, and government eavesdropping are the prices that we must pay to reduce the crime rate.

I do not agree with these suggestions. There are alternate courses of legislative action which can be enacted in a short time and which will bolster law enforcement without objectionable erosions of constitutional guarantees. I also firmly believe that it is right and proper for the Senate to insist that anticrime proposals be consistent with longstanding American concepts of justice.

There are presently available three legislative proposals which offer effective means of giving the District of Columbia additional tools to prosecute law enforcement. I am referring to S. 4080 and S. 4081, introduced by Senator ERVIN and others as substitutes for S. 2601. These measures incorporate the worthwhile features of the court reorganization plan and changes in criminal law and procedure which were contained in the conference report on S. 2601.

The most needed and uncontroversial features of S. 4080 and S. 4081 include a new superior court which would take jurisdiction over all purely local civil and criminal cases with divisions of flexible size capable of adjusting to exact needs; a system of modern court management, with the centralization of nonjudicial, administrative duties in top-level court executives to invoke more efficient procedure that will clear away paperwork and other delays; substantial increase in judges with provisions for other means for expanding the city's judicial resources; a full-fledged public defender service for the District of Columbia, greatly expanding the size and scope of operation of the existing Legal Aid Agency; and expanded District of Columbia Bail Agency with the authority and manpower to keep a much closer watch on defendants released on bail; and restoration of the Senate's original Federal payment of $48 million to the District to carry out court reorganization and give substance to other crime programs, in particular, efforts to deal with narcotics addiction.

The third legislative proposal which would assist in reducing crime in the District of Columbia is S. 3936, the speedy trial bill. This measure would require each Federal District Court to provide trial within 60 days of indictment or information. The measure would also provide for additional penalties for crimes that are committed during pretrial release and would establish demonstration pretrial service agencies in five Federal districts, including the District of Columbia. In sum, S. 3936 provides a constitutional alternative to preventive detention.

These three bills are sensible anticrime measures for the District of Columbia which I have cosponsored and which I support as substitutes for S. 2601. In addition to excising the questionable provisions infringing on citizens' constitutional guarantees, this legislation would give the District the additional money to begin to make a concerted effort against its No. 1 crime problem—narcotics. These substitute bills deserve expedited consideration and passage in place of the measure now before us.

Since this legislation will mainly affect an unrepresented minority within an unrepresented minority—the black residents of the District of Columbia—it is a proper duty and an obligation of this body to question and object to the infringements of citizens' protections under this bill. Furthermore, we must also consider the example which this bill is intended to make for law enforcement activities in all the States. This bill has vital implications for governmental conduct in every region of the country.

Mr. President, the affairs and activities of men and governments in this country have been controlled and guided for over 180 years by the U.S. Constitution. Its provisions have withstood the tests of time and relevance to an expanding nation. Thus we are the only country in the world that has sustained any form of government under one constitution for so long a period of time.

Over the years this Constitution and its Bill of Rights have faced stiff and critical challenges. This document has remained as the framework of government and the guardian of individual liberty through these tests only because men have taken the responsibility and the opportunity to defend the Constitution all through the continuing stresses and strains of this great and important experiment of man and government.

Today, the Senate is faced with a measure which makes specific attacks upon the rights guaranteed to all citizens by the fourth, fifth, sixth, and eighth amendments to the Constitution and traditional American concepts of justice. In particular, these attacks are embodied in the no-knock entry and preventive detention provisions of the District of Columbia crime bill.

First, the no-knock authority granted in the conference report is broader and less clear than the no-knock power permitted under the Griffin amendment, which I opposed, to the Drug Control Act, S. 3246, passed earlier this year. The language of the present no-knock provision in S. 2601 is therefore at variance with both previous legislative language in S. 3246, and with case law. It has been suggested that the provision merely codifies existing law. If this is so, then why is this provision necessary at all? Also, if existing law concerning no-knock is sufficient, then why has the Federal prosecutor for the District of Columbia claimed that he now cannot do what the new law would permit?

According to the conference report, a police officer needs only a low level of proof to obtain a no-knock warrant up to 10 days before it is to be used. A magistrate must rely upon an officer's judgment which can be far removed in time and place from the point of action. In addition, the use of the no-knock warrant in the conference report is not

restricted to a specific category of crimes such as in S. 3246, the Drug Control Bill, where the no-knock provision can only be used in connection with narcotics felonies. Under S. 2601, no-knock could be used for anything from minor offenses to major felonies.

Under S. 2601, an officer may seek a no-knock warrant if he has probable cause that evidence is likely to be destroyed or an officer's life endangered. There is no reference to any certainty regarding the need for a no-knock warrant, only likelihood. This conjunction of "probable cause" and "likelihood," in effect, is a level of proof requiring only a contingent contingency and would allow an officer to conduct a no-knock search at will, or at best, a reasoned conjecture.

A most curious part of the no-knock provision is that which extends no-knock authority to "any person aiding an officer" in the execution of this warrant. Who is this "any person aiding an officer?" Is he a passer-by? Is he a vigilante? No need has been demonstrated for extending whatever right of unannounced intrusion there may be to private persons. Indeed, the language of the conference report leaves open the possibility of a self-labeled assistant breaking and entering alone on the barest suggestion from an officer or on the basis of what the aide alone interprets as an implied suggestion.

The Ker against California case decided by the Supreme Court established the current common law rules regarding no-knock searches. According to the best interpretation of this ruling, only "exigent circumstances" are sufficient for a no-knock entry. Exigent circumstances by their very nature can only be determined at the place where the search is to be conducted.

Thus the officer has to be at the scene where the search is to be executed before he can know whether a no-knock entry is justified. The words of the bill before us do not reflect this interpretation of the Ker case.

Finally, the present no-knock proposal raises the serious question of offending the fourth amendment which guarantees the right of people "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." There is no more important right secured by the Constitution, and no one has more eloquently stated the case against no-knock entry than William Pitt in debate in the House of Lords 204 years ago, when he stated:

> The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail. Its roof may shake. The wind may blow through it. The storm may enter. The rain may enter. But the King of England cannot enter. All his force dares not cross the threshhold of that ruined tenement.

As if this no-knock provision is not offensive enough, the conference bill also contains a preventive detention provision. This provision introduces a new element to be considered in the release on bail of a person accused of a crime. Traditionally, the single issue to be considered in setting bail release conditions is the likelihood that the accused criminal will not appear for trial. Under the preventive detention provision, there is to be the further determination as to whether pretrial release in noncapital criminal cases will affect the "safety of any other person or the community." This new factor makes far-reaching changes in the purpose and intent of bail procedures.

This new consideration is an outgrowth of the great concern to keep violent criminals off the street, that is, to prevent further crimes of physical violence before a criminal is incarcerated. The language of the conference bill, however, makes preventive detention applicable to a wide range of persons accused of both nonviolent as well as violent crime. Under the bill, not only can accused murderers, rapists, arsonists, and other perpetrators of physical violence be detained, but so can those accused of "taking or attempting to take property from another by force or threat of force" and those accused of "unlawfully entering or attempting to enter any premises adapted for overnight accommodation of persons or for carrying on business with the intent to commit an offense therein." This broadens the concept of preventive detention far beyond an intent to prevent further physical violence before trial and destroys the primary intent of release on bail to insure appearance at trial. Although preventive detention may have been intended to be limited to crimes of violence, under this bill it is subject to use as a catchall street cleaning mechanism for those accused of antisocial behavior.

Reference is made in this bill to placing the case of a person preventively detained on an expedited court calendar so as to make a swift test of guilt or innocence of the original charge a part of the process, as in the English system. But there is no assurance that the accused will receive a speedly trial within the original 60-day detention period, as the British system provides. Since consecutive periods of 60-day detention are allowed under this bill, an accused person can be incarcerated for an extended period of time without either release or without trial.

Preventive detention is contradictory to the due process clause of the fifth amendment, since the arrested person is deprived of his liberty on the basis of a probability that he will commit a future crime. This detention is made before and without conviction for the first criminal charge.

Preventive detention also interferes with a person's right of access to counsel and participation in obtaining evidence and witnesses in his own defense as guaranteed by the sixth amendment.

It also violates the eighth amendment prohibition against the use of excessive bail. The historical purpose of the amendment was to make certain that bail is used to insure appearance and not to penalize the accused before conviction. Thus, by implication, the eighth amendment guarantees a right to reasonable bail for noncapital cases.

The arguments which I have considered concerning the issues of no-knock entry into private homes, the preventive detention of accused criminals who may cause further crime, and other provisions of this bill, lead me to the conclusion that there is certainly probable cause that the individual rights of citizens of the District are not only likely to be impaired, but they will be impaired. This constitutional infringement is unacceptable.

I should also like to voice my opposition to the wiretapping provision in this conference bill. With the possible exceptions of national security and organized crime, I am opposed to any use of wiretapping and the invasion of privacy that occurs in a formalized government effort to intercept wire or oral communications. The authority for electronic surveillance given in S. 2601 goes far beyond the limitations of these exceptions when the list of offenses for which wiretaps are permitted reads: arson, blackmail, bribery, burglary, destruction of property of value in excess of $200, gambling, grand larceny, kidnaping, murder, obstruction of justice, receiving stolen property of value in excess of $100, robbery, extortion, and offenses involving dealing in narcotic drugs, marihuana, and other dangerous drugs. This extends the Government's ear far too far.

Mr. President, the issue before the Senate is not whether to do something about crime. Nor is the issue one of preserving the rights of criminals. The issue is how to take strong law enforcement actions consistent with the constitutional guarantees of all citizens.

The no-knock, preventive detention, and wiretapping provisions are not only objectionable on constitutional grounds, but they are repugnant to American traditions and values. One freedom we have always honored is the freedom from repressive governmental action. Freedom from the fear that our life, our liberty, or our property may be arbitrarily taken from us by the State is a founding proposition of this country.

Millions of our citizens or their forefathers came to settle in America to escape the repressive practices in their homeland. They have known the terrible fear of "the knock at the door in the middle of the night." In contrast the United States symbolized a country where people could live in personal security and free from any threat to the security of their household.

I must cast my dissent to any possibility that this security may be compromised in any way. We have protected well against the specter of the "knock in the middle of the night"—we must defend even stronger against the fear of the unannounced breaking down of any man's door.

Nowadays, any legislation traveling the legislative route under the umbrella of "crime control" automatically receives wide public acclaim. No one wants to raise doubts or questions or vote against any such bill, because the public reaction will be adverse.

Grave doubts are being privately expressed by many who will vote for this bill because they view it as too difficult to explain to their constituents. Everyone here was elected to uphold the Constitution—not compromise it. I, therefore, register my opposition to this measure by voting against it.

Mr. President, the Senate has an even stronger alternate legislative plank to

fight crime in the District of Columbia. My support is for the alternate bills to the conference report—S. 4080, S. 4081, and S. 3936, providing speedy trial for those accused of crime.

Mr. STENNIS. Mr. President, every Member of this body, I am sure, and the people of the Nation, owe a debt of gratitude to the Senator from North Carolina (Mr. ERVIN) for the very fine exposition he has made of this troublesome and far-reaching question.

I, too, would like to support a sound bill. I am not indifferent to conditions in the District of Columbia. In a small way, I am a property owner here—of a home, at least. A member of my family has been a victim of some of the lawlessness here. So I am not indifferent to that. I am not a total stranger to law enforcement here.

I spent 5 active years as a district attorney. In that office I did everything from investigating to serving a grand jury. My duties included preparing indictments, advising, and consulting with the grand jury, presenting the evidence, and making arguments to the jury, handled many hundreds of felony cases. I am not boasting, but I got it in the "raw." It was my privilege to serve 10 years on the trial court bench as a circuit judge, with all kinds of criminal cases and with unlimited civil jurisdiction. I have no outstanding record, but I am not a stranger to this field and the problems that goes with it.

I think we are planting seeds of great disappointment in this bill. In the first place, almost everyone has doubts about its constitutionality. When those who doubt the constitutionality of statutes rely on the courts to overturn them, that does more to undermine our Constitution than anything else I know of. I refer to those who believe that the question of constitutionality is purely one for the courts and not for the Congress or State legislatures.

Passing on, Mr. President, because I do not have time to argue this question fully—and many of these very questions have been ably presented by the Senator from North Carolina—the principal argument is that we should pass the bill to help the District of Columbia. I do not think there is any doubt that we are making admissions and lowering the standards of the administration of justice if we pass this bill and it is upheld. We are lowering the standards and we are doing it because the standards have already been lowered in the District of Columbia to the point where there is little effective enforcement of our criminal law. But this bill is not the remedy, just because we have let these conditions build up. This is no excuse to desert constitutional standards. I believe that these conditions were largely caused by the unfortunate changes in the laws of criminal procedure and the administration of criminal justice by the Supreme Court of the United States in its interpretation of the Bill of Rights, such as in the Mallory case, and many others. This bill will not bring about a remedy in that field. It does not touch, topside or bottom, the constitutional questions involved.

Another question is the general widespread permissiveness we have let come about in the District of Columbia and many other places in the country to which it has spread. For years there has been no real will to enforce the criminal law. There has been no positive determination on the part of the people or, it seems to me, on the part of many of the officials. Bandits walk the policemen's beats. The policeman is ridiculed. He is criticized and blasted in public day after day. Furthermore, there is a certain type of permissiveness that has almost gotten out of hand. We should not let it go on. My point is, that condition has to be met by will and determination. Putting more laws on the books is not going to do it.

There may be a need for more judges, but my feeling is that some of the judges could put in more hours a day than they seem to put in. They could do more to pursue cases and know more about the sentences that are going to attach to those criminals than using the system now in use under which someone files some kind of report.

So I believe we are looking in the wrong direction. We want to do something for the District of Columbia, certainly—we also want to do something for the whole country. But I believe we are going to have to reform ourselves first by law enforcement, and developing the will to enforce the law that we already have.

There is no breakdown of criminal procedure, as I see it. As I say, we may need more judges. We may need more law. But I strongly back the Senator from North Carolina (Mr. ERVIN) when he offers us a law that will give immediate relief and bring matters more up to date. His proposal skips all these very highly questionable constitutional matters that are in the bill before us. There are good motives behind those who worked on them. I would not suggest anything. I praise them for the work they have done. But I believe we are going to make the people think that paradise is at hand. We will lead the people of America to believe that we have found the remedy; that we are going to apply it to the District of Columbia first; and then apply it to the rest of the Nation. There is going to be a serious breakdown and a lot of hollering and disappointment.

I think we can take the laws we have, plus the proposals of the Senator from North Carolina, and get a strong public sentiment behind law enforcement officers, and a strong public sentiment behind enforcement of the law and support for the courts.

I remember the old days when public opinion was the basis for support of law enforcement. We must have that to have the juries in the right frame of mind.

I am really disappointed, in getting into this important matter—and it is highly important—to find so little of the things that really would, in my humble opinion, afford us an appreciable remedy.

So I have grave doubts about it, in fact, I just do not believe some of these provisions are constitutional, and if those of us who believe that way are going to surrender and say, "Let the courts decide everything," then who else will stand up for these basic principles?

Another thing I find here, and I have checked somewhat, is that there is no punishment passed out, no real punishment provided for these offenses. In the District of Columbia we do not have enough houses of correction or houses of punishment, or places where the offender may feel a penalty of some kind—I do not mean excessive penalties, but in order for the offender to feel the sting for having committed a crime. I believe that is the necessary remedy. We have always believed that, until recently. But some way, we have slipped into the idea that a man's background, or some other far-off reason, is to control, and he must be more or less protected instead of really punished. I say that is simply contrary to commonsense.

We have purse snatching because it is not unprofitable to snatch purses; and we have these felonies of burglary and larceny and stealing because it is not unprofitable. There is no sting of real punishment.

The Senator from Louisiana has stated that only 5 percent of those who are charged with felonies are ever punished. My goodness alive, if that is correct—and I assume it is—are we going to use that as the justification for the no-knock provision? I think we already have, in practical effect, most of this no-knock provision anyway.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. STENNIS. I thank the Senator from North Carolina for yielding.

The PRESIDING OFFICER. Who yields time?

Mr. ERVIN. Mr. President, I yield the remainder of my time to the able and distinguished junior Senator from Maryland (Mr. MATHIAS).

Mr. HARRIS. Mr. President, will the distinguished Senator from Maryland yield me 1 minute?

Mr. MATHIAS. Mr. President, I yield 1 minute to the Senator from Oklahoma.

Mr. HARRIS. Mr. President, Bernard Schwartz, noted constitutional authority, stated in his "Commentary on the Constitution of the United States," that the Constitution:

> Ensures to the person a privileged sanctuary within which he can live his own life, sheltered from public supervision and scrutiny . . . He can retreat therein from outsiders, secure in the knowledge that they cannot get at him without disobeying the Constitution.

Mr. President, this will be less true if the Senate agrees to the pending conference report on the District of Columbia crime bill. Since the founding of this Nation, Americans have always regarded "a man's home as his castle." This cliché establishes the moral, if not legal, basis upon which many traditional and fundamental concepts of American law are based.

Previously, I have expressed my strong opposition to certain provisions of the omnibus crime bill for the District of Columbia. Provisions for no-knock entries by police, "pretrial preventive detention," extensive wiretapping and electronic surveillance, mandatory minimum sentences for certain crimes, and revision of the juvenile code making trial as an

adult mandatory for 15 to 18 year-olds under certain conditions are inconsistent with the constitution and are repressive in both nature and effect.

Authority for law-enforcement officers to break and enter without announcing their identify or purpose has been incorporated in a number of legislative proposals during the 91st Congress, including the Controlled Dangerous Substances Act—S. 3246—the District of Columbia Court Reorganization Act—S. 2601—and the present District of Columbia crime bill—H.R. 16196.

Mr. President, these proposals raise serious questions concerning the meaning and scope of the fourth amendment's protection against unreasonable searches and seizures. On several occasions, the Supreme Court has addressed itself to the problem of "no knock" entry, first in 1958 in Miller against United States and in 1962 in Ker against California. As a memorandum issued by the distinguished Senator from North Carolina (Mr. ERVIN) states:

In *Miller* v. *United States*, 356 U.S. 301 (1958), the Supreme Court held unlawful a breaking and entering by arresting police officers where proper notice was not given. While the Court's decision turned on its application of the governing federal statute, 18 U.S.C. 3109, and not expressly upon constitutional standards, the court discussed the history of the requirement of notice. Mr. Justice Brennan wrote for the majority, "From the earliest days, the common law drastically limited the authority of law officers to break the door of a house to effect an arrest. Such action invades the precious interest of privacy summed up in the ancient adage that a man's house is his castle." Mr. Justice Brennan cited *Semayne's Case* as setting forth the common law rule concerning breaking and entering. He concluded his opinion by writing: "The requirement of prior notice of authority and purpose before forcing entry into a home is deeply rooted in our heritage and should not be given grudging application."

In *Ker* v. *California*, 374 U.S. 23 (1962), the Supreme Court for the first time directed itself to the question of the constitutionality of a "no-knock" entry. It appears that at least eight Justices on the Supreme Court at the time of the Ker decision subscribed to the view that the Fourth Amendment implicitly prohibits unannounced entry in the execution of a search or arrest. The decision of the court in *Ker* v. *California*—affirming a state court's rejection of a contention that officers' failure to give notice was violative of the Fourth Amendment—also pointed to common law exceptions to the rule of announcement. It is the basis for and scope of the exceptions to the universally acknowledged general rule of notice that is specifically at issue in the various legislative proposals for "no-knock" entry.

In this case, the Supreme Court affirmed a California court decision which found sufficient circumstances to justify an exception to the constitutional requirement of notice, held to be incorporated in a California statute. Mr. Justice Clark quoted from *People* v. *Maddox*, 46 Cal. 2d 301 P. 2d 6:

". . . since the demand and explanation requirements of section 844 are codification of the common law, they may reasonably be interpreted as limited by the common law rules that *compliance is not required if the officer's peril would have been increased or the arrest frustrated had he demanded entrance and stated his purpose.*"

The close 5-to-4 vote in the Ker against California case significantly diminishes the majority decision. Justice Brennan and three other Justices held that the majority had recognized "a new and unsupportable exception to the common law and constitutional requirement of notice." Justice Brennan further wrote:

I have found no English decision which clearly recognizes any exception to the requirement that the police first give notice of their authority and purpose before forcibly entering a home.

English and American Courts have both cited the 1603 Semayne's Case as the leading judicial interpretation and application of the maxim that "every man's house is his castle." In that case the Court said:

The Sheriff (if the doors be not open) may break the party's house, either to arrest him or to do other execution of the King's process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open the doors.

Mr. President, the cases clearly refute the arguments advanced by proponents of the no-knock provision of this bill.

Many people, correctly or incorrectly, believe that these provisions threaten their privacy and justify their resistance to law enforcement officers in such cases of forcible, unannounced entry. To be sure, this will not be to the benefit of law enforcement officers or the citizens of our Nation's Capital.

The "preventive detention" provision of this bill also raises grave questions of public policy. It gives cause for serious constitutional questions when considered in light of the eighth amendment guaranteeing "reasonable bail"; the fifth amendment providing for "due process"; and the sixth amendment guaranteeing "access to counsel and the opportunity to participate in the preparation of a defense."

The issue of "preventive detention" fragments current efforts for bail reform. Under existing law preventive detention is already practiced in many instances by the establishment of extremely high bonds. The extraordinary overcrowding of the District jail provides ample support of this fact.

In English law criminal suspects are presumed innocent unless proven guilty. The present bill will subject such individuals to a pre-trial for possible detention which, if such persons are detained, could seriously jeopardize their chances for a fair trial when he is brought before the court. This practice could also add additional burdens to the District's courts which already have substantial backlogs of pending cases.

Further, Mr. President, the Justice Department released a report on April 7 which had been conducted by the Bureau of Standards in connection with the need for preventive detention. The report showed that only 5 percent of all defendants charged with a violent crime during a 4-week study were also charged with a second violent crime while awaiting trial. Another 12 percent of those charged with violent crimes were rearrested while awaiting trial but for less serious offenses. This means then, that 83 percent of those persons committing a violent crime for the first time, were never charged again for a second offense while awaiting trial.

It would seem that accelerated court trials would be far more useful in resolving the kind of programs preventive detention is designed for. Such measures are provided under legislation for reorganization of the District's court system which is also a part of this bill. Additional use could also be made of "third party" supervisors for persons on pretrial release.

Mandatory sentencing provisions are contrary to experience in traditional law and at best, are likely to be counterproductive from the standpoint of law enforcement and corrections. In the area of corrections this provision could have the effect of reducing a prisoner's primary incentive for good behavior and self-improvement, especially when he knows that he has no opportunity for an early release as a result of good behavior.

I am equally concerned about the wiretap and electronic surveillance authority provided for in this bill, and the provision relegating a larger number of juvenile offenders to adult criminal procedures when facilities at the District jail and the Lorton Reformatory are already overcrowded.

Finally, Mr. President, I believe very strongly that it is possible for this body to enact legislation which will provide an effective response to the problems this bill is proposed to solve, and at the same time respect the principles of individual liberty and due process. This can be done if the controversial provisions of this bill are deleted. However, since they are contained in the bill now before us, I will vote to reject the conference report.

The PRESIDING OFFICER. Who yields time?

Mr. MATHIAS. Mr. President, I yield 2 minutes to the distinguished Senator from Massachusetts.

Mr. BROOKE. Mr. President, the decision we face regarding the conference report on the District of Columbia Court Reform and Criminal Procedure Act is a grave one. One of the most telling measures of the values of any society is the manner in which it treats those who violate its laws and standards. This Nation aspires to a justice rare in human society, a justice which recognizes the precious rights of every individual and which accords humane treatment even to those convicted of the most serious crimes. In seeking to maintain a civilized system of justice and to protect our citizens against the dangers and injuries inflicted by those who flout the law, we must strike a complex and delicate balance. In deciding the fate of this legislation, we are once again obliged to weigh that balance carefully.

All of us know the long and arduous efforts which many Senators and Congressmen have devoted to producing this conference bill. Its provisions for court reorganization and other improvements in the law enforcement mechanisms of the District have justly won the approval of the community and of both Houses of Congress. These elements of the bill ought to be approved forthwith in order

to relieve the critical situation which has persisted for too many years in our crime-plagued National Capital.

I favor most of the provisions of this bill. In the interests of the people of the District, I think we should enact the most effective anticrime program we can devise. I emphatically agree, as a former law enforcement officer, that innovations are required to curb the growing pattern of criminal behavior in this city. Coupled with long-term programs of social reform and development, more potent law-enforcement techniques can reverse the swelling tide of crime which afflicts us all.

Yet the bill before us includes a number of sections which properly invite close scrutiny and which have provoked bitter controversy. The conference committee has certainly made an earnest attempt to meet the objections raised against such provisions as those regarding pretrial detention and the so-called no-knock entry by police.

Nevertheless, serious questions of policy and of constitutionality remain. Particularly in regard to pretrial detention, the concept appears so novel and its potential implications are still so dimly understood that it is difficult to render a confident judgment on precisely what effect such procedures would have. It may be that this procedure would do less damage to our traditional principles of the presumption of innocence in criminal cases and of the requirements of due process, than the procedures which are now being applied through devices like high-money bond and extraordinary delays in trials. But it is possible—and the possibility is too threatening to be dismissed—that this provision would open the way to abuses that are worse than those we seek to correct.

In my opinion, it is quite possible that a suitable procedure of this kind can be drawn—indeed, it is even possible that, if properly interpreted, the present proposal could prove both constitutional and helpful to the twin goals of effective law enforcement and individual liberty. However, doubts remain and I am not personally satisfied that this is the appropriate vehicle for this purpose.

Given these doubts and the extreme importance of the issues at stake, I believe the sound course for the Senate is to reject the conference report and to seek passage of the principal features of the bill which command the support of wide majorities in both Houses. Surely we are agreed that the substantial upgrading of the District's law enforcement and judicial capabilities will, in and of itself, do much to alleviate the intolerable delays in processing criminal cases. Speedier trials will themselves contribute immensely to that expeditious justice which is the heart of an effective program to combat crime.

I think we should reserve for fuller study such concepts as pretrial detention. By severing them from the bill and addressing them through additional hearings and debate, we may be able to satisfy our concerns and to design provisions of this sort in which this community can have high confidence.

At the moment, however, so intense is the division on these issues and so widespread the misunderstanding of the provisions of this bill, that passage of this legislation in its present form would not be wise.

Let us instead take one step at a time. Let us move to provide facilities and resources to assure prompt disposition of the heavy caseload in the District and to improve the law enforcement system's overall capacity to meet the challenge of crime in this troubled city. But let us not further undermine confidence in the system of justice we seek to serve by prematurely introducing procedures which are poorly understood and which could surely benefit from more extensive analysis by the Senate and its standing committees.

In casting my vote against this conference report, I profoundly hope that its rejection will not result in a deadlock between the Senate and the House. I cannot believe that reasonable men on both sides, recognizing the vital need to pass potent anticrime legislation, would sacrifice the essential and accepted provisions of this bill in a senseless contest over debatable proposals which obviously affect the most fundamental realms of individual liberty and constitutional government.

Should the bill pass in its present form, we can expect important court tests in the near future. None of us who questions one or another aspect of this bill should assume that today's vote will settle the issues in any final way. The judicial review to which many provisions of the bill will be subjected affords important reassurance to the community and to the Congress that constitutional rights will be safeguarded. On this occasion, as so often in the past, the splendid strength of our system of checks and balances should encourage all of us to rely on forthcoming judicial evaluations of the dubious provisions of this bill. Men may well differ on the merits and effects of this legislation and we do well to view this measure, not as an inflammatory act of repression, but as exactly what it is—a controversial approach to the problems of criminal justice which we all seek to resolve. I am sure that, should the bill be enacted, the courts will be quick to correct any features which flout the Constitution.

On the basis of my own analysis, I urge the Senate to reject the conference report and to adopt a new bill built principally on the major provisions previously enacted by this body.

Mr. MATHIAS. Mr. President, as we approach the end of this debate, I wish there were time to summarize fully the concerns that have led me to oppose the conference report, and that have led three of the seven Senate conferees to oppose the report and to support alternative legislation to improve the administration of justice and reduce the level of crime in the Nation's Capital.

As President Nixon stated in January 1969, the most urgent need of law enforcement in Washington is court reform. In his first message to Congress on the District of Columbia, the President gave top priority to reforming and reorganizing the court system of the District to eliminate its crippling backlogs, prevent future delays, and insure that justice will be both swift and sure.

After extensive hearings, the Senate District of Columbia Committee responded to the President's request and the city's need by reporting a massive court reform bill, which was approved by the Senate without objection on September 18, 1969. The Senate also passed measures last year to improve procedures for handling juvenile cases, make limited changes in local criminal law, strengthen the District of Columbia Bail Agency, and establish a full-time public defender.

Unfortunately, this enlightened legislation has undergone many substantive changes. These changes create issues which should not be swept under the rug of court reform. They should be considered separately and voted up or down on their own. Yet, the conference report procedure today gives us only two choices: to reject the report, or to swallow it whole. If we reject the report, we can proceed at once to take up the substitute bills which other Senators and I have introduced—bills which would restore top priority to court reform, and would enable us to debate no-knock, preventive detention, juvenile procedures, and other issues point by point. To me this is the course of wisdom, and I, therefore, urge the rejection of this report.

It is the concern of many Senators, as expressed on this floor and privately, that defeat of the conference report would mean that the President's request for court reorganization would be deferred until next year, or that there would be no anticrime bill for the city—a city that has now been awarded the title of national crime capital by bipartisan agreement.

Mr. President, that is a groundless fear. There can be a bill for court reform and it is on each Senator's desk in the form of S. 4080. There can be a bill for revision of criminal and juvenile law, and it is on each Senator's desk in the form of S. 4081. There will be no delay for research and development. The research and development has been done. The bills are in the pipeline. They are ready to go. They can be adopted immediately and sent to the other body, and that is what we ought to do.

Mr. President, this is serious business. The level of crime in Washington rose by over 20 percent this year. We have to address ourselves to the best possible way of eliminating the pollutants of crime and fear of crime from the city of Washington.

Mr. President, some Members of the Senate have devoted impressive amounts of time, energy, and thought to this legislation. I want to commend in particular the contributions of my colleague from Maryland, Senator TYDINGS, and the senior Senator from North Carolina, Senator ERVIN. I also want to note the essential contributions of many tireless staff members.

In considering this bill, we are acting in our capacity as the local legislature for the District of Columbia. I happen to

believe that the residents of Washington should be empowered to elect their own legislators, but as long as we deny the citizens of the Nation's Capital the right of self-government, we have a special obligation to insure that they are not denied any other rights, such as privacy or due process of law.

And I say, Mr. President, that if we were debating this kind of bill for our own States, this would be a different debate. Or if this were nationwide legislation, we would be dissecting it clause by clause. We would be insisting—and our constituents would insist—that we produce a measure which would curb crime without suspending the Constitution. We would consider a man's right to be secure in his home as important as his right to be safe on the streets. We would want to zero in on the real problems of law enforcement, rather than waving a blunderbuss at a whole community.

This body has spent just 7 weeks deciding that the Constitution does not stop at the water's edge. Today, I hope we will decide that it does not stop at the District line.

Mr. TYDINGS. I yield 1 minute to the distinguished Senator from Nevada.

Mr. BIBLE. Mr. President, 1 minute is not much time, but I spoke at length on Tuesday urging full support of this conference report.

The conference report—the bill it brings to the Senate has been thoroughly discussed. The questions raised by the bill have been exhaustively debated. There is no questioning the fact that the proposed court reorganization is urgently needed. The deplorable crime situation in the Nation's Capital will not be stemmed unless the processes of criminal justice are speeded up. This bill will provide the wherewithal to assure swift, fairly administered justice. I think it is a sure step toward making this city a safer place to live and do business. Two issues—no-knock and preventive detention—have raised concerns respecting their constitutionality. These questions have been argued long and thoroughly. I have examined them carefully, and I subscribe to the viewpoint that they are soundly conceived and constitutional.

I urge adoption of the conference report.

Mr. PASTORE. Mr. President, will the Senator yield for a question?

Mr. TYDINGS. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 7 minutes.

Mr. TYDINGS. I yield to the Senator from Rhode Island.

Mr. PASTORE. There is a rumor prevalent that the manager of the bill resisted these two very crucial amendments in conference; is that true?

Mr. TYDINGS. The manager of the bill has introduced a pretrial detention provision prior to that introduced by the Department of Justice. The conference report perfected the House provision in a manner in which the chairman of the Senate conferees thought was best, and the House receded and adopted the Senate version of no-knock which passed without a dissenting vote in the Senate last year and passed again in two other legislative forms in the past year as well.

Mr. PASTORE. The next question: Is the Senator convinced, after thorough study, that both these provisions are consistent with our Constitution?

Mr. TYDINGS. I am convinced.

The PRESIDING OFFICER. Will the Senator suspend for a minute?

Mr. TYDINGS. Yes.

The PRESIDING OFFICER. The time is now approximately 5 minutes to the time the Senate is to vote on this issue.

In compliance with the order previously agreed to, the Sergeant at Arms is directed to clear the Chamber and the lobbies of all staff personnel except the staffs of the Secretary of the Senate, the Sergeant at Arms, the secretary to the majority, the secretary to the minority, their assistants, the aides to the leadership on both sides of the aisle, staff personnel associated with the manager of the conference report, and the personnel of the two policy committees, and that such staff remain off the floor and from the lobbies until the vote is announced, at which time they may be permitted to return to the Chamber.

Mr. JACKSON. Mr. President, I have followed closely the debate on the conference report on the District of Columbia crime bill. I have concluded with some regret that the proponents of this conference report have been unable to demonstrate that the many merits of the bill outweigh its obvious defects. I am not convinced that the introduction of such concepts as preventive detention will substantially advance the cause of crime control in the District, but I do know that they raise serious questions of due process which have not been answered to my satisfaction. On balance, there are too many aspects of the bill which raise constitutional and other issues to warrant our acceptance of the conference report.

Legislation has already been introduced in the Senate which deals with the problems of crime and court reform in the District without, at the same time, introducing dubious constitutional concepts. I am cosponsoring this legislation and see no reason why it cannot win the early approval by Congress.

Mr. President, I ask unanimous consent to have printed in the RECORD a statement by my colleague from Washington (Mr. MAGNUSON), opposing the conference report on the District of Columbia crime bill, S. 2601.

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

Mr. MAGNUSON. Mr. President, while there can be little argument over the rise in crime in the District of Columbia and the subsequent need for a D.C. anti-crime bill this year, I cannot in good conscience vote for a bill containing provisions which I believe to be unconstitutional. Therefore, I oppose the acceptance of the Conference Report on the D.C. Crime Bill (S. 2601).

While I have grave reservations about the wisdom and efficacy of certain provisions in this bill, I am particularly concerned about the preventive detention sections of the bill. After a long and diligent study of both case and common law, it is my belief that preventive detention would violate the "due process" clause of the 5th Amendment and the 8th Amendment's provision that "excessive bail shall not be required." In addition, I have serious questions as to whether or not preventive detention violates a defendant's right to a speedy trial as provided for by the 6th Amendment. At such, I believe preventive detention is unconstitutional, and for this reason I would vote against accepting the Conference Report.

Mr. President, as a former County Prosecutor in the State of Washington and as a current resident of the District, I am well aware of the need for an anti-crime bill in the District of Columbia this year. Thus it is my hope and expectation that the Senate will expeditiously pass the many other fine provisions of this bill, as provided in S. 4088 and S. 4081 which I am cosponsoring and which include sorely needed court reorganization and the establishment of a Public Defender program, so that the streets will once again belong to the people, rather than the criminals.

Mr. SPONG. Mr. President, notwithstanding my reservations about certain of its provisions, I will support this conference report because I believe it represents the only realistic chance we will have in this Congress to begin doing something about crime in the District.

As one of the Senate conferees, I can testify to the strenuous efforts that were made to eliminate such questionable items as pretrial detention and mandatory minimum sentences. But, even though we succeeded in improving the original House provisions, in the end, we were faced with a choice of having a less than perfect bill or no bill at all.

In my judgment, it is the same choice the Senate is called upon to make here. I do not believe we can avoid it by passing another bill which preserves only programs which are acceptable to the Senate conferees. For, just as surely as it passed this report by a better than 5-to-1 margin, the House would amend the new bill to put back those provisions we took out. We would have gained nothing for the exercise except further delay.

Mr. President, although I continue to have reservations about pretrial detention and mandatory minimum sentences and would vote against those measures were they to be acted on separately, I am forced to make an overall judgment on the entire package before us. And, on balance, I find the good far outweighs the bad. In such specific provisions as court reform, expansion of the bail agency and creation of a full-fledged public defender system, I believe the bill makes a valuable contribution to the system of justice in the District.

Mr. President, the need to come to grips with the crime problem in the District is too compelling for there to be any further delay in passing this legislation.

Mr. HATFIELD. Mr. President, the problem of crime in the Nation's Capital has grown to such an extent that it demands the immediate action of Congress without further delay. Many of us and our staffs, regrettably from personal experience, are well aware of this urgent need. Comprehensive reform of the criminal justice system is necessary.

The District of Columbia Court Reform and Criminal Procedure Act of 1970, referred to as the District of Columbia crime bill, represents an attempt to provide that reform. It provides for a reorganization of the court system designed to improve its efficiency and ef-

fectiveness. It increases the number of judges, their tenure and salary. The bill contains a comprehensive revision of the code of juvenile procedure. The criminal code of the District of Columbia has been completely revised and updated. The bail agency has been expanded and the District is provided for the first time with a full-fledged public defender rather than the pilot project it now has.

I wholeheartedly support these reforms of the criminal justice system in the District of Columbia. They are the kinds of reforms which I have long advocated as necessary for the District and, indeed, elsewhere to help the fight against crime.

Mr. President, I am fully aware that this bill also contains some highly controversial provisions, particularly those relating to pretrial detention and so-called no-knock. In view of the widely divergent views people have today concerning crime and how best to cope with it, it is not surprising that such provisions as these are controversial and that opponents have challenged their constitutionality. In today's period of change in court interpretations of criminal laws and the Constitution, I believe that almost any new legislation in this area would be open to conflicting arguments regarding their constitutionality.

I have carefully studied these provisions and the arguments of their supporters and critics. Despite some reservations I have about these two provisions, I intend to vote in favor of the conference report. Delay in enacting legislation is simply not tolerable.

It is my hope, Mr. President, that those responsible for the administration of justice—the police, the prosecutors, and the courts—will use these controversial provisions with wisdom and restraint. Should application of these controversial provisions demonstrate unwarranted infringement of the constitutional freedoms of the citizens of the District of Columbia, I shall support their prompt repeal. I do not expect this to happen. Employed with sound discretion, all the provisions of this conference report will contribute to the improvement of the criminal justice system in the Nation's Capital.

Discussion of this bill has brought out another facet of this problem—that of our corrections system.

Many speeches have been given about our penal system in recent weeks. As Governor of Oregon, I worked to improve our State corrections system, and today we have a women's prison unit, a minimum-corrections complex, juvenile rehabilitation centers, halfway houses and work-release programs. All of these work very well at the State level, and I hope that we could expand work in these areas at the Federal level.

I hope that the discussions on this bill will give needed impetus to the various proposals offering substantial improvements in our penal system. The present allocation of our funds—with the great majority going to the apprehension of criminals and very little to their rehabilitation—must not continue. I hope the Senate can vote in the near future on needed improvements in our penal system.

Mr. TYDINGS. Mr. President, in a few moments the Senate will vote on the conference report on S. 2601, the President's District of Columbia crime legislation.

I am confident the Senate will approve this bill by a substantial majority. In doing so, it will send to the President the first of his major crime proposals to pass the Congress.

I am proud of the Senate's role in this legislation. We passed the Senate version of these bills in prompt order last fall, within weeks of their submission by the President. We worked hard in a long and difficult conference to achieve this sound and effective conference report.

Of the major items of difference between the two Houses, the Senate prevailed on more than a full half; the House on a third; and the balance were resolved by compromise legislation. We successfully eliminated from this legislation virtually all the controversial provisions which the House had added to the President's proposals.

During the past week, we have spoken at great length on the provisions of this bill and the urgent need for its enactment.

No one doubts the need for prompt action on National Capital crime legislation. More than 56,000 felonies were reported in this city last year, but scarcely more than 1,400 felony convictions were obtained in the District's courts. The number of felonies reported in the District has risen 122 percent in the last 5 years, but the percentage of convictions obtained each year has actually decreased during the same period.

This conference bill is a sound, effective, constitutional, and fully safeguarded answer to this crime crisis.

As I predicted when the Senate discussion of this legislation began, debate has centered on the pretrial detention and no-knock sections of the bill. I believe we have demonstrated that these provisions are improvements on the present state of the law.

We have demonstrated how the no-knock provision simply writes down what is already the law as declared by the Supreme Court for the whole United States. The Senate version of no-knock, passed without a dissenting vote in this body last fall, prevailed in the conference and is incorporated in this bill we are about to pass. The conference version of no-knock, like the Senate version, improves on the present law in the District of Columbia, by requiring prior judicial supervision of proposed no-knock entries in every possible case.

We have explained our belief that the pretrial detention provisions of this bill, which are based on the centuries-old British practice, under a bill of rights bail provision identical to our own, are a vast improvement over the unconscionably hypocritical subterfuge of high money bond now in use in every State of the Union, and in the District of Columbia as well, as a pretext to detain dangerous defendants prior to their trial.

We have called attention to the recent National Bureau of Standards study which shows that fully 40 percent of all felony defendants in the District are in fact detained today. This conference report merely proposes that, when a defendant is to be detained because the judge believes he may be dangerous if released, that defendant must be given a full and fair hearing as to his dangerousness, with the right to counsel and to present evidence; that he should have an immediate appeal from any adverse finding; and that he should have an absolute right to release or trial within 60 days of any detention order.

This proposal is not only constitutional, but an enormous reform over the hypocrisy which now pervades American pretrial detention practice.

I believe we have met the reasoned arguments by the critics of these proposals.

But much of this debate has been cast in unfortunately emotional and inflammatory terms. We have heard some well-meaning critics assert that this bill is antiblack. To those who say this bill is anitblack, I say crime in this 70-percent black city is antiblack. President Johnson's District of Columbia Crime Commission tells us that 86 percent of all District of Columbia murder victims are black; 86 percent of all aggravated assault victims are black; 80 percent of all rape victims are black; 66 percent of all auto theft victims are black;and 60 percent of all burglary victims are black. In fact, the only crime of violence which afflicts blacks and whites equally in this city is robbery.

I find no cause to abandon the people of this city or any segment of our population to the morass of crime simply because it may be expedient or fashionable to do so. The most controversial provisions of this bill are among the most vital for protecting the residents of this city from the grinding terror of the dangerous defendant and the malignant pervasion of the city's drug traffic.

We have heard some others, ignoring the 90 percent of this bill which is without controversy, oppose this bill as repressive. 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 drives people to bar their windows and flee the streets at dark. It is the repression which forces people to keep arsenals and police dogs in their homes for fear of being assaulted, not by the police, but by vicious killers, rapists, and thieves.

We have heard it claimed that this bill should not be enacted because it might serve as a model for the Nation. We have heard the bill described as an "experiment in repression" by critics whose own States sanction no-knock search and pretrial detention practices broader and far less safeguarded than this bill provides. We have heard it described as a "model" for other States by critics who overlook the fact that more than half the States now permit no-knock searches and practice virtually

unlimited pretrial detention through money bond, without the safeguards of this bill.

We have seen the wiretap and second-offense mandatory sentencing provisions attacked as unprecedented by critics who forget Congress authorized this same legislation, without the new safeguards this bill provides, for the entire Nation in the Omnibus Crime Act and the Gun Crime Control Act of 1968.

This legislation will be an example to the Nation, but not by reason of its provisions, which are based on the experiences and practice of other States and prior Federal laws. The example Congress will provide today is the clear message that a government by free people has the determination, within the sacred limits of its time-tested Constitution, to take reasoned, safeguarded steps to meet and defeat a plague of lawlessness destroying the very fabric of its society.

Some Senators have suggested we should defeat this conference report and send to the House a watered-down version of this legislation. They suggest that in adopting the conference report we are somehow knuckling under to the other House.

Having led the Senate conferees, I can guarantee this body that the other House will never accept this suggested alternative. But I do not offer that as a reason to pass this report. We should approve this conference report because it is a sound, constitutional, and effective answer to the crime crisis facing this city.

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.

We have done our job. We have met the President's request. We have provided the bill necessary to answer the crime problem in this city. I urge the adoption of the conference report.

Mr. PASTORE. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. (BELLMON). All time on the conference report has now been yielded back. The question is on agreeing to the conference report.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. YOUNG of Ohio (after having voted in the negative). On this vote I have a pair with the Senator from Nevada (Mr. CANNON). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. LONG (after having voted in the affirmative). On this vote I pair with the Senator from Washington (Mr. MAGNUSON). If he were present and voting, he would vote "nay." If I were at liberty to vote I would vote "yea." I withdraw my vote.

Mr. INOUYE (after having voted in the negative). On this vote I have a pair with the Senator from New Mexico (Mr. MONTOYA). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Connecticut (Mr. DODD), the Senator from Tennessee (Mr. GORE), the Senator from Washington (Mr. MAGNUSON), the Senator from New Mexico, (Mr. MONTOYA), the Senator from Rhode Island (Mr. PELL), and the Senator from Georgia (Mr. RUSSELL) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from New Hampshire (Mr. COTTON) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) and the Senator from Maine (Mrs. SMITH) are absent because of illness.

If present and voting, the Senator from New Hampshire (Mr. COTTON), the Senator from South Dakota (Mr. MUNDT), and the Senator from Maine (Mrs. SMITH) would each vote "yea."

The result was announced, yeas 54, nays 33, as follows:

[No. 248 Leg.]

YEAS—54

Aiken	Griffin	Percy
Allen	Gurney	Prouty
Allott	Hansen	Proxmire
Baker	Hartke	Randolph
Bellmon	Hatfield	Saxbe
Bennett	Holland	Schweiker
Bible	Hollings	Scott
Boggs	Hruska	Smith, Ill.
Burdick	Jordan, Idaho	Sparkman
Byrd, Va.	Mansfield	Spong
Byrd, W. Va.	McClellan	Stevens
Curtis	McGee	Symington
Dole	McIntyre	Talmadge
Dominick	Miller	Thurmond
Eastland	Moss	Tower
Ellender	Murphy	Tydings
Fannin	Pastore	Williams, Del.
Goldwater	Pearson	Young, N. Dak.

NAYS—33

Anderson	Fulbright	McCarthy
Bayh	Goodell	McGovern
Brooke	Gravel	Metcalf
Case	Harris	Mondale
Church	Hart	Muskie
Cook	Hughes	Nelson
Cooper	Jackson	Packwood
Cranston	Javits	Ribicoff
Eagleton	Jordan, N.C.	Stennis
Ervin	Kennedy	Williams, N.J.
Fong	Mathias	Yarborough

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—3

Inouye, against.
Long, for.
Young of Ohio, against.

NOT VOTING—10

Cannon	Magnuson	Russell
Cotton	Montoya	Smith, Maine
Dodd	Mundt	
Gore	Pell	

So the report was agreed to.

Mr. TYDINGS. Mr. President, I move that the vote by which the conference report was agreed to be reconsidered.

Mr. MANSFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. There will be order in the Senate. The galleries will please be as quiet as possible. The Senate will be in order. The Senate is not in order. We will suspend until we have order in the Senate.

The Senator from Florida is recognized.

Mr. HOLLAND. Mr. President, I have just voted to approve the conference report on S. 2601, a bill to reorganize the courts of the District of Columbia and for other purposes. I want the record to show that I have studied the situation presented by this conference report at great length and with deep misgivings. My respect for the distinguished senior Senator from North Carolina is such and in particular my recognition of his unexcelled capability in the field of constitutional law is so great that I was unwilling to vote for said conference report in view of his deep and expressed conviction as to the unconstitutionality of several portions of that bill in the absence of a conviction of my own as to its usefulness and the very great existing need for many unquestioned provisions of the measure. I think there is substantial reason to expect that the courts may rule in accordance with the convictions and able arguments of the Senator from North Carolina, to eliminate certain sections of the bill as unconstitutional and to limit certain other sections which I shall not discuss at length.

My reason for voting for the conference report, however, is that the bill does contain so many provisions which, in my opinion, will strengthen the enforcement of law within the District of Columbia and that such strengthened enforcement of law is so greatly needed not only for the protection of residents of the District but also for the protection of millions of Americans who visit here every year and the protection of thousands of guests from other nations who come here either as visitors or as officials representing their several countries, that I feel profoundly that these helpful provisions of the bill should be enacted notwithstanding the fact that in my own mind there are serious doubts as to several of its provisions which as I have already said may be eliminated or limited by the opinions of the courts.

It is clear to me, however, that under applicable law and under the structure of this particular bill these questionable provisions, from the constitutional standpoint, are separable—separable—from the main body of the bill which is so badly needed to improve the enforcement of law and the protection of the law-abiding public within the District of Columbia. From the standpoint of better organization of the courts, better jurisdictional and procedural machinery for the courts, and in many respects improvement of the substance of the criminal laws applicable in the District of Columbia I feel that this measure should become law.

I may add that in reaching my decision on this serious question I have not only studied the record of the debate and carefully considered my own convictions, but I have also discussed with some of our colleagues in the other body the possibility of eliminating or limiting in further conference or in separate legislation some of the questionable provi-

sions which have disturbed the Senator from North Carolina as well as other Senators and myself. I have reached the conclusion that the soundest course available was to enact the conference report and I have therefore voted to do so.

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. BELLMON). Without objection, it is so ordered.

MILITARY PROCUREMENT AUTHORIZATIONS, 1971

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 1020, H.R. 17123, that it be laid before the Senate and made the pending business.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 17123) to authorize appropriations during the fiscal year 1971 for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength of the Selected Reserve of each Reserve component of the Armed Forces, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to the consideration of the bill, which had been reported from the Committee on Armed Services with an amendment to strike out all after the enacting clause and insert:

TITLE I—PROCUREMENT

SEC. 101. Funds are hereby authorized to be appropriated during the fiscal year 1971 for the use of the Armed Forces of the United States for procurement of aircraft, missiles, naval vessels, and tracked combat vehicles, and other weapons, as authorized by law, in amounts as follows:

AIRCRAFT

For aircraft: for the Army, $292,100,000; for the Navy and the Marine Corps, $2,337,700,000; for the Air Force, $3,225,500,000.

MISSILES

For missiles: for the Army, $1,031,600,000; for the Navy, $932,400,000; for the Marine Corps, $12,800,000; for the Air Force, $1,479,400,000.

NAVAL VESSELS

For naval vessels: for the Navy, $2,276,900,000.

TRACKED COMBAT VEHICLES

For tracked combat vehicles: for the Army, $182,200,000; for the Marine Corps, $47,400,000.

OTHER WEAPONS

For other weapons: for the Army, $67,200,000; for the Navy, $2,789,000; for the Marine Corps, $4,400,000.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

SEC. 201. Funds are hereby authorized to be appropriated during the fiscal year 1971 for the use of the Armed Forces of the United States for research, development, test, and evaluation, as authorized by law, in amounts as follows:

For the Army, $1,609,200,000;

For the Navy (including the Marine Corps), $2,194,300,000;

For the Air Force, $2,718,000,000; and

For the Defense Agencies, $445,000,000.

SEC. 202. There is hereby authorized to be appropriated to the Department of Defense during fiscal year 1971 for use as an emergency fund for research, development, test, and evaluation or procurement or production related thereto, $50,000,000.

SEC. 203. (a) Funds authorized for appropriation to the Department of Defense under the provisions of this Act or any other Act shall not be available for payment of independent research and development, bid and proposal, or other technical effort costs unless the work for which payment is made is relevant to the functions or operations of the Department of Defense and unless the following conditions are met—

(1) the Secretary of Defense, prior to or during each fiscal year, negotiates advance agreements establishing a dollar ceiling on such costs with all companies which during their last preceding fiscal year received more that $2,000,000 of independent research and development, bid and proposal, or other technical effort payments from the Department of Defense, the advance agreements thus negotiated (A) to cover the first fiscal year of each such company beginning on or after the beginning of each fiscal year of the Federal Government and (B) to be concluded either directly with each such company or with those product divisions of each such company which contract directly with the Department of Defense and themselves received more than $250,000 of such payments during their company's last preceding fiscal year;

(2) the independent research and development portions of the advance agreements thus negotiated are based on company submitted plans on each of which a technical evaluation is performed by the Department of Defense prior to or during the fiscal year covered by such advance agreement;

(3) no payments for independent research and development, bid and proposal, and other technical effort costs are made by the Department of Defense to any company or product division with which an advance agreement is required by subsection (a)(1) of this section, except pursuant to the terms of that agreement; and

(4) the total dollar value of the advance agreements negotiated prior to or during a given fiscal year as required under subsection (a)(1) of this section does not exceed a ceiling to be established annually by the Congress.

(b) In the event negotiations are held with any company or product division with which they are required under subsection (a)(1) of this section, but no agreement is reached with any such company or product division—

(1) no payments for independent research and development, bid and proposal, and other technical effort costs shall be made to any such company or product division during the fiscal year for which an agreement was not reached, except in an amount substantially less than the amount which, in the opinion of the Department of Defense, such company or product division would otherwise have been entitled to receive; and

(2) the amount of money received by that company for independent research and development, bid and proposal, and other technical effort costs during its last preceding fiscal year shall be included in determining compliance by the Department of Defense with the ceiling established by Congress, pursuant to subsection (a)(4) of this section, for the fiscal year in question.

(c) The Secretary of Defense shall submit an annual report to the Congress on or before January 31, 1972, and on or before January 31 of each succeeding year, setting forth—

(1) those companies with which negotiations were held pursuant to subsection (a)(1) of this section prior to or during the preceding fiscal year, together with the result of those negotiations;

(2) the manner of his compliance with the ceiling established by Congress for the preceding fiscal year pursuant to subsection (a)(4) of this section; and

(3) the latest available Defense Contract Audit Agency statistics on the independent research and development, bid and proposal, and other technical effort payments made to major defense contractors whether or not covered by subsection (a)(1) of this section.

(d) The provisions of this section shall apply only to contracts for which the submission and certification of cost or pricing data are required in accordance with section 2306 (f) of title 10, United States Code.

(e) The ceiling to be established pursuant to subsection (a)(4) of this section for fiscal year ending June 30, 1971, shall be $625,000,000.

(f) Section 403 of Public Law 91-121 (80 Stat. 204) is hereby repealed.

SEC. 204. None of the funds authorized to be appropriated by this Act may be used to carry out any research project or study unless such project or study has a direct and apparent relationship to a specific military function or operation.

SEC. 205. (a) There is hereby established an interagency advisory council to be known as the Interagency Advisory Council on Domestic Applications of Defense Research (hereinafter in this section referred to as the "Council").

(b) The Council shall be composed of the following members:

(1) One member from the Department of Defense, to be designated by the Secretary of Defense.

(2) One member from the Department of Health, Education, and Welfare, to be designated by the Secretary of Health, Education, and Welfare.

(3) One member from the Department of Housing and Urban Development, to be designated by the Secretary of Housing and Urban Development.

(4) One member from the Department of Transportation, to be designated by the Secretary of Transportation.

(5) One member from the Office of Economic Opportunity, to be designated by the Director of the Office of Economic Opportunity.

(6) One member from the Department of Labor, to be designated by the Secretary of Labor.

(7) One member from the Department of the Interior, to be designated by the Secretary of the Interior.

(8) One member from the National Aeronautics and Space Administration, to be designated by the Administrator of the National Aeronautics and Space Administration.

(c) The member of the Council designated by the Secretary of Housing and Urban Development shall serve as Chairman of the Council.

(d) Three members of the Council shall constitute a quorum; and a vacancy in the Council membership shall not affect its powers but shall be filled in the manner in which the original appointment was made.

(e) It shall be the function of the Council to study and evaluate proposed research programs and projects submitted to it pursuant to this section. The Council shall accept for consideration research projects that are of mutual interest to the Department of Defense and one or more of the participating departments or agencies, and, subject to section 204, such other categories of research bearing on important national needs as the Council may specify, including but not

limited to such fields as housing, education, transportation, and pollution.

(f) The Council shall advise the Director of Defense Research and Engineering of the Department of Defense regarding research proposals submitted to it for consideration pursuant to subsection (e) and shall make such recommendations to the Director as it deems appropriate as to the merits of proposals submitted to it for consideration.

(g) The Council shall review the results of research conducted under its auspices and shall advise the Director of Defense Research and Engineering of the Department of Defense as to the desirability of continuing, modifying, or terminating such research activities.

(h) The Secretary of Defense is authorized to make grants to colleges, universities, and other not-for-profit institutions engaged in research and/or development activities sponsored by the Department of Defense for the purpose of supporting selected research programs and projects promising significant domestic benefits. Proposals for such research shall be submitted to and reviewed by the Council. The decision of the Secretary of Defense with respect to which, if any, research proposals approved by the Council will be sponsored shall be final.

(i) The total amount in grants made under this section in any fiscal year shall not exceed an amount equal to 5 per centum of the total funds expended in such fiscal year by the Department of Defense under contracts entered into with colleges, universities, and other not-for-profit institutions for the performance of defense research.

(j) In no case shall any one institution receive more than $5,000,000 under this section in any one fiscal year.

(k) Research grants made by the Secretary of Defense under this section shall be made subject to such rules and regulations as the Secretary of Defense may prescribe after consultation with the Council.

TITLE III—RESERVE FORCES

SEC. 301. For the fiscal year beginning July 1, 1970, and ending June 30, 1971, the Selected Reserve of each Reserve component of the Armed Forces will be programed to attain an average strength of not less than the following:

(1) The Army National Guard of the United States, 400,000.

(2) The Army Reserve, 260,000.

(3) The Naval Reserve, 129,000.

(4) The Marine Corps Reserve, 47,715.

(5) The Air National Guard of the United States, 87,878.

(6) The Air Force Reserve, 47,921.

(7) The Coast Guard Reserve, 10,000.

SEC. 302. The average strength prescribed by section 301 of this title for the Selected Reserve of any Reserve component shall be proportionately reduced by (1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at any time during the fiscal year, and (2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at any time during the fiscal year. Whenever any such units or such individual members are released from active duty during any fiscal year, the average strength for such fiscal year for the Selected Reserve of such Reserve component shall be proportionately increased by the total authorized strength of such units and by the total number of such individual members.

TITLE IV—ANTI-BALLISTIC MISSILE CONSTRUCTION AUTHORIZATION; LIMITATIONS ON DEPLOYMENT

SEC. 401. (a) Military construction for the Safeguard anti-ballistic missile system is authorized for the Department of the Army as follows:

(1) Technical and supporting facilities and acquisition of real estate inside the United States $322,000,000;

(2) Research, development, test, and evaluation facilities at the Kwajalein Missile Range $3,200,000;

(3) Military Family Housing, four hundred units, $8,800,000:

Malmsrtom Safeguard site, Montana, two hundred units,

Grand Forks Safeguard site, North Dakota, two hundred units.

(b) There are authorized to be appropriated for the purposes of this section not to exceed $334,000,000.

(c) Authorization contained in this section (except subsection (b)) shall be subject to the authorizations and limitations of the Military Construction Authorization Act, 1971, in the same manner as if such authorizations had been included in that Act.

(d) Within the amounts of the authorizations for military construction for Safeguard, the Secretary of the Army or his designee is authorized to provide for, under such terms and conditions as he may determine, two hundred and twenty-five units of temporary family housing for occupancy on a rental basis by military and civilian personnel of the Department of Defense and their dependents at each Safeguard site in connection with any military construction and installation and checkout of system equipment which is or may hereafter be authorized at a Safeguard site, if the Secretary of the Army or his designee determines that such temporary housing is necessary in order to perform the construction and installation and checkout of system equipment, and that temporary housing is not otherwise available under reasonable terms and conditions.

SEC. 402. None of the funds authorized by this or any other Act may be obligated or expended for the purpose of initiating deployment of an anti-ballistic missile system at any site other than Whiteman Air Force Base, Knobnoster, Missouri; except that funds may be obligated or expended for the purpose of initiating advanced preparation (site selection, land acquisition, site survey, and the procurement of long lead-time items) for an anti-ballistic missile system site at Francis E. Warren Air Force Base, Cheyenne, Wyoming. Nothing in the foregoing sentence shall be construed as a limitation on the obligation or expenditure of funds in connection with the deployment of an anti-ballistic missile system at Grand Forks Air Force Base, Grand Forks, North Dakota, or Malmstrom Air Force Base, Great Falls, Montana.

TITLE V—GENERAL PROVISIONS

SEC. 501. The Congress views with grave concern the deepening involvement of the Soviet Union in the Middle East and the clear and present danger to world peace resulting from such involvement which cannot be ignored by the United States. In order to restore and maintain the military balance in the Middle East, by furnishing to Israel the means of providing for its own security, the President is authorized to transfer to Israel, by sale, credit sale, or guaranty, such aircraft, and equipment appropriate to use, maintain, and protect such aircraft, as may be necessary to counteract any past, present, or future increased military assistance provided to other countries of the Middle East. Any such sale, credit sale, or guaranty shall be made on terms and conditions not less favorable than those extended to other countries which receive the same or similar types of aircraft and equipment.

SEC. 502. Subsection (a) of section 401 of Public Law 89-367, approved March 15, 1966 (80 Stat. 37), as amended, is hereby amended to read as follows:

"(a) (1) Not to exceed $2,500,000,000 of the funds authorized for appropriation for the use of the Armed Forces of the United States under this or any other Act are authorized to be made available for their stated purposes to support: (A) Vietnamese and other free world forces in support of Vietnamese forces, (B) local forces in Laos and Thailand; and for related costs, during the fiscal year 1971 on such terms and conditions as the Secretary of Defense may determine.

"(2) No defense article may be furnished to the South Vietnamese forces, other free world forces in Vietnam, or to local forces in Laos or Thailand with funds authorized for the use of the Armed Forces of the United States under this or any other Act unless the government of the forces to which the defense article is to be furnished shall have agreed that—

"(A) it will not, without the consent of the President—

"(i) permit any use of such article by anyone not an officer, employee, or agent of that government,

"(ii) transfer, or permit any officer, employee, or agent of that government to transfer such article by gift, sale, or otherwise, or

"(iii) use of permit the use of such article for purposes other than those for which furnished;

"(B) it will maintain the security of such article, and will provide substantially the same degree of security protection afforded to such article by the United States Government;

"(C) it will, as the President may require, permit continuous observation and review by, and furnish necessary information to, representatives of the United States Government with regard to the use of such article; and

"(D) unless the President consents to other disposition, it will return to the United States Government for such use or disposition as the President considers in the best interests of the United States, any such article which is no longer needed for the purposes for which it was furnished.

The President shall promptly submit a report to the Speaker of the House of Representatives and the President of the Senate on the implementation of each agreement entered into in compliance with this paragraph. The President may not give his consent under clause (A) or (D) of this paragraph with respect to any defense article until the expiration of fifteen days after written notice has been given to the Speaker of the House of Representatives and the President of the Senate regarding the proposed action of the President with respect to such article. As used in this paragraph the term 'defense article' shall have the same meaning prescribed for such term in section 644(d) of the Foreign Assistance Act of 1961. In order to allow a reasonable period of time for the Department of Defense to comply with the requirements of this paragraph, the provisions of such paragraph shall become effective sixty days after the date of enactment of this section."

SEC. 503. Of the total amount authorized to be appropriated by this Act for the procurement of the F-111 aircraft, $283,000,000 of such amount may not be obligated or expended for the procurement of such aircraft until and unless the Secretary of Defense has (1) determined that the F-111 aircraft has been subjected to and successfully completed a comprehensive structural integrity test program, (2) approved a program for the procurement of such aircraft, and (3) certified in a written report to the Committees on Armed Services of the Senate and the House of Representatives that he has made such a determination and approved such a program, and has included in such written report the basis for making such determination and approving such program.

SEC. 504. (a) Of the total amount authorized to be appropriated by this Act for the procurement of the C-5A aircraft, $200,000,000 of such amount may not be obligated or

expended until and unless the Secretary of Defense has submitted to the Committees on Armed Services of the Senate and the House of Representatives a plan for the expenditure of such $200,000,000 and such committees have approved such plan. In no event may all or any part of such $200,000,000 be obligated or expended except in accordance with a plan approved by such committees.

(b) The $200,000,000 referred to in subsection (a) of this section, following the approval of a plan pursuant to such subsection, may be expended only for the reasonable and allocable direct and indirect costs incurred by the prime contractor under a contract entered into with the United States to carry out the C–5A aircraft program. No part of such amount may be used for—

(1) direct costs of any other contract or activity of the prime contractor;

(2) profit on any materials, supplies, or services which are sold or transferred between any division, subsidiary, or affiliate of the prime contractor under the common control of the prime contractor and such division, subsidiary, or affiliate;

(3) bid and proposal costs, independent research and development costs, and the cost of other similar unsponsored technical effort; or

(4) depreciation and amortization costs on property, plant, or equipment.

Any of the costs referred to in the preceding sentence which would otherwise be allocable to any work funded by such $200,000,000 may not be allocated to other portions of the C–5A aircraft contract or to any other contract with the United States, but payments to C–5A aircraft subcontractors shall not be subject to the restriction referred to in such sentence.

(c) Any payment from such $200,000,000 shall be made to the prime contractor through a special bank account from which such contractor may withdraw funds only after a request containing a detailed justification of the amount requested has been submitted to and approved by the contracting officer for the United States. All payments made from such special bank account shall be audited by the Defense Contract Audit Agency of the Department of Defense and, on a quarterly basis, by the General Accounting Office. The Comptroller General shall submit to the Congress not more than thirty days after the close of each quarter a report on the audit for such quarter performed by the General Accounting Office pursuant to this subsection.

(d) The restrictions and controls provided for in this section with respect to the $200,000,000 referred to in subsections (a) and (b) of this section shall be in addition to such other restrictions and controls as may be prescribed by the Secretary of Defense or the Secretary of the Air Force.

SEC. 505. Section 412(b) of Public Law 86–149, as amended, is amended by inserting immediately before the word "unless" the following: ", or after December 31, 1970, to or for the use of the Navy for the procurement of torpedoes and related support equipment".

SEC. 560. (a) None of the funds authorized to be appropriated by this Act shall be used for the procurement of delivery systems specifically designed to disseminate lethal chemical or any biological warfare agents, or for the procurement of delivery system parts or components specifically designed for such purpose, unless the President shall certify to the Congress that such procurement is essential to the safety and security of the United States.

(b)(1) Section 409(b) of Public Law 91–121, approved November 19, 1969 (83 Stat. 209), is amended—

(A) by striking out "or the open air testing of any such agent within the United States" in the material immediately preceding paragraph (1) and inserting in lieu thereof the following: "the open air testing of any such agent within the United States, or the disposal of any such agent within the United States";

(B) by striking out "transportation or testing" each time it appears in paragraphs (2), (3), and (4) and inserting in lieu thereof "transportation, testing, or disposal"; and

(C) by inserting "or disposal" immediately after "such testing" in paragraph (4)(A).

(2) Section 409(c)(1) of such public law is amended—

(A) by striking out "deployment, or storage, or both," and inserting in lieu thereof "deployment, storage, or disposal"; and

(B) by striking out "deployment or storage" immediately after "unless prior notice of" and inserting in lieu thereof "deployment, storage, or disposal".

(c)(1) The Secretary of Defense shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation to determine (A) the ecological and physiological dangers inherent in the use of herbicides, and (B) the ecological and physiological effects of the defoliation program carried out by the Department of Defense in South Vietnam.

(2) Of the funds authorized by this Act for research, development, testing, and evaluation of chemical warfare agents and for defense against biological warfare agents, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Secretary of Defense shall request that the National Academy of Sciences submit a final report containing the results of its study and investigation to the Secretary not later than January 31, 1972. The Secretary shall transmit copies of such report to the President and the Congress, together with such comments and recommendations as he deems appropriate, not later than March 1, 1972.

Mr. MANSFIELD. Mr. President, this is the so-called military procurement bill. The opening speech on the bill will be made tomorrow, after the conclusion of the morning business.

Mr. President, there will be no votes tonight that I know of.

ORDER FOR RECOGNITION OF MR. SYMINGTON TUESDAY MORNING NEXT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate meets on Tuesday next, the distinguished Senator from Missouri (Mr. SYMINGTON) be recognized after the disposition of the Journal for not to exceed 30 minutes.

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

LEGISLATIVE PROGRAM

Mr. SCOTT. Mr. President, I would like to inquire as to the further order of business after the military procurement bill. I realize that there is some amount of optimism in the inquiry. But I would be curious to know whether it is contemplated that conference reports may be taken up from time to time or other business which would require the attention of Senators, even though there will be a period of debate on the military procurement bill.

Mr. STENNIS. Mr. President, may we have order. I ask that the Senate suspend until we do.

The PRESIDING OFFICER. The Senate will be in order. The Senator may proceed.

Mr. MANSFIELD. Mr. President, in response to the question raised by the distinguished minority leader, it is anticipated that the conference report on the education appropriations bill will be taken up some time on Monday next.

It is hoped, when appropriation bills are reported by the full Appropriations Committee, that on those occasions we will go back on the double shift basis and, late in the evening, take up those appropriation bills so that we can become as current as possible in that respect.

As Senators can see, the Calendar is pretty clear. The Senate committees have been working assiduously. The Senate is up on its work. That is about the best I can say at the present time.

Mr. SCOTT. Mr. President, I thank the Senator.

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. 14705) to extend and improve the Federal-State unemployment compensation program.

The PRESIDING OFFICER. The Senate will be in order.

SENATE PENSION STUDY GETS UNDERWAY

Mr. JAVITS. Mr. President, pursuant to Senate Resolution 360 which, among other things, authorizes the Committee on Labor and Public Welfare to conduct a general study of pension and welfare funds, the Senate Labor Subcommittee, under the joint direction of its chairman and ranking minority member, Senator WILLIAMS of New Jersey and myself, has prepared a detailed 32-page survey from which is being mailed to the administrators of some 1,500 private pension plans representing a broad and varied sample of the private pension industry.

The initiation of this survey is a major step forward in securing key information concerning the structure and operation of the private pension plan system. Much of this information has never been gathered before and yet it is essential if there is to be an intelligent and rational legislative approach to the problems of the private pension industry.

The survey form, which incidentally is designated "Pension Study: Form P–1," specifically explores four vital areas which, in my judgment, will illuminate in an unmistakable fashion what is right and what is wrong with the private pension system. These four areas are: First, the nature of the retirement benefits promised by the plan; second, the requirements that must be met to obtain

these benefits; third, the likelihood of an employee under the plan actually receiving such benefits; and fourth, the adequacy of the funding arrangements made by the plan.

This P–1 form is the product of intensive efforts extending over a period of several months and involving the assistance of experts both in and out of the Government.

In an article written by New York Post Correspondent Anthony Prisendorf, which appeared in the New York Post on Wednesday, July 15, 1970, the form was described as a "unique nationwide survey." Mr. Prisendorf's article, as well as a current series of articles by Associated Press writer Dick Barnes, which are appearing in the Buffalo Courier-Express and other newspapers throughout the country, illustrate in convincing detail the problems that have prompted great concern over the private pension system. As Mr. Barnes points out, thousands of Americans retire each year only to find that they will receive no private pension plan benefits from the plan they may have worked under for many years. The reason is that these private plans are, "a mishmash of low benefits, superstrict qualifying rules, lack of information, and in a few cases, misuse or mismanagement of funds."

I am not surprised to see an escalating concern over a social problem of such appalling dimensions. Since 1967, I have urged the Congress to enact legislation which would bring about minimum standards of fairness in private pension plans and end the self-perpetuating, self-destructive characteristics of the system. About a month ago, I presented statistics compiled by the Bureau of Labor Statistics from which the inference can be drawn that the risk of loss of benefits in private pension plans is abnormally high, so high that but for the fact that the pension issues, as Mr. Barnes points out in his article, are dry and complex, there would doubtless be—and should be—an overwhelming public demand for congressional action to reform these plans.

I recognize, however, that the Congress should not rely on inferences alone, no matter how well-founded, in considering legislative proposals of such major impact. The survey initiated by the Senate Labor Subcommittee will answer this need. It will, for the first time, pin down in precise detail essential facts relative to the adequacy of employee benefit protection under the private pension system.

The continuing spectacle of substantial numbers of retired workers having lost anticipated pension benefits despite having been covered under private pension plans for many years, is a matter that can only be ignored by the business community, labor, pension planners, and the Government at their peril. As United Auto Workers President Leonard Woodcock has perceptively observed in an eloquent letter to all Members of Congress, there is great danger in emphasizing the critical security needs of business—dramatized by recent events involving the collapse of the Penn Central Railroad—while ignoring the equally desperate security needs of the worker. Such a lack of justice in ordering our priorities would inevitably be interpreted, as Mr. Woodcock aptly remarks, as "a politics of class verging on the classic Marxian strain."

As a matter of fact, we have already witnessed a Penn Central debacle in the private pension field. In 1963, Studebaker Corp. closed its operations in South Bend and as a result some 4,400 workers with vested pension rights were cut adrift with only 15 cents for every dollar of pension benefits they had earned, and no meaningful opportunity to earn a private pension elsewhere and there are other cases like Studebaker although perhaps not of the same magnitude.

It is time we stopped thinking about pensions as an esoteric specialty reserved for a select "priesthood" of actuaries, consultants, insurance experts, and other technicians, and started thinking about pensions in human terms. On June 18, 1970, I addressed the International Executive Board and Staff of the Steelworkers on the subject of pension plan terminations and the need for reinsurance which my bill, S. 2167, would provide. In that speech I noted that "the problems of forfeiture of benefits by reason of restrictive requirements or terminations of one sort or another is a very real one, which is exacerbated by the fact that the employees who are being shortchanged by these plans have foregone wage increases in favor of obtaining these retirement benefits." In recent testimony before the House General Subcommittee on Labor, the distinguished president of the United Steelworkers Union, I. W. Abel, stressed:

> That the failure to pay promised and *earned* pensions is as much the exploitation of labor as are long hours and low wages, and that nothing can drain life and hope out of a worker faster than the denial or loss of a pension after a lifetime of labor.

Mr. President, our country has been characterized as an affluent society; yet today there are untold thousands of retired workers living perilously close to the poverty level who feel deceived, betrayed, and even gyped by a private pension system in which they had placed their hopes and their trust. Only the most brutally cynical can now say to these hapless victims: "Well—you should have read the fine print in your pension plan. If you had, you would have realized that your chances of actually obtaining retirement benefits were really quite remote."

There is only one way to answer the mounting cries of resentment and despair over a system that, even assuming the best of intentions, so persistently ignores the human equation. And that is to enact legislation which establishes essential standards of equity for the workers covered by these plans and provides the mechanisms by which their hard-earned pension credits can be protected against economic misfortune. Let us not wait for massive tragedies like the Studebaker closing to proliferate before we are convinced of the necessity for such action. By then our constituents may be asking us to dismantle the private pension system. Let us act now to preserve it.

Members interested in the pension study form of questionnaire—form P—can get a copy from me or Senator WILLIAMS.

I ask unanimous consent to have printed in the RECORD the various newspaper articles and other pertinent material on this subject, including my speech to the United Steelworkers.

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

SENATE UNIT CHECKS PENSION PLANS

(By Antony Prisendorf)

WASHINGTON.—Throughout the country there are probably thousands of retired men and women who, to their utter dismay, found out too late that they didn't meet the fine-print requirements of their private pension plans.

How many such people there are, who they are, and how long they contributed a portion of their salaries to a plan under the misguided assumption that upon retirement they would automatically begin receiving regular benefits—these are some of the questions to be answered in a unique, nationwide survey being made by a Senate subcommittee.

In most cases that have been recorded or brought to an individual Congressman's attention, pension benefits are withheld from retired employes because the workers did not fulfill the demanding longevity requirements for "vesting" rights.

These "vesting" rights represent a worker's non-forfeitable share in the pension plan to which he has contributed over the span of his employment.

ENTITLED TO PENSION

Once vested, the employe is entitled to his pension benefits after retirement, even if he is fired, laid off or otherwise severed from his present job.

But all too often, Senate investigators have found, an employe doesn't attain "vested" status until he has worked steadily for the same employer for 10 years—a relatively infrequent occurrence because of this country's highly mobile and fluid labor force.

Hypothetically, these investigators report, if such an employe worked steadily at the same job for nine years, 11 months and 29 days and was then abruptly fired, he would forfeit all benefit rights to the pension plan to which he had contributed regularly during that time.

A second, less frequent form of retirement trauma occurs when a mismanaged or insufficiently funded pension plan goes bankrupt—as was the classic case at a Studebaker plant in Indiana in 1964—and the employes, though "vested," received little or none of their rightful benefits.

What makes the subject one of growing interest to members of Congress is its dimensions. At present there are an estimated 30 million American workers participating in 33,000 private pension plans.

(The word "private" distinguishes them from the public pension plans offered by the federal government to its employes or even Social Security.)

Of even greater interest to some members of the Senate is that these private pension plans have combined assets of 126 billion, which one specialist on Capitol Hill described as "the largest aggregate to essentially unregulated funds in the country."

Efforts to impose some form of federal regulation are at the heart of the current survey being made by a Senate labor subcommittee, of which Sen. Williams (D-N.J.) is chairman, and Sen. Javits is the ranking minority member.

Subcommittee staff members are now in the process of mailing detailed, 32-page questionnaires to the administrators of more than 1000 of the private pension plans.

"We hope to determine, among other things," the two Senators said, "what benefit rights an employee gets under a plan, what funding arrangements are provided to pay benefits, under what circumstances an employe forfeits his benefit rights, and how likely he is to do so.

"Much of this information has never been compiled before," Javits and Williams went on, "yet it is essential to full understanding of the many problems that confront private pension funds."

According to one knowledgeable Congressional source, little has been done so far because of "massive pressures" brought by just about every side—organized labor as well as the administrators of the pension plans.

Congressional specialists in the area of pension plans are relatively certain that their private misgivings will be supported by the results of the survey.

So, they are already planning to propose, as Javits has in the past, that a uniform vesting requirement be adopted nationwide.

Under the Javits formula, an employee would begin acquiring vested rights after six years in graduated 10 per cent increments each year until he reached full vesting after 15 years.

Moreover, a federal pension commission would be established to administer the programs and to consolidate the piece-meal regulatory functions now performed by the Treasury, and Labor Depts. and the Securities and Exchange Commission.

[From the Buffalo Courier-Express, July 13, 1970]

FEW WORKERS ARE DESTINED TO REAP PENSION HARVEST

(By Dick Barnes)

WASHINGTON.—Thousands of Americans retire each year only to find they'll get no money from the private pension plan they may have worked under for years.

The reason, an Associated Press study shows, is that many of the nation's 33,000 private pension plans are a mishmash of low benefits, superstrict qualifying rules, lack of information and, in a few cases, misuse or mismanagement of funds.

Many other plans are progressive and generous in benefits, so thousands of workers do get the retirement check they expect, particularly if they worked most of their career for one employer in a well-paid industry.

Although the majority of plans are prudently run, criminal activity dots the field.

Mafia names have cropped up in New York trials involving kickbacks for loans from a Teamsters pension fund. Grand juries in Chicago and Los Angeles are probing other pension fund loans.

Beyond such attention-grabbing cases, weaknesses in some pension fund operations leave the elderly with disappointment instead of a retirement check and sometimes a forced shove into poverty rolls instead of economic stability in their waning years.

One expert, for instance, found that only one of every 10 workers covered by pension plans in several low-waged industries would ever receive pension benefits.

Example of frustration abound:

A sheet metal worker from the Northwest who for years alternated between two union locals because of work availability found when he reached age 70 he would get a pension from neither.

A retired hat worker in Manhattan was notified by her pension plan that payments would be suspended for a year because the fund was not taking in enough money.

A business executive quit his firm after 18 years, thinking he had pension benefits he could draw at age 65. But when he went to work for a competitor, his original company canceled the pension right.

A woman who worked 37 years in New York was forced out of her job by a shop shutdown and was told to temporarily withdraw from her union. Later, when she sought her pension, she was told the withdrawal had cost her the pension.

Letters full of such claims of unfairness, broken promises and misunderstandings come regularly to government agencies and officials.

A few of the writers can be helped.

Most can't.

There is little federal or state regulation of private pension plans or their $126 billion in assets.

Annual financial reports must be filed with some agencies. The Internal Revenue Service must approve a fund if it is to be tax-exempt. And federal law prohibits some flagrant types of financial mismanagement.

But funds set their own benefit levels. They determine their own qualification rules. Many select their own well-paid lawyers, consultants and advisers, and make their own investments.

A federal grand jury in Chicago is examining the loans an investment adviser negotiated for the Barbers Union pension fund. Loans with a total face value of $7 million are delinquent—and the fund only has $21 million in total assets.

A Federal grant jury in Los Angeles is probing a $14.5 million involvement by the Teamsters Union's Central States, Southeast and Southwest Areas Pension Fund in a Los Angeles land development. City officials also are involved.

Not all cases involve loans.

For example:

The Employees Savings and Profit Sharing Fund of the Kropp Forge Co. of Chicago purchased 206,318 shares of the company's stock from two departing company officers for $3 a share. The stock was worth $1.875 a share at the time, according to a report the fund filed with the Labor Dept.

The United Mine Workers' welfare and pension fund deposited $67 million one year in a non-interest-bearing checking account in a bank the union controlled, costing the fund more than $3 million in lost interest.

The administrator of the Painters Pension Fund of Suffolk County, N.Y., was indicted on charges of embezzlement and bribery in connection with the purchase of fund office equipment. The same fund paid $19,184 in insurance commissions to a man whose wife worked for the fund. He had little previous insurance experience.

Pension trustees who also were officers of the McCrory Corp., which maintained the plan, purchased shares of McCrory stock for the fund while they sold their own holdings. When the fund quit buying, the stock prices dropped by two-thirds. The fund lost $4.5 million in this and other securities transactions.

A local Teamsters' fund contracted for land in a remote area to build housing for retired people but couldn't get a federally guaranted loan after the government found 20 of the 26 acres were under water and nearly half the rest consisted of a rock outcropping.

Legislation to tighten the fiduciary responsibility of pensions trustees and administrators and to prohibit various self-dealing practices is moving toward passage in Congress.

Some advocates of pension reform are trying to win simultaneous passage for provisions dealing with the broader and stickier issues of vesting and funding.

Vesting refers to the process and qualifications under which a worker becomes entitled to an eventual pension even if he quits his employer before retirement age. Funding refers to the manner in which money is paid into the the pension fund to meet its retirement check obligations.

Vesting and funding issues are dry, complex and subject to wide dispute—yet their human impact is far broader than the more isolated cases of fraud and misuse.

About 30 million workers, less than half of all private wage and salaried workers, are covered by retirement plans. About 3 million retired persons now receive private pensions.

The bulk of uncovered workers is in small businesses.

More than 90 per cent of pension plans are run by the employer.

Almost all of the rest are run jointly by representatives of a union and representatives of a number of small employers who deal with the union.

The employer makes all contributions in nearly three-fourths of the plans. Both employers and employes contribute in about one-fourth, and employes alone contribute in only 1 per cent.

Courts today increasingly label these employer contributions as simply a deferred wage earned by the worker—not a gift from the employer as early pension benefits were considered.

But with this trend has come growing concern about whether the deferred wage will be there when the worker retires.

Thomas R. Donahue, an assistant secretary of labor during the Johnson administration told the Senate Labor Committee:

"In all too many cases the pension promise shrinks to this: 'If you remain in good health and stay with the same company until you are 65 years old, and if the company is still in business, and if your department has not been abolished, and if you haven't been laid off for too long a period, and if there's enough money in the fund, and that money has been prudently managed, you will get a pension.'

"It is utterly indefensible in a society as affluent as ours that an individual's economic security in his later years should rest on such a flimsy foundation and be so endangered by such an incredible list of 'ifs' and 'maybe,'" said Donahue.

Mario Impellizeri, a New York pension consultant, testified before the House general labor subcommittee this year that his study of 10 plans covering 60,000 low-paid workers "discloses that less than 10 per cent will ever receive a pension benefit."

He found that to be eligible for a pension, a worker had to compile at least 20 years of continuous service ending with his retirement at age 65. Yet annual turnover in the industries studied averaged 25 per cent, Impellizeri said.

Only about one of every six employes covered by the mammoth Western Conference of Teamsters pension plan will qualify for a pension, according to fund officials, despite the fact that they can transfer among any of 13,000 employers and can qualify for some pension rights if they have 15 years of service at age 52.

Merton C. Bernstein, an Ohio State University law professor, gave a Senate committee this interpretation of how pension plans work:

"The losses of many provide the funds with which the pay-off is made to the lucky few—just as at any honest race track."

He listed business failures, reorganizations, mergers, government contract losses and employe turnover all as factors in eliminating workers from pension plans before they qualify for benefits. He estimated that "as few as one out of five may reach the winner's circle."

James Curtis, a Seattle actuary on the board of the National Foundation of Health, Welfare and Pension Plans, Inc., told a congressional subcommittee he thought a pension qualification rate of "one out of two people is going to be more accurate than one out of nine"—a figure cited often by pension reform advocate Rep. John Dent,

D-Pa., chairman of the House general labor subcommittee.

Even for those retirees who do get their pensions, the size of the checks seldom guarantee luxurious living.

A Social Security Administration report predicts that in 1980, 74 per cent of couples and 83 per cent of unmarried persons who get pensions will receive less than $2,000 a year. Not counting Social Security benefits only 2 per cent of couples and 1 per cent of single people will get more than $4,000 annually.

An 11-year study by the Bureau of Labor Statistics shows that an average of 22,500 employees a year are in pension plans which terminate. Some are absorbed into other plans through corporate merger and some are paid accrued benefits. But others are left with nothing.

The biggest termination in recent years followed the shutdown of the Studebaker plant in South Bend, Ind.

Studebaker workers with at least 10 years of service who were 60 or older lost no benefits. But after they were taken care of, there was only enough money left in the funds to give 15 per cent of the accrued value of their benefits to workers with 10 or more years of service who were between 40 and 59 years of age. Workers who were younger or who had less than 10 years of service got nothing.

One Studebaker employe who got only 15 per cent of his benefits was 59 years old. He had worked for the firm since he was 16.

LETTER FROM UNITED AUTO WORKERS PRESIDENT LEONARD WOODCOCK TO ALL MEMBERS OF CONGRESS URGING PUBLIC REINSURANCE OF ACCUMULATED PRIVATE PENSION RIGHTS

JULY 2, 1970.

DEAR CONGRESSMAN: I am writing to you and to the other members of the Congress to urge that at least as much consideration be given to public reinsurance of the accumulated private pension rights of workers as is being given to bailing out both Wall Street speculators whose brokers go bankrupt and the stockholders of the Penn-Central Railroad.

In his June 17 televised addess on the state of the economy, President Nixon told the nation that we are in transition from a wartime to a peacetime economy. Senator Mansfield and economic indicators suggest that the word for our situation is recession. We in the UAW are struck by the fact that whether we are in an economy of war, peace or transition, in recession or what passes for prosperity, the conduct of government and economic affairs remains too largely in the grip of a double standard: all Americans are equal, but some Americans are more equal than others. Walter Reuther used to refer to this double standard as Park Avenue socialism for the rich and free enterprise for the poor. The President's program "specifically addressed to help the people who need help most in a period of economic transition" reflects that double standard. Mr. Nixon called for:

"Establishment of an insurance corporation with a Federal backstop to guarantee the investor against losses that could be caused by financial difficulties of brokerage houses. . . ."

Yet he made no reference to and indicated no support for a long-pending proposal to provide similar insurance to meet the urgent need of wage-earners and lower-salaried workers who stand to lose the protection of privately negotiated pensions if the companies they work for should go out of business before their pension programs are fully funded. Yet the closing of plants and the wiping out of workers' pension rights are an obvious potential consequence of a transition from war to a peace economy, while it is difficult to see any necessary connection between such a transition and trouble in brokerage houses.

Again, the collapse of the Penn-Central Railroad has brought on the spectacle of Administration figures falling over each other in their haste to shore up the managements and to protect the stockholders of the Penn-Central and other threatened lines through massive infusions of Federally guaranteed loans. The Secretary of Transportation admitted that such action to help the Penn-Central management would be "gambling" on "high-risk loans." Nevertheless he attempted to panic the Congress and the country with the hobgoblin of nationalization of the railroads if the risk were not taken. And the President himself, in his June 17 speech on the economy, authorized the gamble by calling for:

"Legislation that will enable the Department of Transportation to provide emergency assistance to railroads in financial difficulties."

We in the UAW are not in principle critical of financial aid to stricken corporations. Nor are we necessarily opposed to action to protect investors or even speculators from losses stemming from financial difficulties of brokerage houses. Yet we ask: Are these people—the well-heeled managements of conglomerate corporations and others affluent enough to be able to speculate in Wall Street—among "the people who need help most in a period of economic transition"?

We think not. These people may need help, but they certainly need help less than the poor, the unemployed, and millions of aging Americans for whom retirement brings a severe slash in income that frequently means ending their days in poverty.

The President gave a thought to these older Americans in his economic speech, proposing that the Congress tie Social Security benefits to the cost of living. This would be helpful, but tying a poverty retirement income to the cost of living would merely guarantee an unruffled prolongation of poverty.

It is the gross inadequacy of Social Security benefits that has given privately negotiated pension rights such critical importance in workers' hopes and plans for retirement. Yet the President was silent with respect to the plight of the many American workers who own no railroads and possess no stock portfolios to speak of, only a private pension promise that offers them hope of a standard of life in retirement beyond the bare minimum possible under Social Security. Public reinsurance of private pension funds—similar to the insurance provided since the 1930s for bank deposits and akin to the backstop Federal protection the President asks for investors—would bring all of us closer together and nearer to fulfillment of the American dream of which Mr. Nixon spoke to such applause in his address to the Junior Chambers of Commerce.

The number of persons dependent upon private pension plans is far greater than the number of Wall Street speculators and Penn-Central stockholders whose problems have generated the urgent concern and precipitate haste of an army of would-be rescuers. Some 28 million persons are presently covered by private pension plans and it is forecast that 42 million will be covered by 1980.

In contrast to the handful of brokerage firms that have experienced difficulties and the one railroad recently forced into receivership, some 4,000 pension plans were terminated in the United States between 1955 and 1965. These terminations, all too frequently, subjected affected workers to the double tragedy of lost jobs and loss of substantial prospective pension rights at a stage in life when they had little or no opportunity to earn further pension entitlement.

We in the UAW have been pressing since 1961 for an insurance program to protect private pension funds. Delegates to a UAW convention that year, comparing the promissory nature of bank deposits and pension plans, declared:

"Pension plans also represent private promises, this time by employers, which they may not be able to keep if they get into deep financial difficulties before the plans have been fully funded. These plans are so widespread and private pensions to supplement social security have become such an integral part of our system of providing for retirement that their protection must also be accepted as an essential feature of public policy. The catastrophe to the worker who sees the security which his pension rights represent to him swept away by the failure of an employer is just as great as the catastrophe of the depositor who loses his lifetime savings in a bank failure. The solution is essentially the same."

Congress in the relatively prospering early 1960s was not impressed by the reality or urgency of this problem and failed to enact legislation which would have shored up the security of workers' pensions. Then, 5 days before Christmas 1963, the last car came off the South Bend line of the Studebaker Corporation, and as a result some 4,400 workers between the ages of 40 and 59, who had earned a vested pension right through ten or more years of service to the corporation, found that right meaningless when their plant shut down with only enough money in the fund to provide pensions to workers age 60 and over. As a result, workers with as much as 40 years of seniority who, even if they found another job, were too old to start acquiring new pension credits from another employer, were left stranded.

The collapse of Studebaker dramatized the predicament of its workers and of workers in other companies who might also find the paper promises implicit in unfunded pension rights repudiated as a result of plant closings. Still the Congress failed to enact a pension reinsurance law, leaning heavily on the argument that great technical difficulties in framing such a law stood in the way.

As of February 26, 1970, when Walter Reuther made a plea for a pension reinsurance law in one of his last statements to the Congress, the opposition no longer rested on technical difficulties; it was more or less conceded that, as Mr. Reuther said, for a small premium cost spread universally over all plans, they could be protected. The argument had now shifted to the claim that there was no need for such a protective mechanism, since only a small percentage of workers were affected in what was after all but an "incidental failure" of the present system.

Mr. Reuther stated that this is the logic to be expected from a computer but not from a human being. He called for:

"A balanced combination of adequate public and private pension plans, with appropriate public support assuring the fulfillment of expectations of the private sector . . ."

And he stated:

"As the richest nation in the world we cannot continue to deny our older citizens their measure of economic justice and human dignity. We must act now to assure society's promise to present retirees and to avoid the potential failure for even a small number of the millions of workers rightfully anticipating a secure retirement."

The closing down of plants or operations is not a rare occurrence in any industry in our economy. In our own industry, we think of Hudson, Studebaker, Packard, Kaiser-Frazer as well as a host of smaller companies. Nor has it been rare in recent years for plants to close or operations to end, wiping out the hopes of security in retirement for men and women too old to start from scratch on other jobs. In recent years the UAW has been

obliged to close out negotiated pension plans for a variety of reasons: a fire totally destroying the plant; the close-out of a smaller plant bought by a larger company; part of an operation discontinued because an obsolescent plant had become uneconomic. The latest closing of a plant under contract to UAW took place on July 1, 1970, with its pension plan 11 years away from full funding. Among the victims of that closing were a man and a woman, both 52 years old, each with 37 years of service. Because of their age, their entire 37 years with the company were washed out as far as pension benefits are concerned.

When plants are closed down, there is apt to be talk about "the price *we* pay for progress"—yet that price is too often inequitably distributed, entailing, for example, a more efficient operation for the employer but unemployoment and a wiped-out pension promise for the worker. Certainly from the fruits of the progress that we are all supposed to enjoy, assurance can be given that the security of pension benefits will be maintained.

The President speaks of the people who need help in a period of economic transition. But it should be clear that for wage earners and to a somewhat lesser extent for salaried workers, the "transition economy" is not a sometime thing but a permanent aspect of their lives. Blue-collar workers particularly work and live all their lives on the cutting and bruising edges of technological and economic change, in war and peace, in sickness and health, in youth and age. A special White House panel that studied the problems and needs of blue-collar workers has within the last few days transmitted a report to the President urging Administration action to deal with the economic and social needs of such workers, whom the report described as economically trapped and socially scorned. It is primarily these workers and their families, rather than railroad managers and speculators, who need help.

We detect a disproportion in the rationing of the President's concern, a show of preference for a kind of Wall Street or Easy Street welfare state which if indulged by the Congress would come dangerously close to—if it did not actually arrive at—a politics of class verging on the classic Marxian strain.

In this disturbing situation, we feel that the Congress has a stronger role to play and a considerable responsibility to play it. The question of establishing a pension reinsurance system has been in Congressional limbo for years. The President of the United States has asked the Congress to produce legislation to insure investors against their losses. We earnestly hope that the Congress will now see the substantive and symbolic merit of enacting a pension reinsurance law without further unseemly delay. Having thus offered assurance of retirement security to American workers, the Congress could then go on with good grace to consider the security needs of Wall Street speculators.

If we are to bring this country together, we are going to have to curb the impulse of Wall Street socialism in favor of much larger doses of Main Street and back-street democracy—on both sides of the railroad tracks. Treating Americans more equally would facilitate our progress not only toward a peacetime economy but toward a more peaceful society as well. Enactment of a law to protect negotiated pension funds would be one firm step in that direction.

Sincerely yours,

LEONARD WOODCOCK,
President, International Union, UAW.

PRIVATE PENSION PLAN REFORM

The issues involved in pension reform, I know, are of critical importance to you, and your union has been a leader in advocating the correction of serious defects in the private retirement system.

I also know that the Steelworkers Union has been a pioneer in the development of vesting in the pension plans you negotiated so that your members are not subject to total forfeiture of benefits after long years of service, as is so often the case in other industries. And it comes as no surprise to me that your leadership is backing pension plan reinsurance, which I also support. For it is the vested plan which really needs reinsurance the most; there the workers have something to lose. On the other hand, the collapse of a plan in which few if any workers have vested rights is only a "loss" of benefits the workers never had in the first place.

As many of you are aware, I have a strong and abiding interest in the subject of pension reform, having introduced the first comprehensive legislation on the subject, and my desire to secure needed standards with respect to the operation of the private pension system has not diminished. In fact, my conviction that basic regulation is required has become increasingly firm since I first introduced my bill in 1967.

Yet, there has been a growing marshalling of forces aimed at frustrating pension reform legislation. These forces—which include substantial segments of the business community and even some international unions—are quite formidable and it will require great unity and perseverance on the part of the trade union movement if effective reforms are to be realized. This union is to be commended for its effort to communicate to its members and the people the serious dimensions of the private pension issue. But, labor has not at this point sufficiently knit together on the pension reform issues. To counter the opponents of pension reform effectively will require much greater efforts by labor than has been the case so far; this union with others will need to come together to furnish the backing that is required if this legislation is to get off the ground.

Your President has specifically asked me to speak tonight on the subject of pension reinsurance and I intend to do that. But before I do, I wish to give you my general impressions with regard to the pending proposals.

CURRENT OUTLOOK

As you know, there are now pending in Congress fiduciary bills amending the Welfare and Pension Plan Disclosure Act—one of which I introduced in the Senate on behalf of the Administration—and some broader proposals dealing with vesting, funding, reinsurance, etc., including my own comprehensive bill. Hearings on both the fiduciary bills and the broader legislation are being held by the House Subcommittee on Labor. The Senate Labor Subcommittee has not gotten around to holding hearings on this subject, but I have every expectation that such hearings will be held this session.

The Senate Labor Committee is, however, engaged in a study of the United Mine Workers Welfare and Pension Fund, and I am making every effort to see that this study goes into the broader issues of pension reform. I think a substantial body of evidence has been built up in the last few years which amply justifies the necessity for fiduciary standards and, in my judgment, gathering further examples of fiduciary abuses in other funds would simply be cumulative. There is a fairly broad consensus that fiduciary standards are necessary. Even so, whether such a fiduciary bill can be enacted this year remains uncertain; a decisive opportunity certainly would be presented if the House should pass such a measure.

The enactment of fiduciary legislation, however, is just the beginning. There are those who have urged that fiduciary legislation only be enacted as part of a package which covers the other issues of pension reform i.e. vesting, funding, reinsurance, etc. On the other hand, there are those who undoubtedly are willing to go along with enactment of fiduciary legislation provided that nothing further be accomplished. This latter group will probably say that having accomplished fiduciary reform, which as I indicated is not all that controversial, Congress ought to wait and see what happens before doing anything further. This tactic is similar to that employed in prior legislative efforts directed to regulation of pension plans. You may recall that the original Welfare and Pension Plan Disclosure Act was a very weak measure. At that time it was argued that Congress should take just a little step at a time and not rush in all at once. That Act proved to be so worthless that it had to be amended in 1962, and even now it requires further strengthening if it is to be effective; yet nothing has happened for twelve years.

As I indicated when I introduced the Administration's fiduciary proposal, I think the proposal is fine as far as it goes, but I don't think it goes far enough. With respect to matters of vesting, funding, reinsurance, etc., the Administration's bill adopts a "truth-in-lending" approach. New disclosure provisions are proposed which would require pension plans to inform participants as to their rights under the plan, the nature of the vesting provisions, if any, where the plan stands in terms of funding and what the participant would receive if the plan terminated. I think these are good provisions and a worthy improvement to existing law. But they will not cure the more serious deficiencies in the private pension system. "Truth-in-lending" is fine but there have to be usury laws as well.

It is for this reason that, favorably impressed as I am by the Administration's fiduciary proposal, I will continue to work for broader legislation, as represented by the comprehensive bill, including funding and vesting which I have offered.

The pension plan system has achieved great success much of which is due to unions, like the Steelworkers. Certainly the sheer size of the system in terms of accumulated assets is rather awesome.

Latest S.E.C. studies show that as of 1969, pension fund assets, both insured and noninsured, soared to $126.2-billion. These funds are expected to accumulate over $200-billion by 1980.

Paradoxically, there are disturbing defects in this vast system. Chief among these is the fact that, according to the testimony of former Secretary of Labor Shultz, approximately one-third of the 29-million participants covered by private pension plans will never receive a pension from these plans.

At first impression, this stunning disclosure seems incongruous with the statistics revealing the vast resources accumulated by these funds. Closer inspection, however reveals that there are two principal factors responsible for this paradox: First, at least one-half to two-thirds of the plans in existence contain requirements—late vesting for example—with regard to qualification for retirement benefits that are sufficiently restrictive to preclude many participants from any realistic hope of obtaining any benefits; second, layoffs, plant closings and business or technological circumstances resulting in plan terminations often cause participants to lose some or all of the retirement benefits they had anticipated.

PENSION REINSURANCE

The rate of formal plan terminations potentially effecting loss of benefit rights has been estimated by former Secretary of Labor Shultz at about 500 a year, affecting approximately 25,000 participants. I think these estimates may be too low because they are based on formal plan terminations reported to the Treasury Department. I do not believe that they fully reflect the extent of instances sometimes characterized as "partial

terminations," where through plant closing, lay-offs, corporate mergers, etc., a substantial number of participants are separated from the scope of the plan with loss of benefit rights even though the plan continues in existence.

In any event, the problem of forfeiture of benefits by reason of restrictive requirements or terminations of one sort or another is a very real one, which is exacerbated by the fact that the employees who are being short-changed by these plans have foregone wage increases in favor of obtaning these retirement benefits. Regardless of whether the current rate of termination is viewed as large or small in proportion to the total number of pension plans in existence, it doesn't take too much foresight to be concerned about the magnitude of loss that would result if we were to experience a prolonged period of severe economic distress.

A harbinger of what might be in store is represented by current conditions in the aerospace industry. The large lay-offs that have occurred in that industry due to massive cutbacks in defense and aerospace contracts has resulted in an extreme curtailment of pension expectations for many of those who have been unfortunate enough to have been separated from their employment.

I believe that the federal government has a clear responsibility to take into account the effects of its programs on employees engaged in industries dependent upon government contracts. About all the government does now is to see to it that the pension plans of these contractors meet Treasury Department standards and that the employers' contributions to the plans are reasonable. If these standards are met the Government permits the contractor's contributions to be included as a reimbursable item of cost with respect to the defense and aerospace contracts it negotiates.

Since the Government is also indirectly subsidizing the plans in these industries—by tax indulgence—it follows that the Government should insure that these plans are realistically structured and that the pension expectations of the employees are made more secure than is presently the case. I think it is incumbent on those agencies involved to consider ways and means of requiring more adequate standards for pension plans of Government contractors. Among the obvious possibilities are earlier vesting, compulsory participation in reciprocal arrangements and pooling of funds by contractors in the same industry to minimize the risk of termination. There is ample precedent for the use of Government's contracting authority as a basis for setting such standards, and I urge the Administration to take active steps along the lines I have suggested.

The Studebaker closing was the archtype of termination demonstrating the need for reinsurance. It is a dangerous misconception to conclude that reasonable vesting and funding provisions will eliminate Studebaker-type cases. The Studebaker plan had a 10-year vesting provision and 30-years funding. At the time the plan was terminated however, it was only 10 years old, and therefore was not fully funded. That situation can and does still occur, in connection with complete as well as partial terminations, and the only way to provide protection for employee pension rights when it does occur is through a reinsurance scheme such as that provided in my bill. The Steelworkers were among the first to recognize this fact, and I commend you for doing so. I would add that reinsurance cannot stand alone either; funding and fiduciary standards are preconditions for reinsurance.

Also, in the merger-acquisition situation, I understand that, at least in the context of unionized employees, the acquiring company usually has the obligation under the National Labor Relations Act to continue in effect the pension plan and collective bargaining agreement of the company it acquires, and not to terminate either plan or agreement without bargaining it out with the union. I think it is most unfortunate that non-union employees in the merger situation do not have any protection from sudden termination of pension plans and consequent loss of benefits if the plan is not fully funded. The reinsurance provisions of my bill would give such protection, and would also protect your members in those situations where the National Labor Relations Act does not have the effect—because of structural business changes resulting from a merger or acquisition—from precluding plan terminations.

No one is certain, of course, what effect this reinsurance plan would have in the long run upon corporate planning or collective bargaining. If past experience is any guide, the cost of reinsurance should be very low, because the rate of termination of pension plans is relatively low.

If, however, reinsurance should turn one to create terminations and "milk" the reinsurance fund we may well decide, on the basis of that experience, that pension plan liabilities for unfunded pension credits should be made a lien upon the assets of the employer in the merger situation. I believe reinsurance will handle the situation at minimal cost, but we will, no doubt, want to watch very carefully what happens after reinsurance is enacted into law.

It may also be necessary that the regulatory agency concerned with reinsurance possess some authority to prevent the splitting of plans when such a result would penalize substantial numbers of participants, or, to require the merger of plans in certain circumstances where that is feasible, which might be the case in a conglomerate situation. Powers somewhat similar to these have been given to the Federal Deposit Insurance Corporation which is authorized by law, for example, to facilitate a merger or absorption of a distressed bank by another insured bank whenever it can be shown that the disruptive effect and potential losses could be minimized.

To accomplish the goals of pension reform will not be easy. However, much can be done to straighten out the misconceptions of those who believe that further regulation would be an unmitigated disaster for the private pension system. In fact, precisely the contrary is the case. To be perfectly frank, I believe that, for the most part, it does not ultimately matter to the ordinary employee where his retirement income comes from, as long as it is an adequate income and he is not compelled to adopt a standard of living in his old age which is at or below the poverty level.

Accordingly, the life expectancy of the private pension plan system is directly related to whether that system together with Social Security will produce an adequate retirement income for the bulk of our labor force. If the private pension system together with Social Security fails to meet this objective, no amount of rationalization will save it from drastic modification or even replacement. Already, there are critics who would like to see the private pension system entirely jettisoned. I do not agree with these critics. I see great strengths and virtues in the system and I believe it is well worth preserving. But I think that the handwriting is on the wall, and that unless fundamental reforms are undertaken to improve the chances that persons covered by private pension plans will receive an adequate retirement income, there will come a time, not too far away I think, when those who want the system abolished may have their way.

I am hopeful that with your help we can accomplish these basic reforms before it is too late.

UNITED STEELWORKERS OF AMERICA,
Washington, D.C., June 22, 1970.

Mr. EUGENE MITTLEMAN,
% Senator JACOB JAVITS,
U.S. Senate,
Washington, D.C.

DEAR GENE: The Senator gave a very good speech to our staff on Pension Reinsurance. I thought it would be appropriate if he could introduce his speech into the Congressional Record accompanied by I. W. Abel's testimony before the House Education and Labor Committee.

Sincerely,

JOHN J. SHEEHAN,
Legislative Director.

PRIVATE WELFARE AND PENSION PLAN LEGISLATION

(By I. W. Abel)

My name is I. W. Abel. I am President of the United Steelworkers of America. I am testifying in support of urgently-needed federal legislation to protect the pension rights of workers.

My remarks primarily concern the concepts of vesting, funding and re-insurance which are incorporated in H.R. 1045. We wholeheartedly support these proposals which most of my statement concerns but we are also seriously concerned about additional federal regulations to cover the obligations of trustees of private pension plans.

However, I do want to emphasize this point: The passage of the bills covering fiduciary responsibilities is no substitution for the enactment of the principles of reinsurance of private pension plans. The enactment of H.R. 1045, therefore, is of primary importance.

I want to state a few facts about our Union which underscore the reasons for our great concern in this vital area of pensions. No union in the world has as many members covered by private pension plans as does the United Steelworkers of America. Currently we have some one million members who are covered by pension plans negotiated by our Union. Almost 175,000 of our members are now being paid pensions under these negotiated plans. Since our first pension agreements were won in 1950, 275,000 Steelworkers have retired under their provisions. The pension payments under these pension plans are around $125 million a year. Reserves have been accumulated in excess of $3 billion. While these are impressive totals they are not impressive enough to fully guarantee the ability of many pension plans to meet all their obligations if we go into a prolonged period when the economy does not expand.

The federal government has established its concern and responsibility for the protection of workers' private pension rights by the enactment of legislation affecting pension plans. However, this concern has been directed almost wholly at assuring the honesty of pension plan administrators and trustees. This is well and good, and it is necessary, but this does not solve the problem. By all means we should provide for the proper administration of pension plans but—above everything else—we should guarantee that such plans meet their obligations as they fall due. In short, make certain that the pension money is paid when it is supposed to be paid to someone who has worked his lifetime for that pension.

We respectfully urge that three basic features be included in any legislation to insure the soundness and integrity of private pension plans. These proposals go beyond the primary measures needed to insure the proper "housekeeping" of pension plans. We believe our proposals go to the heart of what is required to provide essential protection of workers' pension rights.

Our three basic proposals are as follows:

1. Every pension plan must provide that any worker who leaves the employment of a company will have a vested right to a pension when he retires, based on his years and months of service for the company. This is what we term a deferred vested right.

2. Every plan must be funded so that when a worker becomes eligible for his pension, enough money will have been accumulated in the pension fund to pay him his pension for the rest of his life. This we call pension security.

3. Every worker is entitled to this pension security when the operations of his employer are permanently discontinued. This would be done by a federal pension re-insurance system.

Now, I would like to say a few words about each of these three proposals. First, deferred vested rights.

Pension rights are an integral part of the total compensation a worker receives for his labor. More and more an increasing share of compensation consists of deferred benefits. The best known deferred wage payments include holidays, vacations, insurance and pension benefits. No employer is permitted to avoid or evade the payment of immediate wages. We say that deferred compensation is entitled to the same protection of law because when we negotiate these benefits we do it on the same basis as we do wage benefits.

Second, we believe a worker's right to freedom of movement is seriously compromised if his mobility deprives him of part of his standard of living in retirement. If pension rights are deferred wages, a man who loses these deferred wages because he changes his employment, or has his employment changed, has been unjustly deprived of what is rightfully considered part of his savings. Pension rights accumulated in a pension fund have the same cash value as that part of his wages a worker deposited in a savings account in a bank.

As Professor James Shulz put it in a publication of the Senate Select Committee on Aging: "The older worker who loses his job, for one reason or another, after many years of service but before qualifying for a private pension benefit, has suffered a retroactive pay cut."

Third, the effect of depriving a man of part of his compensation when he changes jobs, is to enrich the employer who was—or should have been—contributing money into the pension fund for the worker's eventual retirement. The proper solution to this area of concern is a proper vesting provision in the law.

Now, to turn to pension security for a moment. What has been included as part of an economic settlement should not be permitted to be used for anything other than what it was intended to be used for. When an employer has agreed to provide an employe with a pension of $300 a month when he has reached retirement age of 65, he has, in effect, agreed to pay him an annuity worth approximately $35,000. Pension negotiations would be a shambles if the value of any pension agreement was not arrived at on the basis of actuarial estimates. An employer who agreed to pay a worker $100 a week for his services and then paid him only $50, would be liable for his failure to live up to his agreement. Why should an employer who agrees to pay a man $300 upon his retirement not be held liable for failure to fulfill his agreement, if he does not regularly put aside the money necessary to meet that agreement?

If Congress fails to provide for the funding of pensions by law, there will be more and more workers who will discover that much of their lifetime of labor will have been in vain if the promised and anticipated pension is not there. There can hardly be anything more crushing to the human spirit, than to labor thirty, forty years—looking forward to retirement with dignity—and then to learn that the hopes and dreams of a lifetime are not to be realized after all. I would also say that, in the event of serious economic problems, the disappointed hopes of millions of Americans who labored in vain anticipation of lifetime pensions will surely prove as powerful social dynamite as any other deeply felt grievances suffered by other segments of our Nation.

Now, for the most important proposal we have made to Congress—legislation to protect workers' pensions by the establishment of a federal pension re-insurance system. A homeowner purchasing his home on time payments surely has the right (if not the obligation) to insure the repayment of the full face value of his loan in the event of his premature death. Otherwise, his family might find themselves homeless even though a part of the indebtedness had been repaid. Our proposal, in essence, adopts the same principle with respect to pension re-insurance. If for example, a company terminates its pension plan prematurely—usually as the result of a permanent shutdown—and if all the payments necessary to fully fund each worker's pension rights have not been made, the re-insurance fund would pay the unfunded benefits. We believe the costs could be properly charged against all pension plans enjoying tax-exempt status. Pension re-insurance premiums should be based on the extent of each pension plan's unfunded liabilities. As the amount of unfunded liabilities decreases, the amount of premiums should also be decreased. Thus, the worker and the employer would both be rewarded: The worker with pension security; the employer with declining premium costs.

It has occasionally been argued that pension re-insurance will discourage the voluntary funding of pension plans. The argument is that there will be no incentive to do so if an employer knows that any unfunded liabilities will be satisfied by the payment of a relatively small premium to the re-insurance fund. The answer to this argument is two-fold: First, as we have proposed, all plans must be required by law to fund their unfunded liabilities by formulas which provide minimum funding standards. There is considerable evidence that most employers are *already* rapidly funding the unfunded obligations of their pension plans. Therefore, the effect of the law will be to compel a minority of employers to do what the majority of soundly-managed enterprises are already doing. Second, a soundly designed program of premium charges will provide for reduced premiums as unfunded liabilities are reduced. However, if neither of these measures eliminate fraudulent schemes, the law should provide for criminal penalties. The penalties should apply to employers who willfully fail to fund, or who terminate a pension plan to secure payments from the re-insurance fund to which their pension plan was not entitled to.

It also has been suggested that unscrupulous pension fund managers will be encouraged to deliberately gamble their pension funds on high-risk ventures. If the gamble pays off, there will be large gains and reduced future contributions. If all is lost—so what? The pension re-insurance fund will take care of everything. I believe this line of argument only strengthens the demand for strictly limiting the types of securities in which pension funds may be invested. This kind of limitation is an essential part of any law governing fiduciary obligations and standards of conduct. Even without pension re-insurance, pension fund investments are presently being mishandled. I doubt, therefore, that a pension trustee who would use pension funds to speculate with other people's retirement benefits, needs pension re-insurance as an excuse for doing so.

Now, I want to conclude my oral testimony with a few, brief comments.

The benefit levels and costs of pension plans are bound to continue to increase in the future. Present pension plans cost in the area of 50 or more cents an hour. The value of these deferred wages alone justifies prompt action by the Congress to establish minimum standards of financial responsibility, and to enact legislation protecting the accumulated pension rights of workers.

I strongly disagree, Mr. Chairman, with those who advocate more study of this serious problem. This Committee, in our opinion, already has enough information to act during this session of Congress.

I concur in the following statement by the Bar Association of New York City:

"Comprehensive federal regulation of pension plans has been shown by actual experience to be necessary. Despite that evidence, regulation has hitherto expired in Congress, primarily, we believe, because important segments of management and labor fear disruptive effects on existing plans and have expressed their fears in Washington. The deep disappointments suffered by individual employes tend to be under-emphasized, particularly when a legislator is led by a continously expanding economy to conclude that those disappointments are not likely to reoccur. We believe that prudence calls for a different conclusion. If a lengthy recession occurs or a single industry founders . . . the effects can be catastrophic . . . Once it is clear that Congress should act, it seems to us just as clear that it should act promptly."

If the Congress were to delay action, it would be disregarding the gathering storms. I cannot underscore enough our feeling of great need for prompt action by the Congress.

I also want to underscore the point that the failure to pay promised, and *earned*, pensions, is as much the exploitation of labor as are long hours and low wages.

By enacting the measures we have proposed, the Congress will recognize that just as there can be no exploitation of a worker when he is a child, or when he is an adult, there can be no exploitation of the worker when he has retired.

I have attempted to emphasize the human element in my remarks because I believe this is the primary consideration. I also have tried to emphasize that nothing can drain life and hope out of a worker faster than the denial or loss of a pension after a lifetime of labor. I would respectfully ask you to think of your own feelings if you suddenly were confronted with the news, upon your own retirement, that the pension money just wasn't there.

Therefore, in conclusion, I again emphasize the importance of prompt action by the Congress.

I deeply appreciate this opportunity to appear before you and to present my views and the beliefs of the United Steelworkers of America on this most vital topic.

SOCIETY'S RESPONSE TO SCIENTIFIC ADVANCE: THE HARD QUESTIONS AHEAD

Mr. JAVITS. Mr. President, with the new emphasis on defining national goals and priorities, and focusing on the issues likely to arise in the foreseeable future, I find it most interesting and reassuring that the Society of Sigma Xi—the Nation's scientific honorary society—recently invited a practicing lawyer, Daniel M. Singer, Esq., to address the society's annual meeting on a subject which might at first seem to be purely scientific but which on closer examination reveals a real need for interdisciplinary discourse.

Mr. Singer raises some really new and puzzling issues, and their implications

are surprising and substantial. Suppose, for example, that a sudden breakthrough in biological science through genetic alteration, drug therapy or organ replacement makes it possible to extend the lifespan of man to 120 years—which is, I believe, a very real possibility. What would that do to our society—which would then be a society in which men and women at "retirement age" would have, nevertheless, an additional 50 or 60 years? What would become of the structure of our business and professional leadership in the context of young men entering fields of endeavor in which their "elders" had another 80 years before retirement? Indeed, what would become of our whole system of public and private pension and retirement plans, which might collapse in bankruptcy if a sudden change in lifespan revolutionized the actuarial assumptions on which the system is based?

Mr. Singer's remarks point up the need for a much closer cooperation and dialog between the social and scientific professions. I take some real satisfaction in the fact that it is a member of my own legal profession who is pointing the way, and I ask unanimous consent that Mr. Singer's remarks be printed in the RECORD.

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

SOCIETY'S RESPONSE TO BIOLOGICAL ADVANCE: AN OPPORTUNITY FOR SELF-CONSCIOUS CHOICE

(By Daniel M. Singer)

When Professor Holzberg dipped down (or reached over) into the community of practising lawyers to find someone to address the Society of Sigma Xi, I felt flattered and cheerfully accepted. And I concluded that at least Professor Holzberg was prepared to listen to mere words, without the benefit of lantern slides, statistical disquisitions or, indeed, the rest of the paraphernalia of traditional scientific discourse. The rest of you will have to bear with me.

Since the law plays an important role in harmonizing social change, perhaps more important than any non-lawyer is willing to admit or to accept cheerfully, it is not wholly inappropriate for me to speak this evening about the impact on society of the new and developing technologies arising out of increasing scientific knowledge. In particular, I want to suggest that the outlines of the impact of advances in the biological sciences can be reasonably well foreseen and that the impact will very likely require major changes in society. Most important, I want to suggest that perhaps uniquely in the history of mankind we have both the time and the wit, if we care to use them, to assess rationally the ethical or value choices inevitably posed by our new technologies, and, if appropriate, to act in accordance with that assessment. I would estimate that we have something more than 14 years in which to do so, but science exhibits an almost predictable fickleness that makes me worry that Orwell may have been overly generous.

(Let me digress slightly to note that I do not believe this to be our most immediate public policy issue. If we cannot do justice domestically, make major strides with regard to environmental pollution and limit drastically our capability for instant and very sophisticated genocide, everything I say tonight will doubtless be moot—save that perhaps the next crowd that makes it out of the second primordial ooze may eventually face the same problems.)

For our present purposes, I think it is sufficient to define "technology" as the harnessing of scientific knowledge to perform tasks perceived by the harnesser as useful.

There are at least three points in the process of technological change where socially relevant choices appear to be possible.

First, there are decisions by individual or very small groups of basic scientists, applied scientists or engineers whether to pursue A or B as a line of inquiry.

Second, having pursued A successfully, there is the choice whether to introduce the New Thing, and if so, how? Historically, the marketplace made or prevented the making of this decision.

And third, having introduced the New Thing into use, society reacts. But society rarely if ever rejects the New Thing. We still cling to the optimistic Nineteenth Century notion that all change is progress and that all progress (especially progress in technology) is good—despite mounting evidence to the contrary. After all, whatever limited success the "good guys" (including me) may have had in slowing down the SST, for example, I doubt that anyone here really believes that we will remain free of SST—indeed we'll probably all choose to fly it when it goes into service. [It should be noted that whatever limited impact U.S. citizen groups may have had in throttling back a domestic SST, their counterparts in France and Russia were even less effective, even though no one but air frame manufacturers and proponents of *la gloire de la patrie* really responded affirmatively to the question "does anyone need it?"]

Let me comment briefly on the first two steps in the process of technological change and then focus the balance of my remarks on the third step—namely, the response of society to the introduction of a new technology—specifically, to advances in biological or biomedical technology.

With regard to the choices by scientists or engineers as to which lines of inquiry seem fruitful or rewarding, there are probably certain ideas whose time has come. The work of others in the past seems (at least from vantage point of the future) almost naturally to require the next step to be taken. And this, I suspect, includes the "bright idea" which historically crops up more or less simultaneously in several places. We all know the story of the decade-long race between the United States and the Soviet Union to concoct a hydrogen weapon. And those of you who have read "The Double Helix" will recognize the joust between Watson and Crick, on the one hand, and Linus Pauling, on the other, as recent evidence for the proposition.

Furthermore, the process of choosing and the pursuit of choices may well be relatively independent of the level of funding. The process and the pursuit are probably much more a function of the peculiar kind of zeal, drive, imagination, dedication and curiosity of the community of scientists than a function of external support. Mendel tended his peas; E did equal Mc; $_2$ and Watson and Crick managed to construct a double helix several years before Sputnik, Congressman John Fogarty and Senator Lister Hill rained manna on the heads of the research community, especially on the biomedical research community. [I recognize, in the current days of budgetary stringency, an element of arch heresy in my suggesting to scientists—especially those in basic research—that they will "do their thing" even without public money. This is not quite my view, given especially the nature of the demands that rob money from education and research. The rate of change may indeed respond to fiscal policy especially in the big hardware technologies and in considering the lead time in the supply of research workers. Suffice it to say that I think my argument is unaffected by alterations of the relevant time scale by a generation or two in either direction.]

For the very same reasons—reflecting the peculiar nature of scientists—it is likewise true, of course, that governmental action has been similarly ineffective in *prohibiting* the inexorable efforts of scientists to describe and explain the natural order. Word did get out, despite papal edict, that the earth was not the center of the universe.

To the extent that I have any personal experience with the working of the minds of researchers, I believe that scientists choose first of all to "do" science, and their choices whether to describe the structure of the double helix or to unlock the information system of the gene are dictated largely by happenstance—"I wonder how it works" or "what will happen if I do thus-and-so?" are the approaches far more common than: "If I do thus-and-so, I can make a light bulb," or "If I learn how it works, I will improve the lot of mankind." Decision-making by individual scientists in this respect is not necessarily rational, nor is the time-scale for doing the work perceived generally as critical. But the decisions are well-informed decisions. They are not, however, self-conscious. such decisions purport to be made without any consideration whether there is a good social end-use—or any end-use—for their efforts. Indeed, any such consideration is probably impossible.

The second step in technological change requires choices whether to put a new discovery (basic or applied) to some practical and public use. Here the marketplace becomes relevant (broadly defined to include producers, consumers, advertising agencies, etc.), and time and money are major factors. Up until quite recently the choice—at least in the private sector—have almost always been made automatically in favor of employing the new technology. Such choices have not been made with any broad participation by those affected by the choice.

And, in general, the option to proceed in a direction most people call "forward" has been exercised with less than precise evaluation of adverse consequences. More importantly, perhaps, it seems always to be the case that doubts with respect to introduction of new technology are resolved in favor of introduction. Of course, there are exceptions, such as when the immediate impact is demonstrably adverse to an important and relevant economic interest (as in the case of the permanent light bulb). I do not know what peculiar characteristic of mankind requires us to act like seven-year olds, and to accept or demand prompt benefits in the absence of meaningful knowledge or risks and costs. (This is not to deny that recently more attention is being given to the consequences of a new technology, generated in part I suspect by the physical crowding we now endure and by the fact that many more people are not only affected by new technologies, but are aware that they are affected.) The point, however, is that decision-making in the marketplace, which should by definition be self-conscious, has in fact been uninformed or ignorant.

Let me now move to my more specific concerns arising out of the truly colossal increase in biomedical knowledge and the readily foreseeable conversion of that knowledge into uses in the public arena. I have no doubt that biochemists and geneticists will continue to tell us more about how living things work and that the public will demand of the government and of an acquiescent industrial establishment that some use be made of this new knowledge. Frankly, it strikes me as quixotic to rail against scientists for learning too much or against the business community for converting that learning into digestible (or indigestible) commodities and offering those commodities to us—unless one is prepared to accept political coercion much more repressive than any we

have considered viable in the past. With some rather obvious and shocking exceptions, no government has for very long prevented its people from doing what they wanted to do. And certainly no technology-based society has successfully prevented (save by inadvertence) the development of new technology, although political or economic policies may have on occasion delayed the utilization of the technology.

I believe the problem we will face with increasing urgency is not how to distinguish rationally between the new technological commodities we should accept and those we should reject. Rather, our problem will focus on the technologies we must accept and adapt, control, or otherwise learn to live with—all within an imperfect political structure where we place a high value on individual freedom and on broad participation in and consent to the governmental process.

Let me start with a rather simple example that has already become of concern to the legal profession. Criminal justice is based in large measure on the notion that, within fairly broad limits, individuals are responsible for their own conduct and, therefore, one's moral sense is not shocked by imposing blame or punishment on persons who elect to violate the established and generally-accepted norms. In addition, it is ideally both possible and desirable to isolate the violators for a period of time so that they may learn, through techniques of criminal rehabilitation, to elect in the future not to violate those norms again. This process takes place after the fact—that is, the law (or, at least, the ideal of law in Western Civilization) assumes that until the norm has been violated the future criminal is entitled to the same measure of freedom from coercive governmental action as are all other people in the community. We have simply not accepted the notion of locking up *potential* criminals, even if we could identify them in advance of their criminal conduct. (The isolation of Japanese-Americans during the Second World War is now widely regarded as an unmitigated outrage and this year Congress will likely repeal the Attorney General's power to repeat that episode.)

However, several geneticists suggested in the mid-1960s, on the basis of their studies of a few prison and mental hospital populations, that there may be a statistically quite significant correlation between the presence of an extra Y chromosome in certain males (who are also tall, pimply and mentally dull) and the occurrence of violent conduct by such males. Can these XYY types be held criminally responsible in any traditional sense, assuming it can be shown that their genetic makeup is such that they are not free agents capable of choosing? If that were the only question, the answer might be fairly straightforward—we simply put them in hospitals (perhaps forever) as we do with other mentally unfit persons whose criminal acts were the product of a mental disease or defect.

But there is more to the problem. It has been suggested that we can predict, with statistical confidence, that an XYY will commit a particularly offensive type of crime. Should society be powerless to act in advance of murder? Shouldn't all males be promptly tested at birth for the presence of the extra Y? Or, why wait until birth—why not test *in utero* and compel an abortion?

I have chosen the XYY phenomenon as the first example for several reasons.

First of all, the example is not hypothetical but quite real and immediate. Criminal defense attorneys interpreted the scientists' suggestion of correlation at much more than face value and quickly "XYY" became legal jargon. Recently a French court convicted a man accused of murdering a prostitute even though he was an XYY. But the sentence was for only seven years. And in Australia a jury acquitted on the grounds of insanity a young XYY who stabbed a 77-year old widow; a doctor had testified for the defense that every cell in the man's body was abnormal. And the lawyers for Richard Speck (the nurse-murderer in Illinois) are claiming now that he is not blameworthy because he too is an XYY.

Second, the social impact of the XYY problem appears to be readily understandable and manageable. If the high correlation is eventually confirmed, rationalizing the new data may require only a little adjustment in the way we handle criminals. The mind does not boggle at such adjustments and no major values or interests of large numbers of people appear to be threatened. And, if the science involved proves to be wrong, society would very likely accept or insist upon the restoration of the *status quo ante*.

Third, it illustrates the inadvertent way in which new knowledge—even without a technology—may force the public to respond. In the early 1960s, studies in Swedish mental hospitals showed an unusually large number of XYY males among hard to manage patients. The data were confirmed in 1965 in Scottish hospitals and maximum security prisons. And in 1968 we had the criminal cases I just mentioned. But I doubt that any of the initial investigators was directly or even indirectly thinking about the fact that the new information might cause disruptions in our criminal justice system.

Last, the example highlights the fact that some choices cannot be ducked or postponed or the data involved carefully analyzed before any action is taken. Courts and juries must decide pending cases. They cannot pick and choose from among all the cases the ones which should be decided and the ones which should be postponed.

A further thought on XYY may put matters in a broader context where very self-conscious societal decision-making is required.

We already know that there will be some number of XYY men who will never commit a crime. Are we to dispose of them as criminals or as insane simply because their numbers are small and, therefore, upon some theory of the greater good, we are willing to compel them to sacrifice their freedom? Does it matter that the statistical correlation is, say, .84 rather than 1.0?

Let me suggest that the statisical difficulty raises several important issues: One issue is the level of certainty of benefit or harm we will require before embracing or delaying introduction of a new technology. It will probably remain true that society will frequently act in a way which, by hindsight, will seem precipitate. But how does one justify failing to act when the probabilities are very high but are less than 1.0? Where we attempt to alter the existing balance of individual freedom and social coercion, we must remain sensitive to the fact that probability statistics will help us predict the outcome of a series of similar events, but will tell us very little indeed about the outcome of particular events. Do you really believe the old story about the man with one foot in boiling water and the other foot packed in ice? When asked how he felt, he responded: "On balance, I feel okay."

Other issues highlighted by—but tangential to—statistical difficulties are common to human experimentation generally. For example, what responsibilities if any, does society have to the necessary mistakes or accidents of medical research and experimentation? What of the casualties of introduction of a compulsory new technology, like fluoridation or PKU tests? One also wonders what ethical norms must be protected and enforced in obtaining the informed consent of human experimental subjects? As life-saving technologies burgeon—especially expensive technologies involving substantial commitment of trained craftsmen—we will be unable for long to avoid the question: "Who shall live and who shall die?" The rich? The smart? The beautiful? The young? or the old? or some of each? and how many? and who decides? and what known value calculus or ethical system is available to guide either the public at large or the Platonic guardians in making such cost-benefit analyses?

The XYY phenomena is a miniscule episode which puts some of the issues in what appears to be a manageable dimension. But the issues raised are common to much of which I will say later and it may be useful to keep them in mind.

Let us now turn to problems not yet upon us which will require far broader adjustments than mere tinkering with the criminal justice system. Until quite recently only life insurance company actuaries and the Census Bureau cared about population grouping at various age levels. All that has now changed. We know that about half the people in the United States are under twenty-five, and some political styles take that fact into account. Likewise people here are generally living longer, and much attention is now paid politically to senior citizens and medically to geriatrics. Science, too, is interested in how we grow old. In several biological research laboratories there are well-advanced cellular studies on the process of aging. I have no doubt that within a decade or two (or perhaps three or four, it really doesn't matter which is correct) through some form of genetic alteration, drug therapy or organ replacements, it will be possible to extend the life span of most people to 100 or 120 years of reasonably good health.

If it should be the case that the life extending technology is relatively expensive, the ethical problems just mentioned will certainly surface as soon as the technology has ceased to be experimental. Who should be permitted to extend his life abnormally? Should some be required to do so? Picasso? The Beatles or John Wayne? Think of the Republican reaction if such an opportunity had been available to FDR? My examples here are facetious only because it may help sharpen the ethical choices inevitably exposed by an expensive technology.

The same issues are evident now in our concerns about delivery of medical services. How can we justify public financing of kidney dialysis or organ transplants for a few people when millions of people could be served prophylactically by the talent and money expended in esoteric medical-techniques?

The facts are, I believe, that the world has become too small and too crowded and people too well-informed and, if you will, too outspoken to suffer that only the rich will have access to a much longer life (or, for that matter have access to psychoanalysts or, closer to home, to lawyers). And these facts force us to examine and articulate our *collective wisdom* to answer the question: "Who shall live?" I stress the words "collective wisdom" because our democratic ideals and sense of fundamental fairness require no less. In addition, much of our future technology will be developed with public funds, and thus the taxpayers and their representatives will have a rightful claim to share the burdens of decision; they will demand it. And, at least absent a major political revolution in this century, any allocation of scarce resources will have to attract a broad consensus to be viable. I have no trouble conjuring up hospital sick-ins to prevent life-lengthening surgery for some rich, powerful, but unpopular person.

But if, on the other hand, it should turn out that our life-extending technology is cheap, the planet as a whole will face a really unprecedented population crisis. (I say "planet" advisedly, because cheap

technologies are not to be contained by national boundaries.) If "who shall live?" is answered: "anybody who wants to," then within a very short time the world population would likely be doubled or tripled, since it is inconceivable that anyone capable of choosing would elect not to take the "life-extending pill" which would assure a substantial extension of a reasonably healthy life.

Assuming we could somehow wrestle with the "gut" survival issues of food and shelter, the economic dislocations would nonetheless be enormous. If the extra years lengthened the retirement years, every pension fund and social security system would very quickly go bankrupt. And if we lengthened the working years, what would all those people do? Unemployment would be substantial, even without considering the funeral directors, casket makers and others who would be technologically unemployed because for several decades nobody would die of natural causes. And, one step further, consider that life-extension might include an extension of childbearing years. Or, alternatively, assume we are unable to extend the span of female fertility but do still further extend the span of male virility. Will we have truly sired a race of old men leching after young women?

I don't pretend to have any answers to those questions. But the facts will force major changes in the way we live; what efforts are perceived as useful, how we spend our leisure and what our values are. In addition, there will be wholly unpredictable consequences. Consider, those of you over 30 with children: What will happen to the ambition and attitudes of young people in a society where parents seem to live forever? My list of questions is by no means exhaustive—a single New England spring afternoon spent in reflection would suggest many more.

I have thus far suggested two examples of science forcing us to think anew about the nature of our social order—the XYY phenomenon, involving no massive research effort or technology but merely a putting together in an unexpected way of existing data, furnishing a new bit of knowledge we can hardly ignore—and the second, life extension, probably involving a substantial technology for which the demand will immediately be universal.

Let me now turn to two examples of what in our youth we called "science fiction" but which we no longer dismiss so casually. The first of these latter examples suggests that what we do in the way of therapy will almost certainly develop for us techniques of prediction, manipulation and control far beyond the therapeutic realm for which those techniques were designed. And my final example—nuclear transplantation—points to the apotheosis of control—and man's infinite capacity for mischief.

I am confident that one of the other things the biomedical community will deliver to us its comparative freedom from disease—not only from the common cold, cancer, heart and lung diseases and epidemics and public health problems of various kinds. We will also be delivered from the range of already known and still unknown genetic abnormalities.

[We will learn, too, a great deal more about presently-known psychological disorders and how to treat them. But I assume that if we retain any creativity or ambition, new forms of mental disorder will occur to keep our psychiatrists and our hospitals well-occupied.]

In speaking about freedom from genetic diseases. I want to borrow heavily from a talk given to the AAAS in December, 1968 by Robert L. Sinsheimer, Professor of Biophysics at Cal. Tech. Sinsheimer does elegant science and is reasonably cautious in projecting the progress of science into a future technology. Let me quote selectively from his remarks, as follows:

"There is today much talk about the possibility of human genetic modification—of designed genetic change, specifically of mankind. A new eugenics has arisen, based upon the dramatic increase in our understanding of the biochemistry of heredity and our comprehension of the craft and means of evolution. . . . For the first time in all time a living creature understands its origin and can undertake to design its future.

"This is a fundamentally new concept. Even in the ancient myths man was constrained by his essence. He could not rise above his nature to chart his destiny. Today we can quite soberly envision that chance—and its dark companion of awesome choice and responsibility. . . .

"I want to use the phrase 'genetic change' in a broad sense—in the sense of altering some physiological and psychological process which we presently believe has been programmed into us through out inheritance. And I will assume that such change might be achieved either in a strictly genetic mode through a change in our inherited characteristics or in a somatic mode, possibly through a change in the time or place or degree of action of our inherited genetic components, or possibly through the somatic addition of genetic components. . . .

"There are in the United States today some 4,000,000 clinical diabetics. Many of these people are kept alive only by repeated frequent injections of the hormone insulin. It is believed that there are likely several million more sub-clinical, not clearly recognized cases with marginal symptoms in the United States. Without these recurrent injections of insulin many of these people would perish. While it keeps them alive the injection of insulin is not the full equivalent of a normal physiological function. Such diabetics are known to be more susceptible to disease, to heart and circulatory illnesses, etc.

"My thesis is that what we might call genetic therapy offers the promise of a much more elegant, and indeed more satisfactory, physiological solution to this ailment."

Sinsheimer then discusses at some length the nature of the protein insulin, the state-of-the-art of synthesis of the gene that directs the pancreas to manufacture insulin, and the clever ways scientists will have for inserting and turning on the gene. He also outlines the prospect that the genetic make-up of the diabetic's children will not be similarly impaired. Sinsheimer concluded his remarks in part as follows:

"The old eugenics required in principle a continual selection—for breeding of the fit, and a culling out of the unfit. The new eugenics would permit in principle the conversion of all of the unfit to the highest genetic level.

". . . The horizons of the new eugenics are in principle boundless—for we should have the potential to create new genes and new qualities yet undreamed. But of course the ethical dilemma remains. What are the best qualities and who shall choose?

* * *

"I know there are those who find this concept and this prospect repugnant, those who fear with reason that we may unleash forces beyond human scale, and those who recoil from this responsibility.

"But I would suggest to those who feel this way that they do not see our present situation whole. They are not among the losers in that chromosomal lottery that so firmly channels our human destinies. This sort of response does not come from the 250,000 children born each year in this country with structural or functional defects, of which it is estimated 80% involve a genetic component. And this figure counts only those with gross evident defects outside those ranges we perforce choose to call natural. It does not include, for example, the 50,000,000 'normal' Americans with an IQ of less than 90.

Sinsheimer concluded by putting on us—namely, on "those who were favored in the chromosomal lottery"—the burden of choosing on behalf of the human race whether, on the one hand, "we will continue to accept the innumerable, individual tragedies inherent in the outcome of this mindless, age-old throw of dice," or whether, on the other hand, "we will assume the responsibility for intelligent genetic intervention."

Sinsheimer's prose is graceful and compassionate. I wish only that he might expand on his repertoire of skills and teach a course in expository writing.

One final example will suffice: until now mankind has had to rely on a rather old-fashioned but quite acceptable method for getting enough information into a female egg to cause that egg to grow into a new human being. We will shortly have a new method which, while not as friendly or interesting, will do the job just as well. The polysyllabic label of this new method is "nuclear transplantation" and was described as follows by Antonie W. Blackler, Professor of Zoology at Cornell, as part of the same AAAS symposium at which Sinsheimer spoke. Blackler said:

"Nuclear transplantation is a technical device which essentially shortcircuits sexual reproduction and permits the generation of species which normally practice sexual reproduction by an artificial form of a sexual generation. The theory of the technique is very simple. The object is merely to replace the normal nucleus of a mature but unfertilized egg with a nucleus taken from a cell of a single parent organism. The technique has been carried out, to date, using salamanders and frogs, and recently the fruit fly *Drosophila* . . .

"In the practice of the technique, a small piece of tissue is taken from the donor animal and chemically disaggregated into its constituent cells. The cells, one at a time, are sucked up into a micropipette such that the cell membrane is shattered. Subsequently, each cell nucleus with associated cytoplasm is injected into an unfertilized egg whose own nucleus has been either manually removed or rendered functionless by ultra-violet irradiation. If all goes well, the egg now develops in the same way as if it had been involved in fertilization.

"The extension of the technique to mammalian material has not so far been performed. Yet I should like to make it clear to you that, while this extension will require something rather more sophisticated than is the case for working with amphibia, and will probably require a term of six or more research scientists, there does not exist any technological barrier which appears insuperable. . . .

"If the technique of nuclear transplantation can be extended to mammals and to birds, then quite definite economic advantages and applications can be looked forward to. Since clones [that is, progeny] of transplant animals have the same genetic character as the original donor, then in the same environment we might reasonably except those animals to be replicates of the parents in terms of their morphology, function and behavior. This would mean that desirable agricultural attributes that turn up from time to time in champion bulls, meat-bearing cattle, milk production and egg-laying could not only be perpetuated in transplant strains, but at least theoretically countless individuas having all the desired qualities could be produced. . . .

"Finally [still quoting from Blackler], the extension of nuclear transplantation to man himself should be mentioned. The production of replicate humans . . . might, from some standpoints be considered entirely suitable. . . . [A] sterile woman could produce her own child, and a handicapped baby might be born anew and whole via a transplantation (provided, of course, that the baby was abnormal not due to some genetic defect but by some developmental accident). Equally,

untrammeled exploitation could lead to bad ends . . .

"At this point we seem to depart from basic science into the world of science fiction. Unfortunately, science fiction has an uncomfortable habit of becoming tomorrow's science."

And now, less than 18 months after Blackler spoke, nuclear transplantation has been achieved in mice—that is, in mammals. We will doubtless soon add to "which person shall live?" the question. "what shall he look like?" And, of course, along with those questions we have a third: "who shall decide?"

Let me return briefly to a footnote I dropped earlier in discussing life-extending technologies. I noted that if the technology turns out to be inexpensive the problem would not be containable by national solutions; some international solutions (or parallel national solutions) would be required. So, too, for regulation of the nuclear transplantation technology. I doubt this nation would for long ignore information that, for example, millions of Chinese women were carrying male fetuses programmed to be tall, bland, aggressive, blue-eyed warriors.

I have referred frequently tonight to the stresses the new biological knowledge will impose on our value systems and on our ethical choices. I do not believe society will opt for anarchy for any long period of time. Society will demand some form of regulation and, in constructing the regulatory scheme, choice becomes inevitable. Will we accept, for example, a society in which the normal condition is sterile, and where one can have babies in the old-fashioned way only by taking a fertility pill—dispensed free by a government, no more than two to a couple? We must somehow decide how much freedom we require and how much coercion we will endure. We will be in the position of the courts in my XYY example—there comes a point where choice cannot be postponed. And what will guide us in choosing will be our capacity to articulate our values—what is fair? what is good? is there some level of suffering required to reserve artistic creativity?—and also our capacity to quantify our values—how many beautiful, or smart, or strong people do we want? and what level of risk or error is tolerable?—or to reject consciously anyone's right so to quantify.

This talk could not properly end without some mention of the role of religion. Historically, one principal function of religion was to articulate society's ethical standards. Confronted with new imperative choices, that role may well expand. In recent years, in both the peace movement and the civil rights movement, religion has attempted to guide public decisions with arguments based on notions of right and wrong in man's relation to man. That experience may be useful in the years to come as others are forced to join in the ethical colloquy.

It is with some trepidation that I have been a mite dogmatic tonight in predicting with carefree abandon the certain course of scientific development. It's a bit outside the lawyer's normal realm, and perhaps another instance of "fools rush in." But one must try to make predictions, and hope for better luck than a distinguished group of scientists and social scientists had in 1937. At that time a Federal National Resources Committee examined the role of science as a national resource, and said:

"Though the influence of invention may be so great as to be immeasurable . . . there is usually opportunity to anticipate its impact upon society since it never comes instantaneously without signals. For invention is a process and there are faint beginnings, development, diffusion, and social influences, occurring in sequence, all of which requires time. From the early origins of an invention to its social effects the time interval averages about 30 years."

The report also sought to evaluate the unprecedented date of technological change during the first third of the twentieth century and discussed the social consequences of the new technologies which had come into being. The scientists also attempted to predict the course of technological progress which could be anticipated in the second third of the century. Their report includes not even a hint of the possible emergence of nuclear technology, radar, computers, or the jet engine, although these came into practice within a few years. In fact, the report suggested that aviation technology had by 1937 largely run its course, and that future developments would lie in safety and comfort rather than speed.

Making predictions is indeed dangerous sport.

I hope that you do not resent my having painted rather broadly in my discussion tonight. Or that I have failed to acknowledge appropriately that most of what I have said tonight was first said or thought of by many others of far greater renown. But I was warned that there is a time limit—and rather than write a book (and read it here tonight) my purpose was to provoke others to do so either to fill the interstices in my argument, or to demolish it. I do hope we have begun a discussion which may, over the years, equip and guide the body politic in coping with some very major problems.

I hope also that you do not resent my having delivered such a lecture to a dominantly scientific group. I recognize that in recent times guidance to the body politic has (or has purported to) come from social scientists, historians, lawyers, economists and practitioners of those arts—called politicians—men who are accustomed to making value choices. And there is a certain comfort in the belief that "there is nothing new under the sun"—that somehow society will adjust without too great strains or hardships to new requirements for survival—in much the same mindless way it has in the past. I happen not to think that observation particularly helpful. Large parts of this planet did suffer through several hundred years we now call the Dark Ages. But those were very different times. Soon, we will no longer be at the mercy of the elements or chance. We will have a qualitatively different power to alter our future. Indeed, I would argue that the quality of life in 1800 A.D. was closer to the quality of life in 1800 B.C. than it will be to the quality of life in 2000 A.D.

I would also argue that the scientific community must play an active role in making the inevitable ethical choices, partly to fulfill the scientist's ancient role as society's principal philosopher, but more importantly because it is essential that the public get the facts straight—what can be done, what can't be done, what may be done, what mistakes are very likely, what uncertainties are sure to haunt any predictions we may make, and what risks are inherent in our choices. Getting the facts straight is surely the minimum scientists should be willing to contribute to the public discourse.

Furthermore, whether they like it or not, scientists are also *part of* the body politic—not above, below, or outside of it. Laymen, standing at a respectful distance, tend still to regard scientists with some degree of awe. At closer range, scientists are very much like people. And while scientists may have a near monopoly on talent, they clearly have no monopoly on wisdom, insight, sensitivity or other humane values. But scientists constitute a growing fraction of the articulate population and what they do affects them and the rest of us. They cannot remain aloof and greet each new public problem and misapplication by abdication. They have a responsibility to become involved as citizens in the sometimes unpleasant business of public argument and decision-making.

Last, I think that, for the health of the scientific community itself, scientists must become engaged now in public undertakings. If scientists—who will continue to startle us with their damnable cleverness—cop out on the problems they create, the public may turn on them and/or they will share the fate of physicists who (probably through no fault of their own) have for a generation been wringing their hands and donning hair shirts to expiate their guilt. The Eahn-Strassmann experiments of late 1938 were, via Meitner and Frisch, reported to the scholarsly American Physical Society by Bohr and Fermi in January, 1939 and six months later Szilard had drafted Einstein's famous letter to Roosevelt. By early 1940 the secrecy curtain (urged by Szilard a year earlier) had foreclosed any public consideration or understanding of the impact of the developing nuclear technology. The people remained ignorant, and the physicists were barred from informing them.

But the fate of the physicists need not be shared by the community of biological scientists. Recent biological advances have suffered (if "suffered" is the right word) from a surfeit of publicity ranging, for better or worse, over all the media. We have been warned and titillated to a fare-thee-well. As I said at the outset, "we have both the time and the wit, if we care to use them." We must now stop protesting the inevitable and commence a disciplined, creative and public effort aimed at articulating our values and harnessing our technology to serve those values. If we fail to grasp the nettle and wrestle the problem directly, we will have only ourselves to blame.

Mr. SCOTT. Mr. President, I now suggest the absence of a quorum.

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

INSERTION IN THE RECORD OF STATEMENTS RELATING TO SENATORS

Mr. MANSFIELD. Mr. President, the RECORD for Wednesday, June 10, on page 19124, carries a statement by the junior Senator from Oklahoma (Mr. BELLMON) with certain attached news items.

This insertion in the RECORD by Senator BELLMON is highly unusual, first, because it is critical of another Senator, the distinguished senior Senator from Oklahoma (Mr. HARRIS), and, second, because it apparently was not read openly in the Senate by the junior Senator from Oklahoma but was handed by Senator BELLMON to the Senate Parliamentarian for printing in the RECORD without notice to Senator HARRIS.

Senator HARRIS feels very deeply that the war in Indochina must be brought to an end, but he is one of those who have worked most diligently to keep this from becoming a partisan issue.

The first newspaper item which was attached to the statement by Senator BELLMON and which referred to Senator HARRIS has as its apparent purpose the establishment of an impression that Senator HARRIS only began to speak out

against the Vietnam war during the present administration, when the truth is that he spoke out against it during the last administration, at that time calling for a bombing halt and de-escalation.

The second item referring to Senator HARRIS attached to the statement by Senator BELLMON was a column in which the columnist had quoted Senator HARRIS as saying, "We will hold Nixon responsible if he turns South Vietnam over to the Communists," indicating that Senator HARRIS, as chairman of the Democratic National Committee, was trying to make political capital of the war for his party, whichever way the war went, when the truth is that Senator HARRIS never made any such statement, and the columnist, himself, in a later column, acknowledged Senator HARRIS' denial.

The trouble is that this insertion in the RECORD by Senator BELLMON is of the type which is often made for reprint purposes. Since Senator HARRIS was given no notice and the statement was not read publicly in the Senate, there was no chance to object to the statement or to correct the erroneous impressions it gives. Thus, it is possible that someone could have Senator BELLMON's statement and attachments reprinted and circulated among persons who will have no way of knowing that Senator BELLMON's charges are not accurate and have been answered.

It may be said that the regular procedures for notifying a Senator concerning an attack to be made upon him personally might not apply in this instance, since Senator HARRIS was once chairman of the Democratic National Committee, while also serving as a Member of the Senate.

Many Senators speak outside the Senate and some hold other positions. Each must, obviously, defend his actions and his words.

But when one Senator chooses the forum of the Senate floor and the CONGRESSIONAL RECORD to attack another Senator personally, for whatever reason, then the fundamental procedures of the Senate should be followed, with full prior notification and opportunity for response before such statements and attachments, seemingly uncontroverted, are printed in the RECORD. Basic fairness is required.

Senator BELLMON, himself, once served in the highly partisan position of campaign manager of candidate Richard Nixon's presidential campaign. Another Senator might just as easily place material critical of him in the RECORD because of these activities without giving him notice or an opportunity to answer. I would oppose such procedure.

The procedures of the Senate have grown up in order to prevent one Senator from taking such advantage of another who is absent from the floor. The special method devised for having a statement and attached materials printed in the RECORD without it having to be given orally is purely for the convenience of Senators, and it will have to be discontinued if it is going to be abused. I have notified the Parliamentarian that, in the future, no statements or attached materials are to be received at the desk for printing in the RECORD if they are critical of another Senator, unless they are read openly on the Senate floor, and I admonish Members of the Senate that so much of our orderly operation in this body depends upon procedures which exemplify civility, that criticism by one Senator of another should not be spoken except in strict accordance with the rules of the Senate and only where there is full notice in advance and opportunity for response.

As far as I am concerned, this would apply—and has applied—to all Senators regardless of party.

Mr. BELLMON. Mr. President, as a Member of the Senate, I certainly have no desire to enter into a personal attack on another Senator. However, as a member of the President's party, I feel a responsibility to help keep the record straight. Therefore, I feel that when the President is criticized by the chairman of the opposition party, it is entirely proper and even necessary to speak out.

I do not consider the statement I entered into the RECORD on June 10, 1970, as a personal attack on another Senator. The statement was intended to call attention to the reported intention of the national chairman of the Democratic Party to take partisan advantage of the Vietnam war. My remarks were based on certain published material, including an article by Roscoe and Geoffrey Drummond, dated October 5, 1969, and distributed by the Los Angeles Times Syndicate. It has been alleged that a statement attributed by the Drummonds to the former chairman of the Democratic National Committee was inaccurate and had been retracted. I have corresponded with the Drummonds and they have informed me that there was no retraction of this column or any of its content.

I have in my hand a copy of the letter I wrote to the Drummonds concerning this matter and a copy of their reply. I also have a copy of the column which they had written on this subject and the column which purported to retract the statement in the earlier column. I ask unanimous consent that they be printed in the RECORD.

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

JULY 2, 1970.

Mr. GEOFFREY DRUMMOND,
Mr. ROSCOE DRUMMOND,
Washington, D.C.

DEAR SIRS: On June 10, 1970, I inserted into the *Congressional Record* references to one of your columns concerning certain comments made about President Nixon's Vietnamization policy. Subsequent to that time a charge has been made that your column contained inaccuracies and that it had been retracted. If this is true, I was unaware of it, and I would appreciate being provided with a copy of a retraction, if one was made.

Your assistance will be greatly appreciated.

Sincerely,

HENRY BELLMON.

LOS ANGELES TIMES SYNDICATE,
Washington, D.C., July 8, 1970.

Hon. HENRY BELLMON,
U.S. Senator, Senate Office Building,
Washington, D.C.

DEAR SENATOR BELLMON: We are pleased to respond to your letter of July 2.

We have enclosed our column of Oct. 5, 1969 which apparently is the one you refer to in your letter to us.

There was no retraction of this column or any of its content.

In a column of Nov. 25, 1969 (enclosed) we did refer to the earlier column. Please see last paragraph as marked.

Hope this helps.

Sincerely,

ROSCOE AND GEOFFREY DRUMMOND.

DYNAMITING THE PEACE

(By Roscoe and Geoffrey Drummond, Los Angeles Times Syndicate, October 5, 1969)

WASHINGTON.—The leaders of the Democratic Party are playing with political dynamite in trying to force President Nixon to withdraw U.S. troops from Vietnam so rapidly as to throw away all prospect of negotiating a peace. They may be the ones who get blown out of the water. That's not important. What is more important is that the United States of America would be hurt—grievously hurt—by this shortsighted, reckless, perilous undermining of what the President is doing to end the war by seeking a fair peace.

No one is suggesting that those who want peace at any price, those who want to withdraw all American forces immediately, regardless of the consequences, should still their protests. All the President and others who are earnestly seeking disengagement *and* a decent peace are asking is that for a reasonable period congressional critics should stop telling Hanoi that it doesn't need to negotiate, that all it has to do is to wait and they—the congressional critics—will see that the U.S. government accepts a no-peace policy.

The Vietnamese war has never been a partisan issue, and attempting to bring it to an end with a fair peace is not a partisan issue. But leaders of the Democratic Party are now trying to make it so. Senator Fred R. Harris of Oklahoma, Chairman of the Democratic National Committee, disclosed this strategy in a candid remark to the press last week. "We will," he said, "hold Nixon responsible if he turns South Vietnam over to the Communists." But simultaneously Senator Harris and Democratic senators like Kennedy, McGovern, McCarthy, Fulbright are continuing to demand such a rapid pull-out of U.S. troops that the end result would be to give the Communists control of South Vietnam. Thus, the national chairman of the Democratic Party is not only acting to make Vietnam a pay-dirt partisan issue but is also seeking to put President Nixon in such a box that no matter what he does he's bound to lose. What he's up to is now in the open. He wants to give the Democratic Party all the dividends he can by joining in the pressure on Mr. Nixon to get American troops out of Vietnam fast. But Harris doesn't intend that the Democratic Party should take any responsibility for an imprudent speed-up of withdrawal. He proposes that if a President gives in to the demand for imprudent speed-up he—not the advocates of speed-up—should be held to blame. In other words, Senator Harris' neat formula is to make Mr. Nixon punishable by the voters if he doesn't yield to pressures to get out quick and also if evil consequences come from yielding to such pressures.

Senators and Congressmen have special responsibility. They know that the President has the constitutional duty to conduct foreign policy and that negotiating peace is the most difficult and delicate act of foreign policy. Heckling and harrassing the President is delaying the peace, not hastening it. Have the Democrats forgotten so soon that Richard Nixon is acting to end a war which he inherited from his Democratic predecessor and which they helped to authorize? Harris and those Democrats he is rallying to put

the voice of his party behind the peace-at-any-price student faculty protests October 15 are playing with fire. It wouldn't matter, if they weren't also undermining the chances of negotiating a just peace.

[From the Philadelphia Inquirer]

NEGRO VOTING TREND BOOSTS REPUBLICANS

(By Roscoe and Geoffrey Drummond)

We want to add a postscript to a recent column in which, though our notes at the time read to the contrary, national Democractic chairman Harris feels we inaccurately stated his views on holding President Nixon responsible no matter what happens in Vietnam.

"What I tried to say and what I have consistently been trying to say," Sen. Harris writes us, "is that I feel the Democratic Party should help to create a climate which will enable the President to bring us out of the war and bring the boys home—without fear of recrimination on the part of the opposition party."

That's good. The test will come when the event takes shape.

Mr. BELLMON. Mr. President, the majority leader's action to require that statements mentioning names of other Senators to be read into the RECORD certainly is appropriate and I support him in his decision. I would have no objection to reading my statement of June 10 into the RECORD. The other method was used to save the time of the Senate and for no other purpose.

Mr. SCOTT. Mr. President, will the Senator yield for a clarification?

Mr. BELLMON. I yield.

Mr. SCOTT. As I understand it, what the Senator from Oklahoma put in the RECORD was a column by the Drummonds, and it was that column which quoted another Senator. The Senator from Oklahoma (Mr. BELLMON) was not himself quoting the other Senator, but was quoting a column which quoted the other Senator from Oklahoma; is that correct?

Mr. BELLMON. The Senator from Pennsylvania is correct.

Mr. SCOTT. Then the Senator from Oklahoma (Mr. BELLMON) inquired of the columnists, the two Messrs. Drummond, whether they retracted the column and the quotation, and they said they did not retract them. They did publish the denial by the Senator from Oklahoma (Mr. HARRIS); is that correct?

Mr. BELLMON. I read the letter that the Drummonds wrote in response to my inquiry. The letter is dated July 8 and it reads:

DEAR SENATOR BELLMON: We are pleased to respond to your letter of July 2.

We have enclosed our column of Oct. 5, 1969 which apparently is the one you refer to in your letter to us.

There was no retraction of this column or any of its content.

(Disturbance in the galleries.)

Mr. SCOTT. Mr. President, I demand that those in the galleries causing the disturbance be removed from the galleries.

(Further disturbance in the galleries.)

Mr. SCOTT. Mr. President, I demand that they be removed.

The PRESIDING OFFICER (Mr. COOK). The Sergeant at Arms will remove the demonstrators.

Mr. BELLMON. Mr. President, the final paragraph of the letter reads:

In a column of Nov. 25, 1969 (enclosed) we did refer to the earlier column. Please see last paragraph as marked.

The paragraph they referred to reads:

We want to add a postscript to a recent column in which, though our notes at the time read to the contrary, national Democratic chairman Harris feels we inaccurately stated his views on holding President Nixon responsible no matter what happens in Vietnam.

"What I tried to say and what I have consistently been trying to say," Sen. Harris writes us, "is that I feel the Democratic Party should help to create a climate which will enable the President to bring us out of the war and bring the boys home—without fear of recrimination on the part of the opposition party."

Then the Drummonds conclude by saying:

That's good. The test will come when the event takes shape.

Mr. DOLE. Mr. President, will the Senator from Oklahoma yield?

Mr. SCOTT. Mr. President, I will defer to the Senator from Kansas.

Mr. DOLE. Let me say that I have read the remarks of the Senator from Oklahoma, and also the quotations from the Drummond column just referred to.

I also recall that on September 27, 1969, an article appeared in the Washington Post where, again, the senior Senator from Oklahoma was quoted as saying:

It is time to take the gloves off on the Vietnam War.

This led to a request by the distinguished Republican leader, the Senator from Pennsylvania (Mr. SCOTT) for a moratorium on making this a partisan issue. He was joined in that request by the distinguished assistant Republican leader, the Senator from Michigan (Mr. GRIFFIN).

I have reviewed the material, and certainly feel that the Senator from Oklahoma (Mr. BELLMON), as indicated by the Senator from Pennsylvania, did not transgress that fine line, covered by rule XIX. I agree with the majority leader that nothing should be inserted in the RECORD which refers to a colleague, unless it is read on the floor. I agree with that. But I would point out that the statement from the Washington Post attributed to the senior Senator from Oklahoma on September 27, 1969, was commented on by a Member of this body, the distinguished Senator from Idaho (Mr. CHURCH), who indicated:

I want no part in any strategem to convert the Vietnam War into a political club for Democrats to use against Republicans.

The statement was also quoted by the distinguished Representative from Illinois, the Honorable JOHN ANDERSON, a Member of the House of Representatives.

But despite that, I agree the war should not be a partisan issue. We have endured it now for some time under three Presidents, and I think we all recognize that President Nixon is attempting to disengage from Southeast Asia. There has been deescalation of the Vietnam war, and every Member of this body hopes for an early end to the war, whether the President be a Democrat or a Republican, and regardless of our own party.

Several Senators addressed the Chair.

Mr. BELLMON. Mr. President, I yield to the Senator from Tennessee.

Mr. BAKER. Mr. President, I have no desire to unduly prolong this debate, and I shall not. I would make this observation: We have the rules of the Senate, as well as the precedents and traditions of the Senate, to insure that 100 men and women can, in good conscience, try to get along with one another. Speaking from my short experience of 4 years, I think it is remarkable that the system works so well, especially when we are dealing with difficult and complex issues that bring out the heat and passion of conflict. It is really a remarkable commentary on the Senate that, during its history, there has been so little conflict or so few injured feelings between its Members.

There is no written rule, that I am aware of, that requires a Senator be present on the floor when some other Senator makes a remark about him. I certainly know of no rule that requires a Senator to notify another Senator when he refers to printed matter regarding the other. All of this is in the second or third degree. All of these things are more or less unspoken rules of the Senate, and I respect them. I think they serve a purpose.

But I would point out that the provisions themselves are just as obscure as the situation is here. The distinguished majority leader has made the statement, if I understood him correctly, that the statements referred to in the Drummond column as having been made by the distinguished senior Senator from Oklahoma were not made, or words to that effect. I have no desire to enter into this conflict on its merits. I do not know what the merits are.

I do know, however, that there is room for reasonable minds to differ, and I took it on myself to call Roscoe and Geoffrey Drummond and talked with them, to find out whether or not these statements were made and whether or not they honestly believed them to have been made, and that, therefore, there was reasonable basis for the distinguished junior Senator from Oklahoma to have made the insertion in the RECORD of the Drummond column.

It turns out that the alleged conversation took place at a breakfast, I believe sponsored by Godfrey Sperling of the Christian Science Monitor. There were a number of people there, and, according to Geoffrey Drummond, who was present, both his notes and his recollection were in accordance with the column he printed, which the junior Senator from Oklahoma had printed in the RECORD.

I do not offer that to try in any way to take sides in the argument, but to point out that, just as rules of conduct sometimes involve a close decision, so this issue is not all one way or the other, and there is room for reasonable minds to differ.

Mr. MANSFIELD. Mr. President, will the Senator yield to me?

Mr. BELLMON. I yield to the Senator from Montana.

Mr. MANSFIELD. The point is that there is nothing in the written rules and regulations of the Senate which calls upon or makes it mandatory for one Senator to notify another Senator if he is to be mentioned in any manner which might be considered derogatory, degrading, or demeaning; but, as the Senator from Tennessee has pointed out, a precedent has been established in that respect, and precedent and custom oftentimes achieve the effectiveness of law.

As the Senator has further pointed out, we get by in this body on the basis of amity and comity. I have had the Speaker of the House of Representatives call me several times about remarks made by Members of the Senate relative to Members of the House of Representatives, and the incorporation of such remarks in the RECORD. I have understood the Speaker's point of view and those of Members of the House of Representatives. I have gone to Senators, both Republican and Democratic, and brought up to them the situation as explained to me by the Speaker. They have understood my awareness of it and the need for rectification. They did not do it again. Most of them had been under the impression that this custom and precedent applies only to the Senate and among Senators.

But this body gets by on understanding, cooperation, and a spirit of trying to work together for the benefit, not of our parties primarily, but of the Republic basically; and if we ever lose that sort of feeling between our Members, then I think the institution of the Senate will suffer a tremendous loss.

So I would hope that the Senator would keep in mind that if another Senator is to be mentioned, he at least should be given the courtesy of being notified; as, for example, the Senator from Mississippi, the chairman of the Armed Services Committee, speaking on some subject on which the Senator from Wisconsin had spoken yesterday, did notify the Senator from Wisconsin that he was going to speak about his remarks on yesterday, and, had the Senator from Wisconsin desired to do so, he could have been in attendance and been prepared to answer his remarks.

It is a small thing, but it is an important thing, and means a great deal in the conduct of the affairs of the Senate. It is not simply that the Senator from Oklahoma would be the one who might use a statement of this kind; it might be someone else, because, after all, the RECORD is a public document.

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

Mr. BELLMON. I am happy to yield to the Senator from Nebraska.

Mr. CURTIS. I ask my distinguished friend, is the alleged statement complained of one that the newswriters wrote without any corroboration?

Mr. BELLMON. Mr. President, I am not sure whether the Senator from Nebraska was in the Chamber when I called attention to the letter that the columnist had sent me in response to my request as to whether or not the statement had been retracted.

Mr. CURTIS. I heard the reference to that. But my point was, did Mr. Drummond, who wrote this column, write it without any corroboration as to what was said?

Mr. BELLMON. Mr. President, there are two Drummonds. Both of them signed the letter. Both of them apparently——

Mr. CURTIS. I mean the two of them.

Mr. BELLMON. There are two of them; yes.

Mr. CURTIS. Yes. My question is this: Did they have any corroboration with reference to the statement that is now questioned? Did anyone else hear it?

Mr. BELLMON. Mr. President, I have not talked with the Drummonds. I have written them a letter. I have their answer. I understood the Senator from Tennessee to say he had talked with the Drummonds, and that there were others present at the meeting. I have no knowledge of this personally.

Mr. CURTIS. The Senator has had no communication with the Drummonds in regard to that?

Mr. BELLMON. Not on that point.

Mr. CURTIS. I thank the Senator.

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

Mr. BELLMON. I yield.

Mr. ALLOTT. Mr. President, I think this is an appropriate time to discuss this matter a little more fully. Since we seem to be sort of straining at gnats in an attempt to place the junior Senator from Oklahoma in an embarrassing position—I should not say "we" because I am not a part of it—I think we ought to perhaps review a little other of recent history.

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

Mr. ALLOTT. I yield.

Mr. MANSFIELD. I think it should be brought out that, so far as the Senator from Montana was concerned, he kept both the Senator from Oklahoma and the minority leader fully informed, because this is not a very pleasant task, I assure the Senator from Colorado.

Mr. ALLOTT. I am sure it is not.

I recall that just 2 days ago I informed the majority leader that I was going to discuss his statement on finances.

Mr. MANSFIELD. That is correct.

Mr. ALLOTT. He said, "Go ahead," and I did.

But I think this is the time to look at this matter. I agree basically with the thoughts that have been voiced by several Senators, including the majority leader. We live here in a goldfish bowl. We live under great strain and great stress. I do not suppose that there is a Senator who has not at some time said something on the floor which strained the bounds of what he really intended to say.

However, I am reminded that a few short weeks ago, while I was involved in a conference committee on a supplemental appropriations bill, of which the Senator from Rhode Island (Mr. PASTORE) was the chairman, and we were involved in a very heated debate in the old Supreme Court Chamber, the junior Senator from South Dakota took the floor and, during the course of his discussion, called the actions of the senior Senator from Colorado crude, cynical, and political.

As soon as I could get back to the floor, I got a copy of the transcript from the official reporter and made a few remarks and later took some steps, which I will discuss at this time, for a reaffirmation of the record.

I have in my hands Webster's New Collegiate Dictionary. I hope the fact that it is "collegiate" will not cause anybody here to say it is not a valid dictionary. At least, I just picked it up off the table, and it purports to be a true Webster's Collegiate Dictionary. Under the situation in which we find ourselves, I have checked the word "crude," and I find the word defined here as follows, after the pronunciation of it:

> From CRUDUS raw; in a natural state; not cooked or prepared by heat; raw; also not refined; unripe; immature; wanting finish, grace, tact, taste, or other quality characteristic of maturity or culture; rude; a crude substance, specifically petroleum as extracted from the ground in crude oil.

Then I looked up the word "cynical" in this dictionary, and I find the following, after the pronunciation key:

> Fault finding; captious; currish; having the attitude of temper of a cynic; contemptuously distrustful of human nature and motives.

I have not bothered to look up the word "political," because, heavens knows, everyone in this body is here because he is political.

Now I refer to rule XIX of the Senate:

> No Senator in debate shall, directly or indirectly, by any form of words impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator.

These words were used about the distinguished Senator from Colorado—I hope he is distinguished—and no voice was raised in the Senate about the use of these very harsh and brutal words in a characterization of the senior Senator from Colorado.

I cannot imagine myself saying to any Senator that he is crude; and if I tell him that he is cynical, I think I am directly attacking his motives. I do not see what other interpretation can be put on it.

So I think we should look at this matter in context, and I would have hoped that at this time we would have had the same high regard for the ethics and the conduct of Senators in the U.S. Senate that we are discussing here today, and in which I completely concur.

There is one other thing: Subsequent to that, I discussed this matter—which was the subject matter of the speech of the junior Senator from South Dakota—with the Parliamentarian. During the course of the debate on that matter subsequently, I called the Parliamentarian of the Senate to the floor and, notwithstanding the ruling of the Parliamentarian, before I ever made a move toward calling up that amendment—notwithstanding the ruling of the Parliamentarian that once an amendment is laid

before the Senate it has no status and that it is the property of anyone in the Senate to call it up if he wishes to do so—the implication was made, on and off the floor, that the Senator from Colorado had somehow done something underhanded in trying to give the Senate a chance to vote on this very, very important amendment—an amendment that has been very divisive in the life of our country.

I now ask the Presiding Officer whether he will inquire of the Parliamentarian if the substance of what I have just said concerning the status of an amendment at the desk is true or untrue.

The PRESIDING OFFICER (Mr. COOK). The Parliamentarian assures the Chair that the remarks of the senior Senator from Colorado are correct: that once an amendment is presented to a bill and it is printed, to lie on the table, it is the prerogative of any Member of the Senate to call that amendment up; and the senior Senator from Colorado is correct.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ALLOTT. Mr. President, I have the floor, but I am happy to yield to the Senator from Montana.

Mr. MANSFIELD. Is that the usual procedure?

The PRESIDING OFFICER. The Chair is not sure that that is a proper question to be directed to the Parliamentarian.

Mr. MANSFIELD. Let me say that I do not think that is the proper procedure, that the rest of the Senators usually recognize the priority which the introducer of the amendment usually has; and I am sure the Senator from Colorado would agree with that thesis.

Mr. ALLOTT. I would agree with the distinguished Senator from Montana that it is not the usual procedure. But a lot of things are unusual in the U.S. Senate; and I say, frankly, that I resent having the imputation that the Senator from Colorado somehow did something underhanded. That is the reason I asked for the reaffirmation, as to the status of any amendment at the desk, regardless of who introduces it.

Now, having said that, Mr. President, I do not know who was on the floor at that time, because I absolutely could not be here. But, I was told that I was being attacked on the Senate floor. The Senator from Rhode Island was in a very bitter and critical debate over some items in that bill. The distinguished majority leader knows what the items were. I was supporting him. One of the items, incidentally, was one in which the majority leader was greatly interested.

Mr. MANSFIELD. Yes, indeed.

Mr. ALLOTT. It was impossible to leave the conference at that time. I did come to the floor. I only wish that I had a fine friend on the other side of the aisle who was present at that time who would have thought that it was wrong to say that the actions of the Senator from Colorado were crude, cynical, and political. Perhaps he had not read the dictionary recently. In that case, of course, he might not have realized the whole implication of what the words mean when they are looked up in the dictionary.

I thank the distinguished Senator from Oklahoma very much for yielding to me.

Mr. BELLMON. I thank the Senator from Colorado.

Mr. MANSFIELD. Mr. President, I hope that this colloquy on the floor of the Senate this afternoon will prove to be beneficial in future relationships among all Members.

I would point out again—this is reiteration—that we get by, not so much on the basis of our rules and regulations but on the basis of the unwritten rules and the unwritten regulations—the custom, the precedents, which have grown up and which have been tried and tested and found to be true, not only over the decades but over the years as well—and, pretty soon, it will be over the centuries.

It disturbs me when anything of this nature develops because there are no people I value more than my 99 colleagues in this body, regardless of whether they are Democrats or Republicans. As majority leader, I know that it would be impossible for the Senate to function if the minority leader and I were not to get a certain amount of cooperation, understanding, and flexibility. That has been forthcoming. We think it keeps the Senate from becoming an anarchic institution, which it could easily become because of the tremendous powers inherent in the position of any one Senator—the newest or the oldest.

So now that this is out of the way, I want to assure my colleagues that I will be on the lookout for any future infractions and will not hesitate to publicize them; but may I say that I do not expect there will be any more infractions of this kind. Hopefully, out of this conversation and colloquy will come a better understanding of the Senate and a stronger institution as a result.

ADJOURNMENT TO 11 A.M. TOMORROW

Mr. MANSFIELD. 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 morning.

The motion was agreed to; and (at 4 o'clock and 5 minutes p.m.) the Senate adjourned until tomorrow, July 24, 1970, at 11 a.m.

CONFIRMATION

Executive nominations confirmed by the Senate July 23, 1970:

DIPLOMATIC AND FOREIGN SERVICE

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

The nominations beginning Helmut Sonnenfeldt, to be a Foreign Service officer of class 1, a consular officer, and a secretary in the diplomatic service of the United States of America, and ending La Rue H. Velott, to be a consular officer of the United States of America, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on March 11, 1970.

HOUSE OF REPRESENTATIVES—*Thursday, July 23, 1970*

The House met at 11 o'clock a.m.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Restore unto me the joy of Thy salvation: and uphold me with Thy free spirit.—Psalms 51:12.

Almighty God, unto whom all hearts are open, all desires known, and from whom no secrets are hid, make Thy presence known to us throughout the hours of this day. Fill our minds with wisdom, our hearts with love, and our spirits with the desire to walk humbly in the way of Thy commandments.

We are glad that we are American citizens and that we live in this blessed land of liberty. Let no violence, no prejudice, no discord dim our vision of a free people living together harmoniously, working for peace in our world.

Bless our President, our Speaker, our Members of Congress, and all who work under the dome of this Capitol. Bless every individual citizen that the sacred rights of a free people may be ours forever.

In the name of Him who keeps men free we pray. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 17619) entitled "An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending June 30, 1971, and for other purposes."

The message also announced that the Senate agrees to the amendments of the House to the amendments of the Senate numbered 3, 5, 14, 25, 26, 33, 34, 38, 42, 53, 56, and 60 to the foregoing bill.

CONFERENCE REPORT ON H.R. 14705, EMPLOYMENT SECURITY AMENDMENTS OF 1970

Mr. MILLS. Mr. Speaker, I call up the conference report on the bill (H.R. 14705) to extend and improve the Federal-State unemployment compensation program, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.